

SYMPOSIUM: THE KIDS AREN'T ALRIGHT: EVERY CHILD SHOULD HAVE AN ATTORNEY IN CHILD WELFARE PROCEEDINGS IN FLORIDA*, * Ron Marmer, *The Kids Aren't All Right*, 38 A.B.A. LITIG. MAG. 4, 4 (2011); THE WHO, THE KIDS ARE ALRIGHT (MCA Records 1979); THE KIDS ARE ALL RIGHT (Focus Features 2010).

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Text

[*345] I. INTRODUCTION

On Valentine's Day 2011, a ten-year-old girl, Nubia Barahona, was found dead in a garbage bag in the rear flatbed of the vehicle owned by her adoptive father, Jorge Barahona. ¹ Victor Barahona, Nubia's twin brother, was also found in critical condition in the truck, which was parked just off I-95 in Palm Beach County, Florida. ² Nubia and Victor Barahona had entered [*346] the Florida dependency system in June 2000. ³ At no time since entering the system, and until they were adopted, did any of the three subsequent reports confirm that either child had ever been represented by his or her own attorney. ⁴

¹ See BLUE RIBBON PANEL, THE NUBIA REPORT: THE INVESTIGATIVE PANEL'S FINDINGS AND RECOMMENDATIONS 4 (2011), available at <http://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/nubias%20story.pdf>; Katherine Fernandez Rundle et al., *Nubia's Legacy: Confronting the Bias of Trust and Complacency in Florida's Child Welfare System*, in FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY 2-3 (2010) [hereinafter MIAMI-DADE GRAND JURY REPORT], available at <http://big.assets.huffingtonpost.com/nubiabarahonagrandjuryreport.pdf>; DAVID E. WILKINS, SEC'Y OF DEPT OF CHILDREN & FAMILIES, THE BARAHONA CASE FINDINGS AND RECOMMENDATIONS 1 (2011) [hereinafter BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY], available at <http://www.floridaschildrenfirst.org/wpcontent/uploads/2011/06/3-14-11-DCF-Barahona-Case-Findings-and-Recommendations.pdf>; Kate Santich, *DCF Lays Off 500 Workers, Claims Children Will Not Be Affected*, ORLANDO SENTINEL, May 27, 2011.

² See Ana Valdes, *DCF Names Independent Review Panel; The Agency Plans to 'Learn from This Sad Case,' Its Leader Says*, PALM BEACH POST, Feb. 22, 2011, at A10 [hereinafter Valdes, *Independent Review Panel*]; Erik Pitchal, *Murdered Child: Will Florida Learn the Right Lessons?*, RECAPITALATION (Mar. 17, 2011, 3:22 PM), http://open.salon.com/blog/erik_pitchal/2011/03/17/murdered_child_will_florida_learn_the_right_lessons.

³ MIAMI-DADE GRAND JURY REPORT, *supra* note 1, at 2.

⁴ See, e.g., *id.*

On September 20, 2011, at a hearing of the Florida Senate Children, Families and Elder Affairs Committee, State Senator Nan Rich of Weston⁵ stated that the case workers in the Barahonas' dependency case should have been visiting the children monthly.⁶ Senator Rich said: "Its [sic] mindboggling that [the Barahonas] could ever have been approved to be foster parents Something is dramatically and drastically wrong if all of these red flags are not seen."⁷ The Senator's comments followed shortly after three separate investigations into the Barahona matter⁸ --a grand jury report in Miami-Dade County, a Blue Ribbon Panel Report, and a report by David E. Wilkins, Secretary of the Department of Children and Families (DCF).⁹ [*347] Each report, and the Senator's comments, focused on the shortcomings by DCF and the community-based agency which came into existence as a result of Florida's move towards privatization of its child welfare system.¹⁰ It is significant that neither the reports, nor the Senator's comments, focused on or analyzed the role of Florida's Guardian ad Litem (GAL) Program in the *Barahona* case. It is unclear from the available information whether the GAL Program carried out its responsibilities over the time period the children were in care. Arguably, an independent attorney for the children would have produced a different result for the Barahona children.

This article is a continuation of a discussion as to why, as a matter of Florida constitutional law, public policy, and professional ethics, Florida's children need independent attorneys from the inception of all dependency and termination of parental rights cases to their completion.¹¹ It is based upon events which have occurred since the

⁵ Senator Rich was a founder of the Guardian ad Litem (GAL) Program of Dade County, Florida. About Nan Rich, NAN RICH, <http://www.nanrichforsenate.com/about.asp> (last visited Feb. 26, 2012).

⁶ *Committee on Children, Families, and Elder Affairs Meeting*, THE FLA. SENATE (Sept. 20, 2011, 1:13:50), http://www.flsenate.gov/PublishedContent/Committees/2010-2012/CF/MeetingRecords/CF_09202011_1045.mp3.

⁷ Margie Menzel, *DCF Secretary Wilkins Gets Tough Questions on Barahona Case*, WCTV.TV (Sept. 21, 2011, 9:32 AM), <http://www.wctv.tv/news/headlines/130265698.html> (alteration in original). There are examples of even more recent problems. See e.g., John Barry, *Deaths of 8 Kids Put Agency in Jeopardy: "We Either Bat a Thousand, or We Bat Zero," Says the Leader of Hillsborough Kids, Inc.*, ST. PETERSBURG TIMES, Oct. 9, 2011, at A1; Editorial, *Do Better Protecting Vulnerable Children*, TAMPA BAY TIMES, Oct. 13, 2011, available at <http://www.tampabay.com/opinion/editorials/article1196495.ece>; Carol Marbin Miller & David Ovalle, *Judge: Abused Boy Looks Like Concentration Camp Victim*, MIAMI HERALD, Jan. 30, 2012, <http://www.miamiherald.com/2012/01/30/v-print/2616223/judge-abused-boy-looks-like-concentration.html> ("He looks like he just came out of Auschwitz," Lederman said. 'This is like a neon sign for child abuse. It would have been obvious to anyone who came in contact with this family the last few years.' Among those who came in contact: a child-abuse investigator from the Department of Children & Families, a mental health counselor from Jackson Memorial Hospital and educators from the [nine]-year-old's school--who called the state's child abuse hotline recently seeking help for the boy.").

⁸ Menzel, *supra* note 7; see generally *State v. Barahona*, No. F116237, 2011 WL 1458426 (Fla. Cir. Ct. filed Mar. 23, 2011).

⁹ See *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, at 1; BLUE RIBBON PANEL, *supra* note 1, at 3-4; Menzel, *supra* note 7; MIAMI-DADE GRAND JURY REPORT, *supra* note 1, at 3.

¹⁰ See *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, at 5; BLUE RIBBON PANEL, *supra* note 1, at 5-10; Menzel, *supra* note 7; MIAMI-DADE GRAND JURY REPORT, *supra* note 1, at 3-4. Florida privatized its child welfare system in the late 1990s. See [FLA. STAT. § 409.1671\(1\)\(a\) \(2011\)](#); Michael J. Dale & Louis M. Reidenberg, *Providing Attorneys for Children in Dependency and Termination of Parental Rights Proceedings in Florida: The Issue Updated*, [35 NOVA L. REV. 305, 320-21 \(2011\)](#); see generally Michael J. Dale, *Providing Counsel to Children in Dependency Proceedings in Florida*, [25 NOVA L. REV. 769 \(2001\)](#). The private agency in Miami-Dade County, Florida is Our Kids of Miami-Dade/Monroe. Carol Marbin Miller, *Florida's Largest Private Child Welfare Agency Under Fire After Girl's Death*, PALM BEACH POST, Mar. 25, 2011, <http://www.palmbeachpost.com/news/floridas-largest-private-childwelfare-agency-under-fire-1348467.html>.

¹¹ The federal and Florida state constitutional and statutory analysis of why children are entitled to independent attorneys in Florida is contained in the authors' prior article. See Dale & Reidenberg, *supra* note 10, at 350-61; see also Dale, *supra* note 10, at 769, 778-80 (discussing the ability to sue to enforce the right to counsel under the Childhood Abuse Prevention and Treatment Act (CAPTA) and needed changes to CAPTA); [42 U.S.C. §§ 5101-07 \(2006\)](#); [Turner v. Rogers, 131 S. Ct. 2507](#),

authors' last article on this topic in the *Nova Law Review*, including the *Barahona* case, the resolution by the [*348] American Bar Association (ABA) in August 2011 at its Annual Convention in Toronto adopting the ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (Model Act),¹² and a series of comments, pronouncements, and policy statements by Florida State officials and advocates.

This article will review the March 2011 *Nubia Report: The Investigative Panel's Findings and Recommendations* by the Blue Ribbon Panel, (*Nubia Report*), the *Barahona Case Findings and Recommendations* summary report of the Secretary of the DCF, and the *Miami-Dade Grand Jury Report*, each of which contains comments and conclusions about the *Barahona* case that no one person was responsible to protect the children's rights.¹³ The article will also review recent representations by the GAL Program suggesting the Program may be engaged in the unauthorized practice of law, as well as the past, present, and future financial issues concerning the operation of the Program. It will discuss recent literature from DCF, the GAL Program, the court system, and a Pro Bono Attorney Program in Broward County. The article will demonstrate the inability of each to correctly articulate its legal and ethical mandate, the result of which is confusion, duplication, and a fundamental misunderstanding of the proper role of each, and the meaning of being the attorney for the child. The article will also comment upon updated information regarding the Gabriel Myers case¹⁴ and will point out the similarity of the conclusions in that matter to the *Barahona* case. Finally, the article will conclude, based upon this additional evidence, as the authors concluded in their prior article, that children in Florida must have an independent attorney. Children cannot remain the only party in a dependency proceeding who appear pro se.

II. ANALYSIS OF THE BARAHONA REPORTS

An analysis of the findings and recommendations of the Blue Ribbon Panel entitled the *Nubia Report*, the DCF report on the *Barahona* matter, and the *Miami-Dade Grand Jury Report* each illustrates the deficiencies in the [*349] Florida dependency system. Three of the deficiencies require comment and discussion in this article because they demonstrate a child's need for an independent attorney.

The first deficiency involves the fact that none of the reports analyzes the role of the GAL Program in the *Barahona* case, specifically through the time of the children's adoption.¹⁵ What the "*Barahona* Case-Key Events" attachment (Key Events) of the *Barahona Case Findings and Recommendations* shows, is that the GAL Program supported

[2517-18 \(2011\)](#) (showing that the Supreme Court of the United States' latest application of the [Mathews v. Eldridge, 424 U.S. 319, 335 \(1976\)](#) test to determine whether counsel is required in a civil case); INST. OF JUDICIAL ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS PROJECT: STANDARDS RELATING TO ABUSE AND NEGLECT 109-10 (1981); Sarah Dina Moore Alba, Comment, *Searching for the "Civil Gideon": Procedural Due Process and the Juvenile Right to Counsel in Termination Proceedings*, [13 U. PA. J. CONST. L. 1079, 1081 \(2011\)](#); Barbara A. Atwood, *Representing Children Who Can't or Won't Direct Counsel: Best Interests Lawyering or No Lawyer at All?*, [53 ARIZ. L. REV. 381, 384 \(2011\)](#); Gerard F. Glynn, *The Child's Representation Under CAPTA: It is Time for Enforcement*, [6 NEV. L.J. 1250, 1259 \(2006\)](#); Bernard P. Perlmutter & Carolyn S. Salisbury, "Please Let Me Be Heard:" *The Right of a Florida Foster Child to Due Process Prior to Being Committed to a Long-Term, Locked Psychiatric Institution*, [25 NOVA L. REV. 725, 755 \(2001\)](#); Shireen Y. Husain, Note, *A Voice for the Voiceless: A Child's Right to Legal Representation in Dependency Proceedings*, [79 GEO. WASH. L. REV. 232, 233 \(2010\)](#).

¹² See generally MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, & DEPENDENCY PROCEEDINGS (2011) [hereinafter MODEL ACT 2011].

¹³ See BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY, *supra* note 1, at 5; BLUE RIBBON PANEL, *supra* note 1, at 6-7; MIAMI-DADE GRAND JURY REPORT, *supra* note 1, at 2-4.

¹⁴ See GABRIEL MYERS WORK GRP., FLA. DEPT' OF CHILDREN & FAMILIES, REPORT OF GABRIEL MYERS WORK GROUP ON CHILD-ON-CHILD SEXUAL ABUSE 3 (2010), available at <http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/Gabriel%20myers%20COC%20report%20May%2014%202010.pdf>. For a discussion of the Gabriel Myers case, see Dale & Reidenberg, *supra* note 10, at 308-09.

¹⁵ See generally, BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY, *supra* note 1; BLUE RIBBON PANEL, *supra* note 1; MIAMI-DADE GRAND JURY REPORT, *supra* note 1.

continued placement with the Barahonas prior to adoption on six occasions between 2005 and 2009, even though questions were repeatedly raised as to the propriety of the placement.¹⁶ For example, the report contains a 2005 hotline report that the then foster father, Jorge Barahona, sexually abused Nubia, which was investigated and closed with no indications.¹⁷ In 2006, a hotline report stated that Nubia had bruises on her chin and face and had been absent from school.¹⁸ The Child Protection Agency then determined the bruises were not from abuse and the investigation was closed.¹⁹ In 2007, a hotline report stated that Nubia and Victor were allegedly "coming to school unkempt."²⁰ The investigation was closed with no indications.²¹ Yet, there is no detailed discussion in the secretary's report of the role of the GAL or the GAL Program, if any, in the investigation of these matters.²² The Key Events document does not even reference the discharge of the individual GAL assigned to the Barahona children prior to the adoption.²³ However, the Wilkins summary report does state that at one point "[t]he Guardian ad Litem was barred from the Barahonas home due to inquiries made with the school."²⁴ The Wilkins finding was that:

There was no assessment made of the lack of access to Nubia by the Guardian ad Litem. The Guardian ad Litem was discharged [*350] from the case to smooth over relationships with the Barahonas. The case manager never documented concerns over the apparent deceptions as to Nubia's whereabouts or made any attempt [to] resolve the discrepancies in information.²⁵

The *Miami-Dade Grand Jury Report* states that, in May 2007:

Guardian ad Litem objects in Court to continued placement of the children with the Barahonas (Court held hearing, found placement safe and appropriate. In addition, it is important to note that at some point during the pre-adoption period, the Guardian ad Litem was barred from the Barahona home due to inquiries made with the school. According to the DCF report, Guardian ad Litem was dismissed from the case to "smooth things over with the Barahonas.")²⁶

¹⁶ *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, exh. 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, exh. 3.

²² *See id.* at 2-4. Nor was there a discussion of the role of the CLS attorneys. *See id.*

²³ *See id.* at exh. 3; John Lantigua, *Guardian Claims He Was Pulled from Case with No Explanation*, PALM BEACH POST, Feb. 25, 2011, at A14. It would appear that the GAL Program file was not reviewed by either the Blue Ribbon Panel or the Secretary of DCF in his report. *See BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, at 5-10.

²⁴ *Id.* at 9.

²⁵ *Id.*

²⁶ MIAMI-DADE GRAND JURY REPORT, *supra* note 1, at 17. The Grand Jury Report also lists a number of school absences for Nubia. *Id.* at 17-18.

The second deficiency in the Florida dependency system is illustrated in the *Miami-Dade Grand Jury Report*, which says that no one person said, "I am responsible," acted as "point person," acted as "system integrator," or fulfilled the role of "ombudsman."²⁷ The *Miami-Dade Grand Jury Report* states that:

It has been suggested to us, and we wholeheartedly agree, that there must be a point person, someone who will take charge of each case. In other words, there must be one designated person who has the responsibility of knowing everything about a case and making absolutely sure that knowledge is communicated to every person who has a need to know the information. The most logical and best way to accomplish this is to assign the Case Manager the job of being the point person.²⁸

This suggestion is curious because chapter 39 and the contracts between DCF and the lead agency provide for staffing where the case manager²⁹ as well as Children's Legal Services (CLS) attorneys, GAL, parents' attorneys, [*351] GAL attorneys, and agency staff should be present to discuss the case.³⁰ The idea of a point person is not a new one. Earlier reports involving another child, Gabriel Myers, who died while in care in Florida, also concluded that there was a need for a "champion"³¹ and that nine year old Gabriel, who allegedly committed suicide by hanging himself while in foster care, was "no one's child."³² The major failure with the proposals in the various reports that the child have a "champion" or "point person" in every case is that no individual or organization in a dependency or Termination of Parental Rights (TPR) proceeding in Florida has, as his or her sole duty and responsibility, the representation of the child as attorneys understand these terms.³³

A third deficiency in the Florida dependency system is found in Secretary Wilkins' *Barahona Case Findings and Recommendations* summary report where he points to a failure in "critical thinking."³⁴ The Blue Ribbon Panel also points to a failure in critical thinking.³⁵ The ninth finding of the *Nubia Report* states that "technology should never substitute for the exercise of *critical thinking*, sound judgment and common sense. Technology should be used to augment and enhance those skills."³⁶ "Critical thinking" has particular significance for attorneys. Starting in the first year of law school, students are immersed in a process of learning how to think critically and analytically.³⁷

²⁷ See *id.* at 16.

²⁸ *Id.* In Broward County the Case Manager is known as the "Child Advocate." *Case Management*, CHILDNET, <http://www.childnet.us/casemanagement.aspx?nvar=casemanagement> (last visited Feb. 26, 2012).

²⁹ [FLA. STAT. § 39.6011\(1\)\(a\)-\(b\) \(2011\)](#); FLA. R. JUV. P. 8.290(e)(1), .400(d) (2011); See Exhibit B: Children's Legal Services in Contract between Fla. Dep't of Children & Families and Child & Family Connections, Inc., 45 (July 1, 2009) (on file with *Nova Law Review*).

³⁰ [FLA. STAT. § 39.6011\(1\)\(a\)](#).

³¹ GABRIEL MYERS WORK GROUP, *supra* note 14, at 3-4; see Dale & Reidenberg, *supra* note 10, at 308-09.

³² GABRIEL MYERS WORK GROUP, *supra* note 14, at 4; Dale & Reidenberg, *supra* note 10, at 309.

³³ See Dale & Reidenberg, *supra* note 10, at 310.

³⁴ *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1, at 5.

³⁵ BLUE RIBBON PANEL, *supra* note 1, at 3, 7.

³⁶ *Id.* at 7 (emphasis added).

³⁷ See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 24, 87 (2007); KENNETH J. VANDEVELDE, *THINKING LIKE A LAWYER: AN INTRODUCTION TO LEGAL REASONING* 1 (1996); Sarah E. Redfield, *The Educational Pipeline to Law School--Too Broken and Too Narrow to Provide Diversity*, [8 PIERCE L. REV. 347, 374-75 \(2010\)](#).

This training continues throughout their legal education.³⁸ If the Barahona children had their own attorney, one assurance, albeit not a failsafe, would have been that the children would have had an advocate representing them who was well-trained in "critical thinking."

Despite these facts, none of the reports evaluate the role of the GAL Program or its attorneys.³⁹ Nor, obviously, is there any reference in the reports [*352] to what might have happened or what role would have been played had an attorney been appointed for Nubia and Victor Barahona. It is this lack of critical analysis of the GAL Program and its attorneys and the failure to analyze the role of independent attorneys for the children, which is troubling and of on-going concern.⁴⁰

III. THE ON-GOING MISCHARACTERIZATION OF THE ROLE OF THE GUARDIAN AD LITEM IN FLORIDA

In a September 2011 PowerPoint presentation at a meeting of the Florida Children and Youth Cabinet, the Executive Director of the GAL Program stated that, "[l]ooking into the [f]uture,"⁴¹ the first of the GAL Program's goals and missions was "to provide quality legal and best interest representation for every child in our dependency system."⁴² This statement mischaracterizes both the law and the ethical obligations of the GAL Program attorneys.⁴³ [*353] The program attorney is not the child's attorney, and it is unethical to provide legal advice to an individual who is a party to a case and who is not one's client.⁴⁴ The GAL Program is a separate party distinct from the child, who is also a party.⁴⁵ Under Florida law, the GAL Program advocates for what it considers to be

³⁸ See VANDEVELDE, *supra* note 37, at 48, 53.

³⁹ See generally *BARAHONA CASE FINDINGS AND RECOMMENDATIONS SUMMARY*, *supra* note 1; BLUE RIBBON PANEL, *supra* note 1. Illustrative of the lack of critical thinking by the panels themselves appears to be the methodology of investigation of the failures in the *Barahona* case. The presentations to the panels were conducted by the department itself through its CLS lawyers. BLUE RIBBON PANEL, *supra* note 1, at 3-5. Neither the persons in charge of DCF nor the GAL Program at the time the children were in care prior to their adoption were called to appear before the panels. See *id.* at 4-5.

⁴⁰ There is, however, one elliptical reference to an attorney for the child in one of the reports--on the last page of the March 10, 2011 *Nubia Report* under the title "Other Thoughts." BLUE RIBBON PANEL, *supra* note 1, at 14. Just prior to the "List of Documents Reviewed" is the following curious statement: "Children's Legal Services and the chief judge should review practices in the appointment of private lawyers to represent dependent children to ensure that the Rules of Professional Responsibility are fulfilled." *Id.* There is no explanation in either report of the meaning of this comment or why CLS should be charged with this responsibility. An earlier effort to investigate the concept of lawyers representing children in dependency and TPR cases went by the boards in February 2010. TASK FORCE ON FOSTERING SUCCESS, DEP'T OF CHILDREN & FAMILIES, MEETING SUMMARY 1-2 (Feb. 25, 2010), available at <http://www.dcf.state.fl.us/initiatives/childsafety/meetings/20100225materials.shtml> (follow "2/25/10 Minutes" hyperlink). At a meeting of the Task Force on Fostering Success, chaired by former DCF Secretary Robert Butterworth, it was reported that a work group of the Task Force on Legal Representation had "planned an outstanding two day session with national experts from around the country. Regrettably, the governor's office selected this as one of many such meetings cancelled due to the budget crisis." *Id.* at 2.

⁴¹ Presentation by Alan Abramowitz, Exec. Dir., Fla. Guardian ad Litem, to Fla. Children & Youth Cabinet (Sept. 1, 2011), available at http://www.flgov.com/wp-content/uploads/childadvocacy/GAL_CYC_Presentation.pdf.

⁴² *Id.* (emphasis omitted); FLA. GUARDIAN AD LITEM PROGRAM, 2011 ANNUAL REPORT 2 (2011) [hereinafter GAL 2011 REPORT], available at <http://www.guardianadlitem.org/documents/GALAnnualReport2011.pdf> ("The Program uses a team approach to represent children. . .").

⁴³ See **FLA. STAT. § 39.01(51) (2011)**; *People v. Gabriesheski*, 262 P.3d 653, 659 (Colo. 2011) (en banc). There can be no doubt that there is no attorney-client relationship between the GAL and the child. See generally **FLA. STAT. § 39.01**.

⁴⁴ See FLA. R. PROF'L CONDUCT 4-4.3 cmt. (2011).

⁴⁵ **FLA. STAT. § 39.01(51)**; see Dale & Reidenberg, *supra* note 10, at 327.

the best interests of the child and nothing else.⁴⁶ The GAL Program's website is seeking volunteers, and in response to a hypothetical question, it currently states incorrectly that a "Guardian ad Litem is . . . appointed by the court to advocate for [a child]."⁴⁷ The statement is misleading for two reasons: First, the GAL Program is the party appointed, and second, the GAL Program is appointed to advocate for the best interest of the child.⁴⁸

A second example of what may be a violation of the *Florida Rules of Professional Conduct* is found in the *Guardian ad Litem Revised Program Attorney Standards of Practice* effective September 2010 at section 2.⁴⁹ The *Guardian ad Litem Revised Program Attorney Standards of Practice* states that: "As needed, the Program Attorney shall be available to discuss the nature of the proceedings with the child except when the child is represented by counsel. The Program Attorney should use sound judgment and reasonable diligence when explaining the nature of the legal proceedings to the child."⁵⁰

This standard of practice fails to consider that the child is a separate party unrepresented by an attorney and a minor, and that the GAL attorney represents the GAL Program as a party.⁵¹ The *Florida Rules of Professional [§354] Conduct* governing contact with unrepresented parties apply to this situation.⁵² The commentary to the Florida rule states that:

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person.⁵³

A third area of concern involves a comparison of the 2006 *Guardian ad Litem Program Attorney Standards of Practice* and the 2010 *Guardian ad Litem Revised Program Attorney Standards of Practice*.⁵⁴ Both state at Rule 1.4 that: "The Program Attorney shall at all times comply with the Rules Regulating the Florida Bar, all of which are

⁴⁶ [FLA. STAT. § 39.820\(1\)](#). The child has legal rights, which the GAL Program has neither standing nor the ethical capacity to protect. See Dale & Reidenberg, *supra* note 10, at 330. For a discussion of the various ethical issues a guardian ad litem faces, see Marcia M. Boumil et al., *Legal and Ethical Issues Confronting Guardian ad Litem Practice*, [13 J.L. & FAM. STUD. 43, 50-80 \(2011\)](#).

⁴⁷ *Volunteer Frequently Asked Questions*, FLA. GUARDIAN AD LITEM PROGRAM, http://guardianadlitem.org/vol_faq.asp (last visited Feb. 26, 2012).

⁴⁸ See GAL 2011 REPORT, *supra* note 42, at 2. Later in the page the document describes the role differently, stating that the GAL communicates "the child's best interests." *Id.*

⁴⁹ GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE § 2 (2010); see also FLA. R. PROF'L CONDUCT 4-4.3 (2011).

⁵⁰ GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE § 2.

⁵¹ See *id.* § 1.1. Program Attorneys are "full-time State Employees, part-time State Employees, Contract Attorneys and Other Personnel Services (OPS) Employees providing legal counsel to the GAL Program." *Id.* definitions. Furthermore, "[p]rogram attorneys provide legal advice on cases and complement other members of the team in advocating for the best interests of [the] children." STANDARDS OF OPERATION § 1.1 (2006).

⁵² FLA. R. PROF'L CONDUCT 4-4.3.

⁵³ FLA. R. PROF'L CONDUCT 4-4.3 cmt.

⁵⁴ Compare GUARDIAN AD LITEM PROGRAM ATT'Y STANDARDS OF PRACTICE (2006), with GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE (2010).

incorporated herein by reference." ⁵⁵ The 2006 standards also contain a description of the GAL Program as the client. ⁵⁶

The Program Attorney represents the GAL Program as a legal entity, and the GAL Program is the client as referenced [to] in Rule 4-1.13, Rules Regulating the Florida Bar. The GAL Program is appointed to represent the child's best interests in dependency court proceedings. The Program Attorney provides counsel regarding the child's best interest and shall fully participate in the decisions regarding the child's best interests as indicated in Standard 4.6 of the GAL Standards of Operation. ⁵⁷

Inexplicably, the September 2010 *Guardian ad Litem Revised Program Attorney Standards* no longer contain this explanation of the ethical obligations of a GAL Program attorney to the client, nor does it contain a reference to the applicable *Florida Rules of Professional Conduct*. ⁵⁸ Whether and why [*355] this information should have been removed from the standards of practice is itself an ethical question.

Finally, the GAL Program continues to cite to the suspect 2003 legislative finding regarding the GAL Program, which originated in the original Blue Ribbon Panel Report as support for the Program. ⁵⁹ According to the Program Director, "if there is a program that costs the least and benefits the most, this one is it. [T]he volunteer is an 'indispensable intermediary between the child and the court, between the child and DCF.'" ⁶⁰

The GAL Program Director failed to refer to the additional findings of the 2002 Blue Ribbon Panel that:

Sixteen times since 1985, other scandals have prompted governors to appoint [eleven] special panels, and state's attorneys to convene five separate grand juries, to investigate DCF or its predecessor agency, the Department of Health and Rehabilitative Services. Now this gubernatorial panel, the [twelfth], has answered a governor's call to do the same.

....

Twenty-two times in the past [thirty three] years, the Florida Legislature has mandated that DCF or its predecessor reorganize in ways great or small. ⁶¹

The Blue Ribbon Panel then said: "We urge the governor to use his moral suasion with the Florida Bar to [request] more pro bono attorneys for children in DCF's custody." ⁶²

IV. ANALYSIS OF THE FY 2012/13 GAL PROGRAM BUDGET REQUEST

⁵⁵ GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE § 1.4 (2010); GUARDIAN AD LITEM PROGRAM ATT'Y STANDARDS OF PRACTICE § 1.4 (2006).

⁵⁶ GUARDIAN AD LITEM PROGRAM ATT'Y STANDARDS OF PRACTICE § 1.4.1 (2006).

⁵⁷ *Id.* (endnote omitted).

⁵⁸ See generally GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE (2010).

⁵⁹ Dale & Reidenberg, *supra* note 10, at 316.17.

⁶⁰ Press Release, Alan Abramowitz, Exec. Dir., Fla. Guardian ad Litem Program, Triage--Which Child Will Have a Voice? Which Child Will Know Someone Is on Their Side? (Sept. 9, 2011), available at <http://www.guardianadlitem.org/documents/Notes%20from%20alan%209.9.2011.pdf> (quoting GOVERNOR'S BLUE RIBBON PANEL ON CHILD PROTECTION, BLUE RIBBON PANEL REPORT (2002) [hereinafter BLUE RIBBON PANEL REPORT] (on file with *Nova Law Review*)). For a discussion of the problem with this oft-repeated statement--that there is no factual basis for it, see Dale & Reidenberg, *supra* note 10, at 316-17.

⁶¹ BLUE RIBBON PANEL REPORT, *supra* note 60.

⁶² *Id.*

A review of recent GAL Program documents amplifies the problem of continuing to rely on the eleven-year-old statement that the GAL Program [*356] "costs the least and benefits the most."⁶³ In 2001, when the first Blue Ribbon Committee initially made the statement, later adopted by the Florida Legislature amending chapter 39, the budget of the Program was approximately \$ 14.1 million of which \$ 8.6 million were state general revenue funds.⁶⁴ In 2001, there were approximately 5000 GAL volunteers.⁶⁵ The FY 2009/10 GAL Program budget was \$ 31.9 million⁶⁶ of which \$ 30.4 million⁶⁷ were general revenue funds.⁶⁸ That year, there were approximately 8000 volunteers.⁶⁹ The GAL Program's FY 2012/13 Legislative Budget Request (LBR) dated October 1, 2011, seeks an additional \$ 3.9 million to "increase the average number of children represented by the GAL program from 21,497 (FY 2010/11) to 24,864 children (FY 2012/13). This increase of +15.7% or 3367⁷⁰ more children receiving GAL advocacy, will improve our overall representation to 80% of the total Dependency children: up from 70% for FY 2010/11."⁷¹ The LBR states that: "We will recruit and train an additional [*357] 1650 certified volunteers, by June 30, 2013, bringing our total . . . to 9283 certified volunteers," and to hire sixty-four new staff, that are comprised of volunteer supervisors, program attorneys, and other support staff.⁷² Finally, the LBR states that the "LBR request

⁶³ See Dale & Reidenberg, *supra* note 10, at 316-17.

⁶⁴ *Id.*; OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, REPORT NO. 02-10, INFORMATION BRIEF: GUARDIAN AD LITEM PLACEMENT MAY SHIFT FOR REASONS OF FUNDING AND CONFLICT OF INTEREST 2 (2002) [hereinafter OPPAGA INFORMATION BRIEF], available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0210rpt.pdf>.

⁶⁵ COMM. ON JUDICIARY, LEGAL NEEDS OF CHILDREN, No. 2002-140, 18 (2001), available at http://archive.flsenate.gov/data/Publications/2002/Senate/reports/interim_reports/pdf/2002-140julong.pdf.

⁶⁶ Dale & Reidenberg, *supra* note 10, at 325-27 (explaining that there were also nonrevenue funds received of at least \$ 6,316,190.49).

⁶⁷ *Id.* at 325-26. The GAL Program budget remained constant while several other agencies such as the Department of Corrections, Department of Juvenile Justice and the Regional Conflict Court lost funding. *Id.*; The News Serv. Fla., *Scott Begins Department of Corrections Job Cuts*, N. ESCAMBIA.COM (Feb. 10, 2011), <http://www.northescambia.com/2011/02/scott-begins-department-of-corrections-jobs>; Jeff Weiner, *Budget Cuts Prompting Two Central Florida Juvenile Facilities to Close*, ORLANDO SENTINEL, May 31, 2011, http://blogs.orlandosentinel.com/news_politics/2011/05/budget-cuts-prompting-two-centralfloridajuvvenile-facilities-to-close.html; *Court Funding*, FLA. ASS'N OF COUNTIES, http://www.fl-counties.com/Pages/Advocacy/Public_Safety/Court_Funding.aspx (last visited Feb. 26, 2012).

⁶⁸ Dale & Reidenberg, *supra* note 10, at 326. The GAL Program Budget is actually larger, including federal funding, in kind services and office space from the counties, and foundation support from multiple organizations. See *id.* at 325.27.

⁶⁹ *Id.* at 329.

⁷⁰ *Id.* Evidence supports the unreliable and confused state of the GAL Program's data. A January 2012 web publication from the Florida Guardian Foundation states: "Currently, the Florida Guardian ad Litem Program represents close to 27,000 abused and neglected children, but more than 4600 children are still in need of the voice in court." *About Us*, FLA. GUARDIAN AD LITEM FOUND., <http://www.flgal.org/index.html> (last visited Feb. 26, 2012).

⁷¹ FLA. GUARDIAN AD LITEM FOUND., GAL: FY 2012/13 LEGISLATIVE BUDGET REQUEST: OCTOBER 1, 2011 (2011) [hereinafter GAL: BUDGET REQUEST], available at <http://www.flgal.org/news.html> (follow "2012 Legislative Budget Request October 2011" hyperlink).

⁷² *Id.*

is part of a five year incremental strategy that will result in GAL Program representation of 100% of our State's dependent children by June 30, 2018, finally achieving the goal of a GAL for every child." ⁷³

The GAL Program state-funded general revenue budget alone has increased from \$ 8.6 million in 2001 ⁷⁴ to \$ 30.4 million in 2010, ⁷⁵ and is projected by the Program to increase to \$ 34.3 million in FY 2012/13. ⁷⁶ The total state-funded budget more than doubled from \$ 14.1 million in 2002 to \$ 31.9 million in 2010. ⁷⁷ It can be expected to rise to \$ 40.6 million in FY 2012/13. ⁷⁸ There were 5000 volunteers in 2001. ⁷⁹ That number rose to 8000 in 2009, and the Program expects it to rise to 9283 in FY 2012/13. ⁸⁰ The state-funded general revenue budget in ten years will have gone up by almost four times. ⁸¹ Yet, the number of volunteers will not even have doubled, ⁸² and the Program will have to wait another six years to reach 100% volunteer coverage. ⁸³

Despite these facts, the director of the GAL Program has stated that, "[d]ay after day our staff struggles to determine how to effectively and efficiently allocate our *very slim* resources." ⁸⁴ He adds, "[o]ur staff and volunteers are forced to 'triage' the huge number of cases we see every day." ⁸⁵

[*358] The director also announced in January 2012, in a press release from the Statewide Guardian ad Litem Foundation, that the GAL Program plans to start a campaign to recruit 10,000 additional volunteer GALs. ⁸⁶ The press release states that "[t]here are approximately 31,000 children in Florida's foster care system today. With nearly 8000 volunteers, the Program is able to give a voice to 22,000 of those children. Who will be the voice for those 10,000 children?" ⁸⁷

⁷³ *Id.*; see Jan Pudlow, *GAL Program Prepares Its Pitch for More Funding*, FLA. BAR NEWS (Nov. 1, 2011), available at <http://www.floridabar.org/DIVCOM/JN/JNNNews01.nsf> (search "GAL Program Prepares Its Pitch for More Funding"; then follow "GAL program prepares its pitch for more funding" hyperlink).

⁷⁴ OPPAGA INFORMATION BRIEF, *supra* note 64, at 2.

⁷⁵ Dale & Reidenberg, *supra* note 10, at 325.26.

⁷⁶ See GAL: BUDGET REQUEST, *supra* note 71.

⁷⁷ Dale & Reidenberg, *supra* note 10, at 325.26.

⁷⁸ See *id.* at 327.

⁷⁹ COMM. ON JUDICIARY, *supra* note 65, at 18.

⁸⁰ Dale & Reidenberg, *supra* note 10, at 329; GAL: BUDGET REQUEST, *supra* note 71.

⁸¹ See Dale & Reidenberg, *supra* note 10, at 325.27.

⁸² See COMM. ON JUDICIARY, *supra* note 65, at 18; GAL: BUDGET REQUEST, *supra* note 71.

⁸³ See GAL: BUDGET REQUEST, *supra* note 71.

⁸⁴ Press Release, Alan Abramowitz, *supra* note 60 (emphasis added).

⁸⁵ *Id.*; see GAL 2011 REPORT, *supra* note 42, at 1.

⁸⁶ Press Release, Alan Abramowitz, Exec. Dir., Fla. Guardian ad Litem Program, Guardian ad Litem Program Strategic Campaign for 10,000 Voices (Jan. 6, 2012) [hereinafter Press Release, Abramowitz, Strategic Campaign] available at http://guardianadlitem2.org/library/documents/blog/release_i-am-for-the-child_2012-01-06.pdf; see Press Release, Deborah Moore, Circuit Dir., Guardian ad Litem Swears in New Class of Volunteers at the Meeting of the Governor and Cabinet (Jan. 18, 2012), http://guardianadlitem2.org/library/documents/blog/release_governors-cabinet-meeting_2012-01-18.pdf.

⁸⁷ Press Release, Abramowitz, Strategic Campaign, *supra* note 86 (emphasis omitted).

According to the press release, the GAL Program represents the best interests of 70.9% of the children in care.⁸⁸ At other times, the Program has stated other percentages of volunteer coverage.⁸⁹ Regardless of the actual numbers, two conclusions can be drawn. A substantial number of children in the system have no involvement with the GAL Program.⁹⁰ And, as the Program expands, it will hire more attorneys at greater cost to the Florida taxpayers.⁹¹

As an alternative solution to the issues confronted by the GAL Program, the authors propose that the approximately 145 full time attorneys now employed by the GAL Program, and those to be hired in the future, be transferred together with their funding to a program that represents children and that pro bono attorneys be recruited to represent the Program and its volunteer GALs.

V. DUPLICATION OF AND CONFUSION IN ROLES OF DCF (CLS) AND GAL PROGRAM ATTORNEYS

Both the GAL Program and DCF continue to claim through their attorney leadership that they represent and advocate for the best interest of the child in dependency and TPR proceedings.⁹² Both agencies assert that they [*359] are legal advocates for children.⁹³ The GAL Program standards state that the GAL lawyers may explain the nature of legal proceedings to the child, while at the same time explaining that there is no confidentiality between the program attorney and the child.⁹⁴ The *Florida Department of Children and Families, Child and Family Services Plan for 2010-2014* describes changes in the role of CLS attorneys.⁹⁵ "This change in focus has empowered the attorneys in [CLS] to become true advocates for children, driving their outcomes from the time of initial court involvement to permanency."⁹⁶ The plan also states that "[t]he CLS attorneys will act as *legal advocates* for the children, and focus on each child's achieving timely permanency."⁹⁷

⁸⁸ See *id.*

⁸⁹ See Dale & Reidenberg, *supra* note 10, at 329 (discussing the legislatively approved foundation support for the GAL Program).

⁹⁰ See GAL: BUDGET REQUEST, *supra* note 71.

⁹¹ See *id.*

⁹² See STANDARDS OF OPERATION § 1 (2006); Press Release, Fla. Dep't of Children & Families, Children's Legal Services Host Training at Stetson University (Jan. 5, 2012), http://www.dcf.state.fl.us/newsroom/pressreleases/20120105_ChildrensLegalServices.shtml; Mary Cagle, *About the Department*, FLA. DEPT OF CHILDREN & FAMILIES, <http://www.dcf.state.fl.us/admin/cls/index.shtml> (last visited Feb. 26, 2012).

⁹³ See Dale & Reidenberg, *supra* note 10, at 330-31, 334-36.

⁹⁴ GUARDIAN AD LITEM REVISED PROGRAM ATT'Y STANDARDS OF PRACTICE § 2 (2010); see also FLA. R. PROF'L CONDUCT 4-4.3, -5.1 (2011) (demonstrating that it is ethically impossible to do what the standards state the GAL lawyers should do).

⁹⁵ FLA. DEPT OF CHILDREN & FAMILIES, CHILD & FAMILY SERVICES PLAN 2010-2014 10-11 (2009) [hereinafter CHILD & FAMILY SERVICES PLAN 2010-2014], available at <http://centerforchildwelfare.fmhi.usf.edu/kb/resource/Child%20and%20Family%20Services%205%20Year%20Plan%202010%20-%202014.pdf>; see FLA. R. PROF'L CONDUCT 4-4.3; Dale & Reidenberg, *supra* note 10, at 335 (describing the change in legal representation by DCF attorneys to a CLS prosecutorial model).

⁹⁶ CHILD & FAMILY SERVICES PLAN 2010-2014, *supra* note 95, at 11. This misstatement of the law is compounded by the internally contradictory statement by CLS that it represents the State of Florida in child welfare proceedings and that it does so using a prosecutorial model. See Dale & Reidenberg, *supra* note 10, at 335 (citing *About the Department*, FLA. DEPT OF CHILDREN & FAMILIES, <http://www.dcf.state.fl.us/admin/cls/focus.shtml> (last visited Feb. 26, 2012)).

⁹⁷ CHILD & FAMILY SERVICES PLAN 2010.2014, *supra* note 95, at 25 (emphasis added).

Duplication in the role of the GAL and CLS attorneys is also demonstrated in a recent decision by the Second District Court of Appeal involving a dispute between the Statewide GAL Program and the Office of the State Attorney in the Twentieth Judicial Circuit. ⁹⁸ In that case, the court held that the Statewide GAL Program is an office in the executive branch of government and "is not an office within the judicial branch." ⁹⁹ The opinion raises the issue of duplication of roles and resources given the fact that the mission statement of CLS, as the lawyers for DCF in the executive branch, is "[t]o advocate in the best interests of children to achieve permanency, stability, [*360] and security." ¹⁰⁰ At the same time, the Standards of Operation of the GAL Program, also in the executive branch, states that "the GAL is the only party mandated to advocate solely for the best interests of the children." ¹⁰¹

The DCF approach to legal representation by its CLS attorneys is also confused. On the one hand, in the description of CLS on the DCF web page, the Statewide Director stated: "Children's Legal Services . . . is the Department's law firm . . . providing counsel advice and technical assistance to . . . Community-Based Care (CBC) [parties] in child welfare legal issues." ¹⁰² On the other hand, in the statewide director's written presentation to the *Barahona* Blue Ribbon Panel in March 2011, the director wrote that there is "[n]o attorney-client privilege with case managers or Pls." ¹⁰³ This apparent confusion is further illustrated by the presentation to the *Barahona* Blue Ribbon Panel on March 7, 2011, by the director of CLS in which the director provided the panel with a chart including a statement that "CLS attorneys [are now] empowered to advocate for what the State believes is in the best interest[s] of the child." ¹⁰⁴ The director added, "CLS [is] not responsible for defending/advocating for the Agency." ¹⁰⁵

⁹⁸ See *Statewide Guardian ad Litem Office v. Office of the State Att'y Twentieth Judicial Circuit*, 55 So. 3d 747, 748 (Fla. 2d Dist. Ct. App. 2011).

⁹⁹ *Id.* at 749. See Dale & Reidenberg, *supra* note 10, at 332-33 for a discussion of the transfer of the GAL Program from the judicial to the executive branch.

¹⁰⁰ Cagle, *supra* note 92; see Press Release, Fla. Dep't of Children & Families, *supra* note 92.

¹⁰¹ STANDARDS OF OPERATION § 1.1 (2006). *But see* *The Tracey McPharlin Pro-Bono Dependency Recruitment Initiative*, available at <http://www.justiceforall.com/wp-content/uploads/2011/06/Pro-Bono-Brochure.pdf>. The Tracey McPharlin Pro-Bono Dependency Recruitment Initiative's brochure states:

How will my representation make a difference in a child's life? Under our current Juvenile Dependency system *there is no one who speaks and advocates for the child*. As a pro bono attorney you will enable your child client to be heard, respected, protected and provided with the myriad protections and services that the child is entitled to under state and federal law.

Id. (emphasis added).

¹⁰² Cagle, *supra* note 92; see OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, REPORT NO. 09-S24, RESEARCH MEMORANDUM: CHILDREN'S LEGAL SERVICES HAS MADE CHANGES TO ADDRESS RECOMMENDATIONS FOR IMPROVEMENT; SOME CHALLENGES REMAIN 1.2 (2009), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/09-s24.pdf>. This misstatement of who is the CLS lawyer's client and the ethical ramifications of such a misstatement are discussed in detail in Dale & Reidenberg, *supra* note 10, at 334-36.

¹⁰³ Mary Cagle, Statewide Dir. of Children's Legal Servs., Fla. Dep't of Children & Families, Address during the public hearing at DCF's S. Region Headquarters 2 (Mar. 7, 2011) [hereinafter Cagle's Address], available at <http://www.dcf.state.fl.us/newsroom/publicdocuments/southern/barahona/Barahona%20Independent%20Review%20panel/Final%20Report/List%20of%20Documents%20Referenced/08%20to%20the%20Panel%20for%20Childre n%27s%20Legal%20Services%20030711.pdf>.

¹⁰⁴ *Id.*

[*361] VI. CONCLUSION

Florida's public officials, past and present, confirm the failure of the dependency system in general ¹⁰⁶ and specifically in the *Barahona* case. ¹⁰⁷ The problems have existed for decades. ¹⁰⁸ Blue Ribbon Panels, commissions, legislative committees, and grand juries have investigated and studied the issues involved in the system and made recommendations. ¹⁰⁹ Nothing appears to have worked. Not one of these entities or individuals has suggested that the appointment of attorneys for all children in dependency and TPR cases in Florida in lieu of the GAL Program is an appropriate option. On the other hand, the ABA has forcefully advocated for precisely this option in the Model Act. ¹¹⁰ As the foregoing discussion shows, DCF and the GAL Programs in Florida continue to fundamentally and publicly misstate their legal and ethical roles. ¹¹¹ This combination of duplication and confusion only exacerbates the problem of proper legal representation of children.

[*362] While traditional legal representation of children by attorneys in all child welfare cases is not necessarily a panacea for the problem, it is an alternative whose time in Florida has come. Thus, the unseen "red flags" referred to by Senator Rich in the *Barahona* case will hopefully be reduced or eliminated by the appointment of attorneys for the children. Florida has never provided attorneys to children in dependency cases statewide to address these "problems." The Model Act is the means to effect this end. Florida should adopt the Act.

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¹⁰⁵ *Id.* Of course, chapter 39 provides that "the Agency" (DCF) is a party in dependency proceedings and must appear by counsel. See **FLA. STAT. § 39.01(51) (2011)**; see also Dale & Reidenberg, *supra* note 10, at 332-33.

¹⁰⁶ See Ana Valdes, *DCF Strives to Avoid Errors of Past Overhauls; Some Panels' Safety Ideas Worked, but Others Were Ineffective or Ignored*, PALM BEACH POST, Apr. 11, 2011, at A1. DCF Secretary David Wilkins has described what he found in early 2010 as a "total systemic failure of the child welfare system." *Id.* On the other hand, former DCF Secretary Bob Butterworth said it was too soon to say it was a systemic failure: "That's [just] not the agency I knew." Michael Mayo, *Could Tragedy Have Been Avoided for Adopted Twins?*, SUN-SENTINEL, Feb. 20, 2011, at A1. In 1999 Governor Jeb Bush stated during a preliminary injunction hearing in federal court in a case challenging conditions in the Broward County foster care system that:

I am here to tell you that this administration is committed to transforming our child welfare system across the board, not just foster care, but from the beginning to the very end to place children that abused [sic] and neglected to a much higher priority that has been in the past.

The legislature is a partner in this, and I intend to use the resources and the bully pulpit and the power that the executive branch has to make that partnership work.

We have a temporary problem that we are going to solve, we are going to work on. A lot of the problems that exist, sadly we don't even have a baseline numbers [sic] to measure--how we measure progress.

We are so far behind. It is such a tragedy to see how the mismanagement combined with the lack of resources has developed this situation

Dale, *supra* note 10, at 774-75 n.31 (quoting Gov. Jeb Bush, Transcript Motion for Preliminary Injunction Before the Honorable Federico A. Moreno, United States District Judge, 18-19, Jan. 11, 1999).

¹⁰⁷ See Mayo, *supra* note 106, at A1; Richard J. Gelles, *Why Did Florida Children Slip Through Cracks?*, CNN.COM (Feb. 18, 2011), http://articles.cnn.com/2011-02-18/opinion/gelles.florida.child.abuse_1_child-fatality-child-protective-service-jorge-barahona?_s=PM:OPINION.

¹⁰⁸ See Valdes, *supra* note 106, at A1; see also Barry, *supra* note 7.

¹⁰⁹ See Valdes, *supra* note 106, at A1; Valdes, *Independent Review Panel*, *supra* note 2, at A10.

¹¹⁰ See MODEL ACT 2011, *supra* note 12, § 3.

¹¹¹ See Dale & Reidenberg, *supra* note 10, at 357, 362.

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