

THE STATE OF NEW HAMPSHIRE**SUPREME COURT**

Case No. 2022-0518

Petition of Children's Law Center of New Hampshire

RESPONSE TO PETITION

The Attorney General, by and through counsel, hereby responds to the Petition of the Children's Law Center of New Hampshire for RSA 292:1-a Approval.

BACKGROUND

On September 19, 2022, the Children's Law Center of New Hampshire filed a petition for approval and authorization to commence business under RSA 292:1-a. The petition states that the Children's Law Center of New Hampshire (the "Center") is a nonprofit corporation. Its purpose is "to provide interdisciplinary, holistic legal representation and advocacy to and on behalf of court-involved and other at-risk low-income children in CHINS, delinquency, abuse and neglect, special education, and other legal systems" and to "address system barriers to successful outcomes for these children." Pet. ¶ 1.

The policy brief attached to the petition reiterates these concepts. It states that the Center will provide "legal representation to and advocacy for low-income and underserved children." Pet., Policy Brief at 4. It refers to children who live in poverty, experience homelessness, who are low-income, who have low socioeconomic status, who are indigent, whose families are poor, who are court-involved, who are at-risk, who are underrepresented, and who are disadvantaged. *See id.* at 4-12. At its inception, the Center "will seek to identify clients who are younger children and teenagers with particularly pressing legal needs, with special

attention paid to children from historically underserved groups” and “may limit [its] geographical scope, prioritizing cases in Rockingham, Strafford, and Hillsborough Counties.” *Id.* at 11-12.

The policy brief describes an array of legal services the Center intends to provide. Some of these are specific in nature: representation in CHINS, juvenile delinquency, abuse and neglect, and special education matters. *Id.* at 4. Some of these are non-specific. *See, e.g., id.* (“identify[ing] and resolv[ing] system barriers to successful outcomes for court-involved and other at-risk children growing up in poverty”); *id.* at 9 (describing working with “other nonprofits and the private bar to identify opportunities for systemic advocacy and change”).

The policy brief identifies the leadership team, including the executive director and the litigation director. *Pet., Policy Brief* at 12-13. It does not identify any other employees for the Center. The policy brief identifies its board, which consists of five members. *Id.* at 13-14.

ANALYSIS

RSA 292:1-a provides,

Five or more persons of lawful age may associate together by articles of agreement to form a corporation, without a capital stock, for the purpose of providing professional legal services to the poor; provided, however, that no such corporation shall commence business until its articles of agreement and by-laws, and such other information as may be required, have been submitted to the supreme court for approval and such court has authorized it to commence business upon finding that it is a responsible organization. Such authorization may, after hearing, be revoked or suspended by the court for just cause. The actual practice of law by such corporation shall be conducted solely by members of the New Hampshire bar in good standing, and the fact of incorporation shall not in any way be deemed to immunize any attorney employed by the corporation from personal responsibility and liability to the clients whom he serves. The provisions of RSA 311:11 shall not apply to corporations organized under this section.

Under RSA 292:1-a, this Court has an obligation to find that the Center “is a responsible organization” that will be providing “professional legal services to the poor.” Depending on the Center’s criteria to determine a potential client’s eligibility for its legal services, the Center could be engaged in representation that goes beyond what RSA 292:1-a authorizes and may conflict with RSA 311:11. *See In re N.H. Disabilities Rights Center, Inc.*, 130 N.H. 328 (1988).

This Court has not promulgated rules regarding what a petitioner under RSA 292:1-a must certify to show that it will be “providing professional legal services to the poor” and that it “is a responsible organization.” Some state supreme courts have rules of professional practice requiring a legal services organization seeking approval to operate to certify that it is a nonprofit organization and to recite with specificity:

- (1) the structure of the organization and whether it accepts funds from clients;
- (2) the major source of funds used by the organization;
- (3) the criteria used to determine potential clients’ eligibility for legal services performed by the organization;
- (4) the types of legal and nonlegal service the organization performs;
- (5) the names of all Bar members employed by the organization or who regularly perform legal work for the organization; and
- (6) the existence and extent of malpractice insurance that will cover the attorneys providing pro bono services.

See, e.g., Alabama Rules Professional Conduct, Rule 6.6, Special Membership for Pro Bono Services (requiring the a legal services organization seeking approval to submit the foregoing information to the Alabama State Bar); Rules Regulating the Florida Bar Rule 13-1.2(b) (requiring a legal aid organization seeking approval from the Florida Supreme Court to provide most of the foregoing information with

the clerk of the supreme court with the exception of the existence and extent of malpractice insurance); Idaho Bar Commission Rule 228(c)(1) (requiring a legal assistance organization seeking approval from the Idaho Supreme Court to provide the foregoing information to the clerk of the supreme court); Iowa Rule of Professional Regulation, Rule 31.19(2)(c) (requiring a legal service organization seeking approval from the Iowa Supreme Court to provide the foregoing information as well as the number of attorneys on the board and the availability of in-house continuing legal education to the office of professional regulation); Mississippi Rule of Appellate Procedure 46(f)(1)(ii) (requiring a legal aid organization seeking approval from the Mississippi Bar for purposes of the rule to file a petition with the Office of General Counsel for the Mississippi Bar certifying the foregoing information); Rules of the Tennessee Supreme Court, Rule 50A, §1.02(c) (defining an “approved legal assistance organization” and requiring certain organizations seeking approval as a legal assistance organization to file a petition with the clerk of the Tennessee Supreme Court certifying the foregoing information with specificity).¹

The Attorney General respectfully submits that this Court should adopt similar criteria and provide the petitioner with leave to supplement its petition to provide that information to it. Having legal services organizations seeking approval to do business under RSA 292:1-a certify this basic information would enable this Court to make the findings the statute requires and would enable the Attorney General to tell whether the petitioner’s operations may conflict with RSA 311:11. For example, RSA 292:1-a requires the legal services organization to provide professional legal services to “the poor.” Having the petitioner certify the criteria it intends to use to determine a potential client’s eligibility for legal services enables this Court to find whether this statutory requirement is met and would enable the Attorney General to determine whether the petitioner may be

¹ Each of these rules use slightly different language, but, as a general matter, all seek most of the information contained in Paragraphs 1-6 above.

providing services beyond what RSA 292:1-a permits and in conflict with RSA 311:11. Absent this information, the Attorney General cannot make an accurate assessment of that issue.

Also, because RSA 292:1-a does not permit “the fact of incorporation” to be used “to immunize any attorney employed by the corporation from personal responsibility and liability to the clients whom he serves,” this Court may find it prudent to have the organization describe the existence and extent of malpractice insurance that will cover its attorneys. And having information about whether the organization accepts funds from clients and the major source of its funds may help the Court make an informed finding of responsibility. *See Matter of Education Law Ctr., Inc.*, 429 A.2d 1051, 1056 (N.J. 1981) (“Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.”) (quoting American Bar Association, Code of Professional Responsibility, EC 5-22 (1980)).

While the Center’s petition and attached policy brief contain some of the information described above, it lacks some critical pieces of information as well such as: whether the organization will accept funds from clients; the major source of the organization’s funding; the criteria the organization will use to determine a client’s potential eligibility for legal services; a list of the legal and nonlegal services it intends to perform; and the existence and extent of malpractice insurance coverage.

Because the Center will be providing representation to juveniles, this Court may also find it prudent to have additional information from the Center regarding whether and to what extent it intends to involve the parents in the retention of the Center and the representation of the child. *See* RSA 292:1-a (permitting the Court to obtain “such other information as may be required”). The policy brief does not

describe this. Will the parents retain the Center's attorneys? Will a child's eligibility for services from the Center be assessed by reviewing the parents' ability to pay for the services? Will the Center involve the parents or other legal guardian in the defense or litigation of the matter or in the decisions made via other forms of advocacy, including whether to initiate litigation on behalf of a juvenile in the first instance, how to approach interactions with a school on behalf of a juvenile, whether to engage in certain advocacy on the juvenile's behalf, or whether to mount a particular defense or assert a particular position in a legal proceeding? Given the array of potential services the policy brief indicates the Center may be providing to juveniles, the answers these questions may differ depending on the nature and context of the representation and may be important for the Court to understand.

Parents play an important and vital role in the upbringing of a child in our society. A parent's right to "the companionship, care, custody, and management of his or her children" is a fundamental and constitutionally protected right. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). For many children the Center would like to represent, the parent-child relationship may already be strained or imperfect. *See Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982) ("Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life."). Advocacy on behalf of the juvenile that goes against what a parent views to be in the best interest of the child may operate to weaken or irreparably break down those familial relationships. It is not difficult to imagine a juvenile desiring to be a plaintiff in litigation instituted by the Center to address one or more system barriers the Center perceives to be problematic, and a parent believing that type of participation in a lawsuit is not in his or her child's best interest. It is similarly not difficult to imagine a juvenile desiring the Center to engage in certain advocacy with his or her school over a school policy or decision that a parent believes is not in his or her child's best interest to undertake. *See Matter of Education Law Ctr.*, 429 A.2d at 1057 ("An

overriding fear in this regard is that the corporation may place its own interests, whether political goals or profits, ahead of the interests of its clients, a situation which can give rise to a variety of evils.”). It may be important to know how the Center intends to approach those kinds of situations if the Center will be seeking to represent juveniles.

If the Center intends to provide legal representation outside of RSA 292:1-a that may come into conflict with RSA 311:11’s prohibition, the types of scenarios referenced above if pursued in conflict with the parents’ views or direction would raise concerns for the Attorney General. The United States Supreme Court has recognized that, “during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality decision). The “guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors.” *Id.* at 637. As a result, the rights of association guaranteed to juveniles by the federal and state constitutions are not co-extensive with the rights of association guaranteed to adults. *See Prince v. Mass.*, 321 U.S. 158, 169-70 (1944) (recognizing that children, like adults, have protected rights, but that “[w]hat may be wholly permissible for adults therefore may not be so for children, either with or without their parents’ presence”). These diminished associational rights, coupled with the fundamental constitutional right of parents to control and guide their children’s upbringing, would, in the Attorney General’s view, make the above-referenced scenarios different than the scenario this Court reviewed in *In re N.H. Disabilities Rights Center, Inc.*, 130 N.H. 328 (1988), and could bring the Center’s representation of one or more juveniles into conflict with RSA 311:11. The petition and attached policy brief do not provide sufficient information, however, for the Attorney General to make that assessment.

CONCLUSION

Based on the information contained in the petition and attached policy brief, the Attorney General cannot tell whether or to what extent he may have concerns under RSA 292:1-a and RSA 311:11 about the petitioner's proposed operations. The Attorney General would therefore respectfully urge this Court to adopt the six criteria outlined on page 3 of this response and permit the petitioner to supplement its petition accordingly. It is of particular importance for the Attorney General to know and understand the criteria the petitioner will use to determine potential clients' eligibility for legal services performed by the organization. The Attorney General would also respectfully urge this Court to ask the petitioner for additional information explaining how it intends to involve the parents of a juvenile in the Center's retention and the juvenile's representation with regard to the categories of professional legal services it intends to provide.

Respectfully Submitted

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Dated: October 19, 2022

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this 19th day of October 2022 been sent to all counsel of record via this Court's e-filing system.

/s/ Anthony J. Galdieri
Anthony J. Galdieri