

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT**

IN THE INTEREST OF

CASE NO.: 3D12-1897

R.L.-R,

CONSOLIDATED: 3D12-1892

APPELLEE

LOWER TRIBUNAL NO. 08-15104

BRIEF OF *AMICI CURIAE*

**THE FLORIDA ASSOCIATION OF COUNSEL FOR CHILDREN.
JUVENILE LAW CENTER,
AND NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN**

IN SUPPORT OF APPELLEE, R.L.-R.

**APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT COURT
IN AND FOR MIAMI-DADE COUNTY**

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IDENTITY AND INTEREST OF *AMICI*

The **Florida Association of Counsel for Children (FACC)** is a membership organization and a local affiliate of the National Association of Counsel for Children (NACC). The mission of the FACC and the NACC includes strengthening the delivery of legal services for children by working to ensure that children are provided with well received, high quality legal counsel when their welfare is at stake. The mission includes the submission of amicus briefs. Members of the FACC include attorneys in private practice, legal aid attorneys, agency lawyers, and law school professors.

Juvenile Law Center, one of the oldest public interest law firms for children in the United States, was founded in 1975 to advance the rights and well-being of children in jeopardy. Juvenile Law Center pays particular attention to the needs of children who come within the purview of public agencies: for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. Information about the center, including downloadable versions of publications and amicus briefs, is available at www.jlc.org.

The **National Association of Counsel for Children (NACC)** was founded in 1977 as a non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America's children. The organization is

multidisciplinary and has approximately 1800 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented. The NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and interests of children. NACC programs serving these goals include training and technical assistance, the national children's law resource center, the child welfare attorney specialty certification program, the model children's law office program, policy advocacy, and the amicus curiae program. Through its amicus curiae program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and in the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as amicus curiae. Cases must pass staff and Board of Directors review, must promote and be consistent with the mission of the NACC, must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants, and must have a reasonable prospect of prevailing. In addition, the arguments to be presented must be supported by existing law or a good faith extension of the law. More information about the NACC can be found at www.naccchildlaw.org.

SUMMARY OF THE ARGUMENT

It is clearly established that the attorney-client relationship depends on the client's ability to communicate confidentially with his counsel. A client, regardless of age, relies on this relationship in order to aid in his defense. Children in dependency proceedings are entitled to attorneys *ad litem* who owe the same duty of confidentiality to their child-clients as they do to an adult client. In the instant case, R.L.-R., a minor, confided his whereabouts in his attorney and specifically with the understanding the information be kept confidential. R.L.-R.'s attorneys *ad litem* are duty-bound by the Florida Constitution, the Rules of Professional Conduct, and Rules of Evidence to maintain the confidentiality of the information shared by their client forcing R.L.-R.'s attorneys to disclose. Disclosing R.L.-R.'s whereabouts to the Court and Appellants would be contrary to law and public policy.

ARGUMENT

I. THE ATTORNEY-CLIENT PRIVILEGE IS CLEARLY ESTABLISHED IN JUVENILE DEPENDENCY PROCEEDINGS.

A. The Attorney-Client Privilege Has Historically Existed in All Attorney-Client Relationships, Regardless of the Client's Age.

The attorney-client privilege¹ is central to a client's representation. It has been called the "most sacred of all legally recognized privileges," *In re Grand Jury Proceedings, Grand Jury No. 97-11-8*, 162 F.3d 554, 556-557 (9th Cir. 1998), and considered "indispensable to the lawyer's function as advocate on the theory that the advocate can adequately prepare a case only if the client is free to disclose everything." James A. Cohen, *The Attorney-Client Privilege, Ethical Rules, and the Impaired Criminal Defendant*, 52 U. Miami L. Rev. 529, 561 (1998) (citing Geoffrey C. Hazard, Jr., *An Historical Perspective on the Attorney-Client*

¹ The confidentiality of attorney and client communications dates back to English common law where a "solicitor was held to be exempt from an examination concerning matters involved in the litigation." 8 Wigmore, *Evidence* (3rd. ed. 1940) at 547, and 1 Thornton, *Attorneys at Law* (1914) at 159. *See also* Paul R. Rice, *Attorney-Client Privilege: The Eroding Concept of Confidentiality Should Be Abolished*, 47 Duke L.J. 853, 898 (1998) citing *Waldron v. Ward*, 82 Eng. Rep. 853, 853 (K.B. 1654) (counsel would not be "bound to make answer for things which may disclose the secrets of his clients..."). It has become the cornerstone of representation in the American legal system. *See, e.g.*, 4 John Henry Wigmore, *A Treatise on the System of Evidence in Trials at Common Law*, § 2311, at 3233-34 (1904) and the policy rationale has remained consistent—"to promote freedom of consultation of legal advisers by clients, the apprehension of compelled disclosure by the legal advisers must be removed; and hence the law must prohibit such disclosure except on the client's consent." 8 *Evidence*, at 550.

Privilege, 66 Cal. L. Rev. 1061, 1061 (1978)); *see also* Marion J. Radson & Elizabeth A. Waratuke, *The Attorney-Client and Work Product Privileges of Government Entities*, 30 Stetson. L. Rev. 799, 799 (2001) (the “most respected privilege known to the legal profession”). It is self-evident that if the client communicates candidly and completely, the lawyer will be better able to provide legal advice and steer the client through a lawful course. *See, e.g. Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981). The attorney-client privilege also serves the public interest. “[T]he best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.” *State v. Doster*, 284 S.E.2d 218, 219 (S.C. 1981); *see also Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); *Anderson Columbia v. Brown*, 902 So. 2d 838, 841 (Fla. 1st DCA 2005) (citing *First Union National Bank v. Turney*, 824 So. 2d 172, 185 (Fla. 1st DCA 2001)). Establishing an attorney-client relationship does not *per se* invoke the privilege. *See State v. Rabin*, 495 So. 2d 257, 260 (Fla. 3d DCA 1986) (“A person obtains the status of a ‘client’ by consulting an attorney for the purpose of obtaining legal advice”). “In determining whether a privileged attorney-client relationship exists, the primary focus is on the intent of the person claiming the privilege.” *Id.* *See also* ABA Canons of Professional Ethics, 37 (1908) (Confidences of a Client); 81 Am. Jur. 2d. § 362.

Even when the client lacks competency or capacity, including a client under the age of eighteen, the privilege applies and the disclosure of client confidences is barred. Cohen, *supra*, at 564. *See also* Model Code of Prof'l Responsibility DR 4-101(A) (1980); Model Rule of Prof'l Conduct R. 1.14 (2010).

B. Florida Law Supports the Right of Children in Dependency Proceedings to Engage in Confidential Communications With Their Attorneys *Ad Litem*.

1. The Plain Language of Florida's Attorney *Ad Litem* Statute Imposes A Duty of Confidentiality.

The Florida Rules of Juvenile Procedure govern the appointment of an attorney *ad litem* for a child who is alleged dependent. Fla. R. Juv. P. 8.217. Pursuant to these Rules, Florida attorneys *ad litem* owe the same duties and responsibilities to their child-clients in dependency proceedings as they do to an adult client. The attorney *ad litem* "shall have the responsibilities provided by law" in his or her representation of the child. *Id.* Florida law governing the role and responsibilities of the attorney unequivocally requires the duty of confidentiality in the legal representation of all clients, and makes no qualification of the duty based on the age of the client.²

² The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations

2. The Florida Rules of Professional Conduct and Rules of Evidence Establish an Attorney's Duty of Confidentiality in Representation of All Clients, Including Minors.

Published by the Florida Supreme Court, the Florida Rules of Professional Conduct (hereinafter "The Florida Rules") establish the authority and responsibilities for all attorneys who are members of the Florida Bar, including attorneys *ad litem* practicing in dependency matters. *See* R. Regulating Fla. Bar 1-3.1 ("membership of the Florida Bar shall be composed of all persons who are admitted by the Supreme Court of Florida to the practice of law in [Florida] and who maintain their membership pursuant to these rules"). The Florida Rules require lawyers to maintain their duty of confidentiality with their clients. *See* R. Regulating Fla. Bar, R. 4 Preamble (stating "preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private."). The Florida Rules further state that a lawyer shall not reveal information relating to representation of a client unless the client consents to the disclosure. *See id.* at 4-1.6. This applies to lawyers representing youth as well; lawyers must maintain a normal attorney-client relationship with a minor "as far as reasonably possible." *Id.* at 4-1.14.

other than those where evidence is sought from the lawyer through compulsion of law. Model Rule of Prof'l Conduct R. 1.14 (2010) comm. 4-1.16.

R.L., a mature 16-year-old minor, is entitled to a traditional attorney-client relationship in all legal proceedings, including the attorney's duty of confidentiality. R.L. has a history of abuse and neglect and has been involved in state care for much of his childhood. Like many children involved in dependency proceedings, R.L. is more likely to seek legal advice and heed his obligations if he knows that he can trust the attorney in whom he has confided. *See* Melissa J. Maguire, *Depriving Children of A Voice Is Not Harmless Error: An Argument for Improving Children's Representation in Massachusetts Through Statutory Reform*, 38 Suffolk U. L. Rev. 661, 685 (2005) (suggesting that attorney-client privilege is central to the trusting relationship between lawyers and clients, including child-clients). In the absence of that trusting and confidential relationship, there would be no person with whom the child would share information central to his representation. Indeed, the Trial Court acknowledged this, noting that R.L. would likely abscond again if his current whereabouts were required to be disclosed, leaving no one with information regarding his whereabouts and well-being. *In Re: The Interests of R.L.*, No. 08-15104 D009 (Fla. 11th Cir. Ct. 2012).

The Florida Rules of Evidence also codify the lawyer's duty of confidentiality, granting the client the privilege to "refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because

they were made in the rendition of legal services to the client.” § 90.502, Fla. Stat (2012). The statute defines a communication between lawyer and client as confidential if it “is not intended to be disclosed to third persons other than those whom are necessary for the rendition of legal services to the client or the transmission of the communication itself.” *Id.* It is undisputed that R.L understood that his whereabouts remain confidential and known only to his lawyers. Thus, his communication is protected by Florida’s evidentiary lawyer-client privilege.

3. No Exception to Attorney-Client Confidentiality Exists Requiring Disclosure of R.L.’s Whereabouts.

The Florida Rules identify only limited exceptions to the lawyer’s duty of confidentiality, none of which applies to the present case: A lawyer must disclose information to the extent the lawyer reasonably believes necessary to either (1) “prevent a client from committing a crime” or (2) “prevent a death or substantial bodily harm to another.” *See* R. Regulating Fla. Bar 4-1.6.³ The facts of the instant case meet neither exception.

³ In further recognition of the paramount role the lawyer’s duty of confidentiality plays in the attorney-client relationship, Florida has construed this exception to the duty more narrowly than the American Bar Association. In the Model Rules of Professional Conduct’s Rule 1.6, the ABA allows disclosure “to prevent reasonably certain death or substantial bodily harm,” without limiting the exception to instances where such risk is to someone other than the client. Model Rule of Prof’l. Conduct R 1-106 (2010). However, Florida rules specifically require that *another* person’s safety or well-being must be implicated for the exception to confidentiality to apply. *See* Fla. St. Bar Rule 4-1.6.

Appellants have not argued that disclosure of R.L.'s whereabouts is necessary to prevent him from committing a crime. Neither have Appellants argued that disclosure of R.L.'s whereabouts is necessary to prevent death or substantial bodily harm to another.⁴ In the instant case, there is no threat of the commission of a crime, nor evidence of substantial bodily harm to another, which would require R.L.'s attorneys to break their duty of confidentiality to their client.

Additionally, no permissive exception to the attorneys' duty of confidentiality warrants disclosure of the confidential information regarding R.L.'s whereabouts. The Florida Rules set forth five situations⁵ in which a lawyer's disclosure of otherwise confidential information is permitted and provide

⁴ Appellants argue that they need to locate R.L. to attend to his medical needs, but even a severe abscess would not constitute 'substantial bodily harm' sufficient to override the attorney-client privilege. *See* Annotated Model Rules of Professional Conduct (2008), Rule 1.6. Subsection (B)(1) (discussing the application of the 'disclosure to prevent reasonably certain death or substantial bodily harm' exception to permit disclosure in cases in which clients threatened harm to judges or lawyers in a currently-occurring case, or in cases where victims were presumed to be alive and disclosure of their location was necessary to prevent their imminent death). More importantly, as stated above, Florida law requires substantial bodily harm *to another*. *See* R. Regulating Fla. Bar 4-1.6.

⁵ Rule 4-1.6 states "a lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed; (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client; (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or (5) to comply with the Rules of Professional Conduct."

that the lawyer “may reveal” confidential information “to the extent the lawyer reasonably believes necessary” to comply with the exception. *See* R. Regulating Fla. Bar 4-1.6. Under this Rule, the lawyer may reveal confidential information “to the extent the lawyer reasonably believes necessary [...] to serve the client’s interest unless it is information the client specifically requires not to be disclosed.”

Id. While Appellants argue that locating R.L. is in his best interests, this cannot override the attorney-client privilege because R.L. understood that his attorneys would maintain the confidentiality of the information.⁶ (Robert Moore’s Aff. para. 4, Appendix #15, Petition for Writ of Certiorari.)

Finally, the Rules of Evidence also delineate the few extraordinary circumstances in which the attorney-client privilege does not apply,⁷ but again

⁶ Appellants cite *Suarez v. Hillcrest Dev. of S. Florida, Inc.*, 742 So. 2d 423, 425 (Fla. Dist. Ct. App. 1999) for the proposition that Florida law recognizes exceptions to the attorney-client privilege that compel attorneys to reveal their client’s address. However, *Suarez* concerned revelation of the last-known address of a debtor to a creditor who sought to collect on a debt. The debtor had no expectation of privacy in the address. This exception to the privilege would be limited to “a situation such as” *Suarez, id.*, and is immediately distinguishable from R.L.’s case in which the understanding was that his attorneys keep his whereabouts confidential.

⁷ The attorney-client privilege does not apply if (1) the lawyer’s services were used to commit a crime or fraud; (2) a communication is relevant to parties who claim through the same deceased client; (3) a communication relates to breach of the lawyer’s duty; (4) a communication is relevant to the intention or competence of a client executing a document to which lawyer is an attesting witness; or (5) a communication is relevant to a matter of common interest between two clients. § 90.502, Fla. Stat (2012).

none is applicable here. As no exception to the rule of confidentiality applies to the facts of this case, Counsel for Appellee are legally-bound to maintain the confidentiality of R.L.'s whereabouts.

4. The Attorney-Client Privilege is Exempt From Florida's Abrogation of Other Statutory Privileges in Abuse, Neglect, and Abandonment Proceedings.

Although Florida, like every state, recognizes a special status for communications relating to the abuse, abandonment or neglect of children that would otherwise be protected by statutory privileges, *see* § 39.204, Fla. St. (2012),⁸ Appellants agree that the law is not applicable to this case. R.L. has been adjudicated dependent but the communication at issue is unrelated to the abuse, abandonment or neglect of him or any other children. R.L. is not a perpetrator or alleged perpetrator in such a case. *See id.* Moreover, the lawyer-client privilege remains intact even when the information is related to the abuse, neglect, or abandonment of a child. *Id.* This underscores that the attorney-client privilege must be extended to all clients, including children in dependency proceedings, even in the face of significant competing public policy interests.

C. R.L. Has a Constitutional Right to Privacy of Information Communicated with his Attorney *Ad Litem*.

⁸ § 39.204, Fla. St. (2012) abrogates the privilege between husband and wife, between any professional person and his or her patient or client, and other privileged communication "except that between attorney and client" relating to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect.

The Florida Constitution affords the right to privacy to every person, including minors. Art. I, §23, Fla. Const.; *see In re T.W.*, 551 So. 2d 1186 (Fla. 1989) (a minor's constitutional right to privacy extends to her ability to consent to abortion). In *S.C. v. Guardian Ad litem*, the Fourth District applied a constitutional privacy analysis in affirming the right of a 14-year-old to assert the psychotherapist/patient privilege, limiting her GAL's access to her confidential records. 845 So. 2d 953 (Fla. 4th DCA 2003). The Court held that the state's interests must be "compelling" to outweigh the minor's interest in the privacy of her communications with her therapist. *Id.* at 955. If the interest is compelling, the state must choose the least intrusive or restrictive means of furthering that interest. *Id.*

Similarly, R.L. is entitled to privacy in his communications with his attorneys. As noted above, Florida has protected the lawyer-client privilege even when others have been abrogated. *See* Point I.B.4 above. Thus, the lawyer-client privilege invoked in the instant case deserves even stronger protection than the psychotherapist/patient privilege in *S.C.* There, the Fourth District recognized that it is "common sense," for a minor to object to the disclosure of private and intimate details to a therapist, an intimate relationship protected by privilege, because it would "taint the minor's perception of the fairness of the legal process." *Id.* This

reasoning would apply *a fortiori* to the lawyer-client relationship, which is the cornerstone of the legal process.

D. National Consensus Supports Strict Adherence to the Attorney-Client Privilege in Dependency Proceedings.

1. The ABA Model Act Explicitly Requires That the Duty of Confidentiality Extend to Children in Dependency Cases.

The American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings expressly extends the attorney-client privilege to children in dependency proceedings. American Bar Association, *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (2011), available at http://www.caichildlaw.org/Misc/ABA_Resolution.pdf. According to the Model Act, the lawyer must form an attorney-client relationship with the child that is "fundamentally indistinguishable from the attorney-client relationship in any other situation and which includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise." ABA Model Act, Commentary to § 7(c) (referring to ABA Model Rules 1.2, 1.6, 1.3, 1.1, 1.7).⁹ It defines a child's

⁹ Praised for its embodiment of "best practices" for representation of children in dependency proceedings, First Star, *A Child's Right to Counsel*, Third Edition, 6 (2012), available at <http://www.firststar.org/programs/report-card-program.aspx>, the Model Act was given a perfect score and an "A+" grade based on criteria that included the express application of attorney-client confidentiality to children. *See id.* at 152-53. Florida scored 55 out of a possible 100 points, and received a failing

lawyer as a “lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality, and competent representation as is due an adult client.” ABA Model Act, § 1(c). The lawyer’s duty of confidentiality to the child is further reinforced throughout the Model Act. It instructs attorneys to maintain a normal lawyer-client relationship with the child, ABA Model Act, § 7(c); to consult with the best interests advocate “where appropriate and consistent with both confidentiality and the child’s legal interests,” ABA Model Act, § 7(b)(6); and advocate for the child’s “counseled and expressed wishes” to ensure that the child’s legal rights and interests are adequately protected.” Commentary to ABA Model Act, §7(c) (citing ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (1996), at Commentary A-1 *available at* <http://www.afcnet.org/Portals/0/PublicDocuments/Guidelines/AbuseNeglectStandards.pdf>).

2. Legal Experts and Professional Organizations Support the Maintenance of Confidential Communications Between Attorneys and Their Child-Clients, As Do Other Jurisdictions.

grade of “F” for the third time. On the specific question of confidentiality, Florida earned full points for its recognition in Rule 1-1.14 of the Rules of Professional Conduct that children who are impaired by minority are still entitled to, “as far as reasonably possible, maintain a normal client-lawyer relationship with the child.” The Model Act goes above and beyond Florida law by expressly preserving not only the normal lawyer-client relationship, but the duties of confidentiality and liability that accompany it for children in dependency proceedings.

There is broad national consensus that children involved in dependency proceedings have the same right to effective legal counsel, confidentiality, and the protection of the attorney-client privilege that adult clients have. *See, e.g.* Amy C. Harfeld, *The Right to Counsel Landscape After Passage of the ABA Model Act-Implications for Reform*, 36 Nova L. Rev. 325 (2012).¹⁰ “The confidentiality of the information that the client shares with the attorney is the hallmark of the attorney-client relationship and is what differentiates the attorney for the child from the guardian *ad litem* for the child.”¹¹ Gail Chang Bohr, *Ethics and the Standards of*

¹⁰ *See also* Linda Elrod, *Client-Directed Lawyers For Children: It is the “Right” Thing to Do*, 27 Pace L. Rev. 869, 873 (2007) (arguing that children need lawyers who act like lawyers); Christopher Wu, *Conflicts of Interest in the Representation of Children in the Dependency System*, 64 Fordham L. Rev. 1857 (1996) (discussing the need for undivided loyalty to the client); Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling The Child Client*, 64 Fordham L. Rev. 1655 (1996) (concluding that lawyers should assure child clients that all communications are kept confidential); Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings in the United States and Around the World in 2005: Survey Findings, Initial Observations, And Areas For Further Study*, 6 Nev. L.J. 966 (2006) (commenting that lawyer confidentiality is extremely strict); Marvin R. Ventrell, *Rights & Duties: An Overview of the Attorney-Child Client Relationship*, 26 Loy. U. Chi. L.J. 259, 270 (1995) (asserting the client’s right to communications protected by the attorney-client privilege).

¹¹ Recently, the Supreme Court of Illinois ruled that a lawyer performing the hybrid functions of GAL and counsel while representing a juvenile in delinquency proceedings was a *per se* “conflict of interest” and violated the juvenile’s due process rights. *See Illinois v. Austin M.*, 2012 IL 111194 (Ill. 2012) (comparing the roles of attorney as a “dedicated and zealous advocate” who can hold the state to its burden of proof, with a GAL, “who need not pursue acquittal” if he does not see it as being in the best interests of the minor or society).

Practice for the Representation of Children in Abuse and Neglect Proceedings, 32 William Mitchell L. Rev. 989, 1000 (2006).

Furthermore, professional and national organizations that promote best practices for children's representation underscore the importance of confidentiality in dependency proceedings. See National Association of Counsel for Children, *Recommendations for Representing Children in Abuse and Neglect Cases* (2011) at 7 at http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf; American Bar Association, *Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) at 1.

Finally, both courts and legislators in other jurisdictions have enforced the attorney-client privilege in dependency proceedings. As the Supreme Court of Washington explained: "[U]nlike a GAL [in Washington], an attorney can maintain confidential communications with the child so the child is free to disclose the child's deepest secrets and concerns and ensure that children know with whom and in what manner they can communicate." *In re Dependency of M.S.R.*, 271 P.3d 234, 244 (Wa. 2012). The Alabama Supreme Court has held that the same ethical duties and obligations that lawyers have to their clients in other settings or proceedings apply to lawyers in dependency cases. *Ex parte R.D.N.*, 918 So.2d 100, 103–04 (Ala. 2006). The Court held that the lawyer has an obligation to represent the child and conform to the state's rules of professional responsibility

for attorneys, including the obligation to keep client confidences and take reasonable precautions to prevent the disclosure of privileged material. *See id.*

In addition to judicial recognition of the attorney-client privilege for youth in dependency proceedings, some state legislatures have also codified this privilege. *See, e.g.,* Mich. Comp. Laws § 712A.13a(1)(c) (2012) (“An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client.”); 705 ILL. COMP. STAT. 405/2-18 (2012) (“The privileged character of communication between any professional person and patient or client, except privilege between attorney and client, shall not apply to proceedings subject to this Article”); La. Sup. Ct. R. XXXIII, Part III, Subpart II, Standard 2 (2012); (“An attorney serving as independent counsel for a child owes the same duties of loyalty, confidentiality, advocacy and competent representation to the child as are owed to any client”); Miss. Code Ann. § 43-21-201(4)) (2012) (“The child’s attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct.”).

CONCLUSION

WHEREFORE, *Amici* urge this Court to affirm the Trial Court's holding and preserve the attorney-client privilege for communications between attorneys *ad litem* and their child-clients in dependency proceedings.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Michael J. Dale", is written over a horizontal line.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief of *Amici Curiae* meets the requirements of Rules 9.210 (Briefs) and 9.370 (Amicus Curiae).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of *Amici Curiae* has been served on the 6th day of September via Electronic Mail to: 3DCAefiling@flcourts.org and U.S. mail to the following addresses:

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