

**AUTHORIZATION TO RELEASE INFORMATION
AND
RELEASE FROM LIABILITY**

I, Elizabeth Bierly, understand and agree to the following:

1. I authorize the Office of the Legislative Auditor General to review any and all information relating in any way to the events, investigation, and proceedings that resulted in the termination of my parental rights in my children. This information may be obtained from any source including, but not limited to, the Department of Human Services, the Division of Child and Family Services, the Utah Office of Child Protection Ombudsman and the Utah Attorney General's Office.
2. I understand ~~and agree~~ that, after reviewing the above described information, the Office of the Legislative Auditor General will render an opinion, in the form of a written report, that may indicate:
 - a. whether the investigation and proceedings that resulted in the termination of my parental rights in my children were properly conducted by government agencies and employees;
 - b. whether the removal of my children from my home was appropriate; and
 - c. whether the termination of my parental rights in my children was justified.
3. I understand ~~and agree~~ that the written report of the Office of the Legislative Auditor General may discuss the actions of government and myself in relation to the investigation and proceedings that resulted in the termination of my parental rights.
4. I understand ~~and agree~~ that the written report of the Office of the Legislative Auditor General will be released to members of the Legislature and to the general public.
5. I authorize the Utah Legislature, the Office of the Legislative Auditor General, their employees and agents to release to members of the Legislature and to the general public the report of the Office of the Legislative Auditor General in relation to the investigation and proceedings that resulted in the termination of my parental rights. I understand and agree that this report may contain my name and any privacy information about me that relates in any way to the termination of my parental rights in my children.
6. I hereby release the Utah Legislature, the Office of the Legislative Auditor General, ~~the State of Utah~~, and their employees and agents from any and all liability relating in any way to the release of the information referred to in this "Authorization to Release Information and Release from Liability."

Dated this _____ day of _____, 2004,

Elizabeth Bierly



STATE OF UTAH

Office of the Legislative Auditor General

W315 UTAH STATE CAPITOL COMPLEX • PO BOX 145315 • SALT LAKE CITY UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

WAYNE L. WELSH, CPA
AUDITOR GENERAL

November 1, 2004

Elizabeth Bierly
6809 South 500 East
Midvale UT 84047

Dear Ms. Bierly:

You have requested a copy of the Legislative Auditor General's report relating to the removal of your children from your home and the termination of your parental rights. A copy of that report is enclosed with this letter. The report is considered a private record and is being provided to you, because the privacy information contained within the report relates to you.

The Legislative Auditor General's report is not being released to the Legislative Audit Subcommittee or the public at this time. The report will only be released to the Legislative Audit Subcommittee and the public if you sign the enclosed release. In order to assure you that this release does not release any claim you may have against the State of Utah relating to the removal of your children and the termination of your parental rights, the specific reference in paragraph 6 to the "State of Utah" has been removed, and paragraph 7 has been added. If you have any questions about the audit, please contact me at 538-1033 x 1103. If you have any questions about the contents of the "Authorization to Release Information and Release from Liability," please contact M. Gay Taylor at 538-1032.

Sincerely,

John M. Schaff
Acting Auditor General

JMS/lm

Encl



Utah State Legislature

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(801) 538-1035 • Fax: (801) 538-1414

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✓ Rick
— Wayne K

December 20, 2002

Mr. Wayne Welsh
Auditor General
Utah State Legislature
130 State Capitol
Salt Lake City, Utah 84114

Subject: Request for Letter Report

Mr. Welsh:

I am aware that over the years you have conducted numerous audits and reviews resulting in recommendations for the long-term improvement of Utah's child welfare system. As recently as two years ago, you conducted a review of several cases involving alleged violations of the procedural deadlines established by the Legislature.

It has come to my attention that state policies and procedures, including those established by the judiciary, may have been violated in the case of Ms. Lisa Bierly and her son who was taken into state custody by the Division of Child and Family Services. Would you please review this case for compliance with policies established by the Legislature, the Division, and the judiciary? Also, would you identify any areas of noncompliance and make recommendations, if necessary, to ensure that the rights of parents and children are protected as the state attempts to protect children and preserve families?

Sincerely,

Representative Matt Throckmorton



JOHN M. SCHAFF
AUDITOR GENERAL

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STATE OF UTAH

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Office of the Legislative Auditor General

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Audit Subcommittee of the Legislative Management Committee
President L. Alma (Al) Mansell, Co-Chair • Speaker Martin R. Stephens, Co-Chair
Senator Mike Dmitrich • Representative Brent H. Goodfellow

Private

November 1, 2004
ILR 2004-A

Speaker Martin R. Stephens
W130 House Building
State Capitol Complex
Salt Lake City, UT 84114

Subject: Elizabeth Bierly Child Welfare Case

Speaker Stephens:

We have completed our review of the Elizabeth Bierly child protection case. The Division of Child and Family Services (DCFS) took custody of some of Ms. Bierly's children in the fall of 2000 and the court terminated her parental rights in July, 2002. We found that procedural errors were made during the removals of each of the children and, based on available documentation, we cannot definitely conclude that the removals were justified at that time. However, after DCFS presented evidence at the shelter hearing, the court determined that the removals were appropriate and placed the children in the custody of DCFS. Once the state took custody of the children, Ms. Bierly did not fully comply with safety and service plans established to protect the children and return them to her. Therefore, it appears the state acted reasonably in its decision to terminate parental rights.

Ms. Bierly has lodged complaints about many aspects of this case and they were evaluated by different organizations and processes. The Office of the Child Protection Ombudsman (OCPO) began investigating complaints shortly after the children were removed and have continued to address concerns even after parental rights were ended. OCPO completed two written reports in response to Ms. Bierly's complaints, issued in September 2001 and June 2003. In addition, DCFS management and the Constituent Services Office reviewed issues surrounding the case. Ms. Bierly's complaints about the assistant attorney general were addressed by the AG's office and the Utah State Bar and her formal request to recuse the juvenile court judge was handled by the courts.

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Evaluating this case was challenging because we were not there to experience firsthand the difficult choices required to protect and establish permanency for the children and still honor the parents' rights. In addition, the case occurred when Utah's child welfare system was changing—including implementing a new practice model in response to the settlement of the David C. lawsuit that required improvements to the system. DCFS employees told us that some aspects of the case would be handled differently if it occurred today but that does not mean the outcome would have been any different.

Our evaluation included interviewing Ms. Bierly and reviewing documents she provided. We reviewed the DCFS case files and interviewed four DCFS child welfare caseworkers and two of their managers. We also interviewed the Assistant Attorney General assigned to the case. In addition, we interviewed the Guardian ad Litem (GAL) who represented the children and reviewed their case files. We studied the laws and policies that were in effect at the time of the case and we interviewed Ombudsman and Constituent Services staff who previously reviewed the case.

Our ability to report the facts and explain our conclusions about this case is limited because the law requires that much of the information we reviewed be kept confidential. We cannot disclose information from DCFS or GAL files about the children. This letter provides our assessment of some significant concerns raised by this case.

Ms. Bierly's Lack of Compliance Was Decisive

Ultimately Ms. Bierly's parental rights were terminated because she did not comply with the service plans developed to protect her children and return them to her.

In reviewing this case, we learned that Ms. Bierly failed to substantially comply with court ordered objectives of the DCFS service plan and that her behavior was often erratic and uncooperative. In the beginning, she made progress on the agreed upon requirements. However, this progress was not sustained. Ms. Bierly did not attend many of the important appointments and hearings and failed to show for some visits with her children. Caseworkers had difficulty keeping in contact with her and she failed to maintain a stable residence. She allowed contact with the children by an individual who was prohibited contact based on a court order. She had outstanding warrants including one for domestic violence and was involved in several disturbances involving DCFS that may have had a detrimental effect on her children. According to the judge in this case:

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The court observes a mother with a keen mind, who verbalizes love for her children but lacks the focus, commitment and common sense to work on issues that relate directly to their care. It appears that much of her physical and emotional energy is spent in contentious challenges to the acts of authority. Such distractions get in the way of her committing her energy and resources to her children and she is virtually immobilized because of such distractions. The court believes she means well, but has failed to show stability over a sustained period of time to warrant a return of the children to her.

However, our review also showed that some of the concerns raised by Ms. Bierly had merit. The remainder of this letter discusses the concerns that appear valid to us.

Concerns Raised by the Bierly Case

We identified four concerns with this child welfare case that seem important to us. First, DCFS made several procedural errors when the children were removed. Second, there were disagreements about the state's handling of the case between the Assistant Attorney General (AAG) and DCFS; the conflict led DCFS to request that the AAG be removed from the case. Third, teamwork of DCFS caseworkers and administrators was ineffective. Fourth, the parents legal assistance may have hindered the case.

Procedural Errors Were Made During the Children's Removals

Utah law and DCFS policy requires that certain procedures be followed when investigating possible child abuse or neglect. These procedures were established to protect and provide permanency in a timely manner for children who are in danger of abuse and neglect and also to honor the parents' constitutional rights. The OCPO reports identified some instances where procedural requirements did not appear to be followed, including:

- ▶ thorough investigation and interview requirements were not completed prior to removal of the children.
- ▶ preventative services were not offered before removal.
- ▶ a mandatory medical examination was not completed in a timely manner.
- ▶ parents were not provided with complete and accurate notices for the shelter hearings.
- ▶ kinship placement options were not adequately assessed.

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While these procedural errors don't necessarily mean that the children should not have been removed, based on available documentation we cannot definitely conclude that the removals were justified before providing services. We note that the OCPO report stated that preventative services may have precluded the need for removal; also, some senior DCFS staff told Ms. Bierly that her children never should have been removed.

Although Ms. Bierly feels the removal of her children was illegal because of procedural errors, the court's primary responsibility is to protect the children. Utah law states that once the children were removed and the court finds that continued removal and temporary custody are necessary to protect the children from harm, the court is required to "order continued removal regardless of any error in the initial removal of the child, or the failure of a party to comply with notice provisions, or any other procedural requirements..." (UCA 78-3a-306(15)). Thus, as discussed above, Ms. Bierly's parental rights were terminated because she did not adequately comply with service plans required by the court after the children were removed.

There Was Conflict Between the Assistant Attorney General and DCFS

A second concern with this case is that there was so much conflict about how the case should be handled between the Assistant Attorney General (AAG) assigned to the case and DCFS. In fact, the DCFS Regional Director formally requested that the AAG be removed from the case, but the division chief declined to do so. The AAG had strong opinions about the case and apparently felt that DCFS was wrong to continue a trial home placement and should file a petition to terminate Ms. Bierly's parental rights. Instead, the Guardian ad Litem (GAL) filed the petition. One reason for this type of conflict is that the AAG has a dual responsibility to represent DCFS and also to ensure child protection laws are complied with and enforced.

Ms. Bierly contends that the AAG assigned to her case controlled the case and was a major reason her children were not returned to her. It appears this AAG's strong opinions may have influenced some decisions but he did not control the case. The CPS worker said that the AAG was a driving force for a child's removal, but decisions were made as a team. Both of the primary foster care caseworkers assigned to the case reported that the attorney did not direct the case and that they did not feel compelled to adhere to his opinions.

Although we don't feel the AAG controlled the case, DCFS did ask that he be removed from this case. Some DCFS staff were concerned the AAG and GAL may have worked together against the mother's interests when DCFS was trying to provide reunification services. We asked the AAG about some of the actions DCFS questioned and he

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acknowledged taking action to verify financial support to determine if Ms. Bierly was maintaining a stable residence but denied attempting to have the mother served with a subpoena while she attended a meeting with DCFS. Although we focused on just this case, it appears that some of the concern that DCFS had with this AAG was broader. A DCFS staff member felt that this AAG tended to favor removing children rather than providing services to preserve families. It was beyond our scope to evaluate whether that concern had any validity, however such conflicts could result from the dual role that the AAG fulfills.

In addition to representing DCFS as a client, the AG has a separate responsibility to ensure child protection laws are complied with and enforced (UCA 62A-4a-113 (2)). Thus, if DCFS isn't adequately protecting a child, the AAG should act to make sure the child is safe. Conflicts have surfaced because of the dual responsibilities. DCFS reported that the conflicts between DCFS and the AG's office have been resolved, in part, by personnel changes in recent years that have led to better communication to resolve differences. Further, a recently drafted memorandum of understanding clarifies the roles of the Attorney General and the DCFS Salt Lake Region. The memorandum states that for decisions involving the removal of children "the AG may give his input but the ultimate decision to remove rests with DCFS." For ongoing cases, "the AG may provide input to the caseworker but decisions on any interventions rests with DCFS."

Ineffective DCFS Teamwork Contributed to Conflict

Conflicts about the Bierly case also surfaced internally at DCFS because administrators and caseworkers did not work as an effective team. Caseworkers seemed to feel that they lost credibility with Ms. Bierly because after some administrators listened to her complaints, they sided with Ms. Bierly before talking to caseworkers about the concerns. On the other hand, administrators expressed concerns about how much the AAG and the GAL influenced the caseworker.

Because of how DCFS interacted with Ms. Bierly, she may have received conflicting messages that did not encourage compliance. Apparently, at least two DCFS officials told Ms. Bierly her children should not have been removed based on the initial investigation. Ms. Bierly believes her children should therefore be returned. However, as noted earlier, state law requires that once removed the state must protect the children even if errors were made during the removal.

Additional conflicts occurred because a team consensus was not reached before talking with Ms. Bierly. In one instance, a DCFS administrator stated that the Bierly case was disturbing because the children "may lose their mother not because she cannot parent but

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she is not in compliance. I am not sure this is how the system should work." We are not sure if this position was communicated to Ms Bierly, but such thinking makes it difficult for caseworkers to emphasize how extremely important it is for parents to comply. Laws direct the court "to order the discontinuance of those services...if the parent or parents have not made substantial efforts to comply with the treatment plan." (UCA 78-3a-311(2)(f)(ii)). Ms. Bierly's parental rights were terminated for her failure to adequately comply with service plans created subsequent to removal of her children.

It appears that DCFS had difficulty coming to consensus about some aspects of the case. Administrators even became concerned that the foster care caseworker was overly influenced by the AAG and the GAL and became a monitor for the court's orders and an investigator of what the parent was not doing. Apparently in an effort to improve the reunification services provided to Ms. Bierly, a more experienced caseworker was assigned to try to help Ms. Bierly successfully complete her service plan. However, at about the same time, a petition for the termination of parental rights (TPR) was filed. Although the AAG felt termination was appropriate, he didn't file the TPR because DCFS was still working to return the children. Eventually, as termination efforts continued, the new caseworker and at least some administrators came to support termination.

Parents Legal Assistance May Have Hindered Case

Our final concern involves the legal representation Ms. Bierly received. It's important that parents have good legal representation because the court process can be intimidating. Ms. Bierly may not have had adequate legal representation because she changed attorneys a number of times. She also contends that her attorneys did not always present the issues that needed to be raised.

The attorneys involvement in this case may also have discouraged Ms. Bierly's ability to comply with her service plan. Initially, Ms. Bierly's attorney apparently instructed her not to sign the service plan; the plan was later signed. At one point a DCFS administrator expressed frustration that the caseworker was not permitted to have any contact with Ms. Bierly. Attorneys were requiring that contact be made only through them. Thus, for a short period of time, they could not provide any services to Ms. Bierly that may have helped her complete her service plan.

Ms. Bierly appealed the termination of her parental rights asserting her legal representation was inadequate because of a change of attorney (for health reasons) during the trial. However, the Utah Court of Appeals determined that nothing they were shown would lead the court to believe that the trial court was negatively influenced by the change

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of counsel. The transcript of the proceedings were not included with the appeal. Subsequently, the Supreme Court declined to review the case.

This letter addresses only some of the concerns Ms. Bierly brought to our attention. There was a wide range of concerns that we were unable to address because of limited time and scope or because we lacked verifiable evidence. Ms. Bierly is devastated about losing her children and continues in her efforts to have her children returned to her. We have emphasized to her that we do not have the authority to have her children returned to her, that only the courts have that authority. We hope this report supplies the information you need. If you have any further questions, please call our office at 538-1033.

Sincerely,

John M. Schaff
Acting Auditor General

JMS/SV/lm

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