

Newsletter

DISCOVERY WHEN THE STATE ASKS FOR NO REUNIFICATION

Special points of interest:

- The Court establishes the permanency goals for minors
- The Court determines whether reunification services are appropriate
- DCFS must conduct a thorough investigation and assessment in order to make informed decisions

Under Utah law, it is not the Division of Child and Family Services which determines whether reunification services will be offered to the family. It is important to remember that it is the court that orders reunification or no reunification.

Utah Code Ann. 78-3a-311 provides,

(2)(a)(i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, **the court** shall first: (A) establish a primary permanency goal for the minor; and (B) **determine whether**, in view of the primary permanency goal, **reunification services are appropriate** for the minor and the minor's family,

pursuant to Subsection (3).

Parents are not entitled to reunification under all circumstances. Utah lawmakers determined that a 'parents interest in receiving reunification services is limited' because of the states' interest in protecting and providing permanency for abused, neglected or dependent minors. Id. "The court may determine (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, **based on the individual circumstances.**" U.C.A. 78-3a-311(3)(b)(i).

When faced with that case in which the state prays for a denial of reunification, defensive measures include examination of the assessment process DCFS fol-



lowed to arrive at its position. The Practice Guidelines are helpful for cross examination of the caseworker to evaluate the quality of decision-making leading a no-reunification request.

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Thank you, Mike Thompson... and Best Wishes

Effective September 1, 2007, Mike Thompson's service to the Parental Defense Alliance comes to an end. The Parental Defense Alliance thanks Mike for his service and commitment to family rights. As a member of the House

of Representatives, Mike sponsored and fought for legislation supporting Utah families. He continues to passionately represent parents.

Thank you, Mike. We know that although your formal service with

the Parental Defense Alliance is at a close, you will continue the pursuit of just, fair, equitable and constitutional treatment of parents in Utah. You have our best wishes as you continue on in your pursuit of justice for all Utah families.

DISCOVERY WHEN THE STATE ASKS FOR NO REUNIFICATION



Documentation received through discovery will provide counsel with cross examination material to show the court that the Division failed to follow its protocols for obtaining adequate information to make an informed decision about reunification.

U.C.A. 62A-4a-409 directs the Division to conduct a “thorough preremoval investigation” upon receipt of a possible case of abuse or neglect. The purpose of any investigation and assessment is to enable the Division to make informed decisions. Practice Guidelines 204.

The Practice Guidelines specifies the minimal elements of a CPS investigation. A CPS investigation shall include interviews, assessments, consultation with the child protection team, service coordination, and documentation of all contacts and information received. Practice Guidelines 202.1. DCFS is required perform an assessment of the family to determine their strengths and weaknesses...the “individual circumstances’ of each family.

The Division must conduct an “Immediate Protection and Safety Assessment for the child.” U.A.R. 512-201-4(B), Practice Guidelines 202.6. That assessment must include consideration of the “family’s capacity

to protect the child.” UAR 512-201-4(B). Assessment includes consideration of the immediate risk, safety, and protection needs of the child.

Discovery by way of request for production of documents to the Division should include the following:

-Documentation of the Immediate Protection Safety Assessment (IPSA) ;

-Documentation of the Risk Assessment;

-Documentation of the Significant Risk Assessment (when allegations include sexual abuse, exploitation, lewdness or inappropriate sexual conduct)

-Documentation of the Serious Physical Abuse Assessment

-Documentation of the assessment of the family’s strengths and weakness

Interrogatories to the Division are drafted to obtain information that went into each assessment factor. For example, interrogatories could include:

For each risk identified in the IPSA, set forth with particularity the basis for the risk, including the information obtained by the investigator which supports each risk conclusion, the identity of all witnesses whose information supports each risk conclusion, each measure undertaken by the investigator to arrive at the risk conclusion, and any documents, and the location of those documents, considered to arrive at each risk conclusion.

The documentation received through discovery will provide counsel with considerable cross examination material to use to show the court that the Division lacks sufficient information to make an informed decision about reunification. The documentation will allow counsel to determine whether the Division fulfilled its statutory duty to thoroughly investigate and assess the protection and safety needs of the children .



PDA’s Future Mini-Seminars

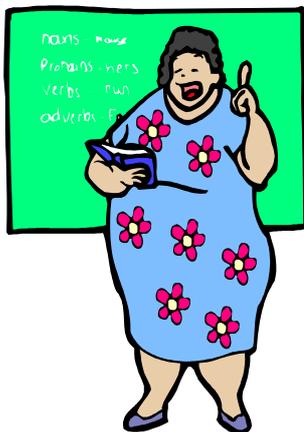
The Parental Defense Alliance is committed to providing educational and training opportunities to enhance the experience and knowledge base for attorneys engaged in the representation of parents in child welfare cases.

Over the next several months, mini- seminars will be held on evidentiary issues

in a child welfare proceeding, child development and the proper technique for interviewing children. DCFS CPS workers are undergoing training now in the proper technique for interviewing children. PDA believes defense counsel will benefit from understanding the same techniques used by DCFS.

On September 7, 2007, PDA will conduct a lunch-hour seminar in Price. The topic of the seminar is evidentiary issues in a child welfare proceeding.

Watch your email and Newsletter for dates and locations for future meetings. All mini-seminars will be approved for CLE and are free to public defenders.



Focus On the Guidelines: Sibling or Child/Youth at Risk

The Division's major objective with respect to the sibling or child at risk, is to assess the safety of children/siblings/youth, who may be a risk when a child in the same home has been the victim of abuse, neglect or dependency. Practice Guidelines, 204.3.

Applicable law: U.C.A. 78-3a-301.

Practice Guideline requirement:

A. In cases where the mother is pregnant and delivers the newborn and the newborn's siblings are in custody, or have been determined to be abused, neglected, or

dependent, the CPS caseworker shall complete all of the identified activities to assess the need for protection, safety, and services for that child/youth.

- B. The CPS caseworker shall complete the following with each sibling or child/youth to determine if the sibling or child/youth requires immediate protection or services:
1. Assess risk and safety in a timely manner.
 2. Conduct a face-to-face interview with each child/youth having verbal or other communica-

tion skills or observe non-verbal children/youth.

3. Complete an Immediate Protection Safety Assessment taking each child/youth into consideration.
4. A safety agreement may be completed with the assistance of the parents or guardians.
5. If law enforcement objects to a Child and Family Services investigation (for example, in a child fatality investigation), the CPS caseworker shall review the case with the Attorney General's office to determine legal options to ensure the safety of other siblings.



"A Culture Thriving on The Power to Control Families" An Inspector General's Perspective

Case Study: Mother (MO) gave birth to her third child. MO tested positive for cocaine, the infant did not. MO's two other children were in the custody of the maternal great grandmother (GGM). Instead of placing the infant with the GGM and with the infant's siblings, the agency placed the child in a foster placement.

The initial caseworker (CW1) wanted to place the infant with GGM and siblings. That placement was ruled-out by the agency, however, because the agency concluded the GGM did not "need" the child. They expressed the concern that at her age a newborn would be too much to handle with the other children. Some DCFS staff thought the GGM to be

strong." DCFS believed she would simply give the infant to her mother.

GGM was, however, subsequently granted permanent custody of the two children, ages 3 and 4, already in her care.

A second caseworker (CW2) was assigned to the case with the instruction to find a home for the infant.

Paternal grandparents were denied placement because they "did not get to the hospital soon enough to bond with the child" and they did not complete training soon enough. Paternal grandfather was later transferred to another state by the US Army. The family requested an ICPC but the agency failed to submit the paperwork. CW2 thought the child should be

placed with her GGM and siblings. A third caseworker (CW3) was then assigned to the case.

CW3 was informed by the agency that the child would not be placed with GGM

"CW2 believed personal issues of ... staff were taken out on the family."



Who said it?

“Moderation in the pursuit of justice is no virtue.”



A. Clarence Darrow B. Barry Goldwater C. George Will

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Control Families”

because she had high blood pressure and another child might be too much for her. GGM produced a letter from her doctor verifying she was healthy enough to care for the third child.

The agency then expressed objection to the placement because the GGM had only visited with the infant twice, and she had a criminal history—no insurance on her vehicle. CW3 said the infant did not know her family and she set up visits for the family.

When it became evident that the agency had no intention of placement with the GGM and they would not place with paternal grandparents, a maternal great aunt sought placement. She was told she needed a larger home. She sold her home and purchased a larger home. A later investigation into the conduct of the

Agency would reveal that there was no documentation to indicate that the Agency conducted a home study or considered the great aunt for placement.

MO was told that all of her relatives had been ruled-out and TPR would be initiated.

This study is not one conducted on a Utah case, despite the fact that statements will sound all too familiar. The case is one of a number of cases reviewed by the Kentucky Inspector General after reports of misconduct by a number of child welfare social workers and agency employees.

The OIG’s report, made available in January 2007, found the following misconduct by various agency employees:

- falsification of documents;
- failure to report all information to the court;
- falsification of records
- failure to make home visits
- unprofessional conduct
- dishonesty
- retaliation against employees

The OIG recognized that caseworkers face daunting tasks on a daily basis and that they are called upon to make difficult judgment calls under “highly stressful” e

situations where the health and safety of both the worker and the children may be at risk. “All such good faith decisions in certain circumstances and the short-term removal of children is far more desirable than allowing children to remain in a potentially dangerous situation. This is true even if such action is later determined to be unnecessary.” The OIG did not intend the report to reflect criticism of a social worker’s good faith handling of situations.

The OIG focused on cases involved alleged abuse, neglect or dependency that resulted in criminal convictions against the parents.

The report revealed issues identified as “longstanding”, a “culture...which thrived on the power of controlling certain families, including but not limited to the ultimate exercise of power—facilitating the removal of children from their biological parents and TPR.

“Termination of parental rights is one of the most significant and far-reaching actions the Commonwealth can take against an individual. OIG Commonwealth of Kentucky, January 2007. With that in mind, the OIG “trusts” the overseeing entities will “work together to ensure” that children are protected from abuse in a manner that is consistently ethical, moral and legal.

