

October 4, 1993
ILR 93-R

Senator Delpha A. Baird
2574 Kentucky Avenue
Holladay, Utah 84117

Subject: Senate Bill 74 - Termination of Parental Rights Act

Dear Senator Baird:

As you requested, my staff has reviewed questions you raised about the implementation of Senate Bill 74 -- Termination of Parental Rights Act. You were specifically concerned about how the Attorney General's Office (AG) and Administrative Office of the Courts (AOC) used appropriations made by the legislature to prosecute parental rights deprivation cases. We found that a great deal of confusion exists about the funding available to prosecute these cases at the state level. In our opinion, adequate funding is unavailable to accomplish the intended legislative purpose established in the act. However, at this time we are unable to project funding needs because of unanswered questions about the number of parental deprivation trials and appeals that might be argued or prosecuted through the AG.

Background Information

To help you understand the conclusions we reached, we need to give you some background information. As you know, the 1992 Legislature passed the Termination of Parental Rights Act (Senate Bill 74) which gave the Division of Family Services (DFS) the option of having the Attorney General or a County Attorney (CA) file petitions to terminate parental rights. Parental rights termination petitions are filed if a parent is found, by reason of his/her conduct or condition, to be unfit or incompetent. Previously, only a County Attorney could file these petitions. While the authority to try parental deprivation cases was given to the Attorney General, the Attorney General was not given a direct appropriation to accomplish this new function. Actual funding for the program was included within the AOC budget. For fiscal year 1993, the Legislature appropriated \$400,000 for AOC programs from the Children's Legal Defense Fund. In fiscal year 1994, the Legislature appropriated \$811,000 from this same fund.

The Children's Legal Defense Fund (CLDF) was also enacted by the 1992 Legislature (House Bill 258). The CLDF was established "to provide for programs that protect and defend the rights, safety, and quality of the life of children." According to the statute (**Utah Code 63-63a-8**), funds accrued in the CLDF can be used for implementing divorce education and mediation pilot programs, expanding the Guardian Ad Litem (GAL) program into district courts, instituting court ordered community service for violation of visitation orders, hiring a GAL trainer, piloting visitation order pilot programs, and prosecuting parental rights deprivation cases. All but the last

item includes programs operated directly by the AOC. Only the last purpose is included within the responsibilities of the AG.

The table below describes the amounts authorized by the programs listed above for fiscal year 1993. You should understand that none of these amounts are line item appropriations. The Legislature left to the AOC the decision on how to allocate monies from the CLDF among these programs.

Table I	
Allocation of Children's Legal Defense Fund	
Fiscal Year 1993	
Program Title	Amount Authorized
Divorce Education Pilot	\$73,000
Divorce Mediation Pilot	32,000
Guardian Ad Litem Expansion into District Court	75,000
Termination of Parental Rights	39,300 ¹
	43,900 ²
Court Ordered Community Service for violation of support or visitation orders	75,000
Guardian Ad Litem Trainer Position	63,000
1st District Violation of Visitation Pilot	17,500
Total	418,700
<i>1 Administrative Office of the Courts (AOC)</i>	
<i>2 Attorney General (AG)</i>	

Funding Inadequate to Accomplish Legislative Purpose

The Legislature passed SB 74 in 1992, but provided no direct appropriation to implement the bill. While the Children's Legal Defense fund was created, in part, to fund the activities of SB 74, no legislative guidance was provide on how to allocate this fund among the AOC's programs. What has occurred, therefore, is the unusual situation whereby the AG is dependent on the AOC for funding of a legislatively mandated program.

In addition to a lack of legislative guidance on the allocation of CLDF funds, there has also been a lack of agreement about the amount needed by the AG's office to prosecute Termination of Parental Rights (TPR) cases. An estimate was prepared by Linda Luinstra, the Attorney General's Division Chief for the Human Services Department, which called for approximately \$150,000 to implement the bill. Ms. Luinstra explained that two experienced attorneys costing about \$70,000 each are needed to adequately address TPR cases. Ms. Luinstra's recommendation, however, was rejected by the AG. The AG made the recommendation to the Fiscal Analyst's Office that \$43,900 be provided in FY 93 for implementation of SB 74.

SB 74's fiscal note called for the AG to receive \$43,900 in FY 93. The \$43,900 FY 93 fiscal note was based on an estimate of the cost to the AG to implement SB 74 in the first one-half year. The note also projected future requirements of \$60,000 in FY 94 and \$134,000 in FY 95. While the legislature has appropriated over \$800,000 for the AOC's programs in FY 94 (to include the Termination of Parental Rights program), actual revenue in the CLDF, which is allocated among all the AOC's programs, is expected to remain constant at \$400,000. Therefore, the monies available for expenditure are far less than called for by the appropriation. It appears, therefore, that without additional sources of revenue, projected increased funding requirements in FY 94 and FY 95 cannot be met.

While the AG received \$43,900 in FY 93, there is still confusion over the amount of funding for TPR cases in FY 94. The AG's financial manager is unsure how much will be available for the prosecution of TPR cases in FY 94. However, AOC staff, also unsure of the amount available to the AG's office, estimate that CLDF revenue will remain constant at approximately \$400,000. As can be seen in the above table, if there is no increase in CLDF revenue and the allocation of the CLDF remains constant, the AG will again receive \$43,900 in FY 94. The AOC has already hired six-and-a-half FTEs to implement its various programs, thereby ensuring that future allocations of the CLDF will mirror the FY 93 allocation unless CLDF revenues increase.

The AG has estimated that it needs \$150,000 per year to address the problem of TPR cases, but only \$43,900 has been provided. Therefore, while the number of TPR cases addressed by the AG improved in 1993, sufficient resources have not been provided to fully implement the provisions of SB 74.

Actual Workload and Funding Needs Unknown

In December of 1990, the Department of Human Services conducted a survey of its four regions and found over 120 cases where parents' rights needed to be terminated. In FY 92 the AG, which at that time was only allowed to handle TPR appeals, handled one appeal and no TPR trials. While in FY 93, the AG handled eight appeals and four trials. The Attorney General's Office, according to its Human Services Division Chief, has received nine requests for TPR trials thus far in FY 94 from the City of Ogden alone. Currently, the AG has only a paralegal and three attorneys assigned part-time to these cases. The County Attorneys, once responsible for all TPR cases, are now assisted by the AG. Not all County Attorneys, however are happy with the AG's involvement. AG staff told us that while many County Attorneys are grateful for the help, others consider the AG's involvement intrusive.

As mentioned above, Linda Luinstra estimated that funding sufficient to hire two experienced attorneys was necessary to address the expected TPR caseload. She further estimated that a simple Termination of Parental Rights trial takes at least 150 hours of attorney time with a complex case taking much more. Simple TPR appeals take approximately 40 attorney hours. Again, many more if the case is complex. The AG, therefore, roughly estimated that a single attorney could handle at most 10 TPR trials in a year, and then only if she handled no appeals. In addition, the AG could not provide the current total number of TPR cases awaiting filing, trial or appeal. Without an understanding of the number of cases and the requirements of each, it is impossible to determine the number of additional staff actually

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needed. An estimate of staff needs is essential in determining the amount of funding required.

The \$43,900 received by the AG in FY 93, although not enough to hire two attorneys, was used by the AG to hire a part-time paralegal and pay other expenses related to TPR cases prosecuted in FY 93. The AG has stated that without additional office space and funding, it is unable to hire additional experienced attorneys to work entirely on TPR cases. Without attorneys working full time on the cases, the AG does not expect that any more than the FY 93 level of cases can be prosecuted. The AOC's financial manager has expressed reluctance to transfer additional funds to the AG without a formal agreement outlining the

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amount needed and use of the funds. In addition, the AG, although unsure exactly what its needs are, is reluctant to hire any additional staff devoted to TPR cases without an adequate and steady funding source.

Recommendations:

1. We recommend that the Attorney General's Office make an accurate assessment of the TPR caseload, as well as an assessment of the staffing and other resources needed to effectively prosecute Termination of Parental Rights cases. With these assessments, a determination of the actual level of funding necessary to implement the provisions of SB 74 should be made.
2. We recommend that once the actual level of funding necessary to implement SB 74 is determined, a contract between the Attorney General's Office and the Administrative Office of the Courts be negotiated which outlines the level of funding that will be provided to the Attorney General's Office annually from the Children's Legal Defense Fund.
3. We recommend that the Attorney General's Office define the relationship between itself and the various County Attorneys throughout the state. Clear areas of responsibility should be established so that accountability is enhanced, and misunderstandings eliminated.

We hope this letter has provided the information you need on this issue. If you have any questions or need additional information, please contact us.

Sincerely,

Wayne L. Welsh
Auditor General

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