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## Issue Brief – David C. Lawsuit Court Monitor

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DIVISION OF CHILD AND FAMILY SERVICES

NUMBERDHS-08-13

### **DAVID C. LAWSUIT COURT MONITOR**

The Division of Child and Family Services (DCFS) is requesting a one-time appropriation from General Funds of \$269,500 and federal funds of \$59,100 for a total of \$328,600 for FY 2007 for the court monitor for the David C. Lawsuit.

### **OBJECTIVE**

The objective is to have an independent monitor of DCFS to ensure progress is being made toward satisfying the court settlement while DCFS develops internal capacity to continue its own monitoring process after the court oversight concludes.

### **DISCUSSION AND ANALYSIS**

The David C. court settlement requires that DCFS fund an independent monitor to assess the Division and to report to the Court on progress in meeting the plan's requirements.

#### ***Court Oversight of DCFS***

In February 1993, the National Center for Youth Law (NCYL) filed a civil rights complaint in U.S. District Court on behalf of all children reported as abused and neglected and all foster children in Utah. A four-year settlement was signed by Governor Leavitt and approved by the Court in 1994.

In August 1998, the Court ordered the four-year settlement to be replaced with a new plan. Not being satisfied with progress made, the Judge required the Division to prepare a comprehensive plan to improve child protective services to a level satisfactory to both the court and the NCYL. The plan, known as "The Performance Milestone Plan," was completed collaboratively with the Child Welfare Policy and Practice Group (CWPPG) of Montgomery, Alabama. The Court accepted it in 1999, directed DCFS to regularly report on compliance and appointed Paul Vincent, the Director of CWPPG to be the Court's monitor.

The State appealed the court's decision to continue its oversight of the Division to the 10th Circuit Court of Appeals in Denver. In March 2001, the Appeals Court decided DCFS must remain under the scrutiny of the federal courts and continue to meet compliance and reporting requirements. The State appealed to the U.S. Supreme Court, but in October 2001 it refused to consider the appeal. In 2002, the Court, the plaintiffs and DCFS attempted to identify resources needed to bring DCFS closer to realizing the goals of the Milestone Plan. It was decided that the Division needed to substantially increase the number of caseworkers and its training process. The 2003 Legislature appropriated \$1.9 million in additional state funds to DCFS for 51 additional caseworkers and trainers. To date, all have been hired by the Division and have completed initial, formal training.

#### ***Current Status of the Lawsuit***

The State continues to meet with the judge and the plaintiffs in attempts to make the requirements of the Milestone Plan more reasonable and attainable with the object of eventually discontinuing the court's oversight. On December 8, 2003, another meeting was held with Judge Campbell and the plaintiffs. The judge requested DCFS within two years to either complete the items in the Milestone Plan, with any agreed stipulations for trimming the plan, or to bring reasons why it is not possible. In June 2004, Judge Campbell reiterated her demand that DCFS and the plaintiffs review the problem areas of the agreement and come to an agreement of items that are not needed or cannot be complied with. In the summer of 2005, Judge Campbell felt that DCFS was making progress towards completing the Milestone goals and requested DCFS to continue working with the court monitor and plaintiffs on the few remaining Milestone goals and objectives. The next scheduled court date was November 13, 2006. Judge Campbell directed the plaintiffs and DCFS to work together on a motion for exit. The Milestone Plan has been complete except for the following:

- QI (Quality Improvement) Committees
- Case Process Performance Level
- Quality Cases Performance Level

Current levels on the Qualitative Case Review are 94 percent on Child and Family Status and 82 percent for system performance. The division continues to have one region that has attained two consecutive years of the performance levels required for exit. Two additional regions have met the level for the first year of the two-year requirement. All regions have attained the level required on the Child and Family Status while three of the five have attained the level required on the system performance.

Overall performance for the Case Process Review are 93 percent for Child Protective Services (CPS), 88 percent for Unable to Locate, 99 percent for Unaccepted Referrals, 86 percent for Home Based Services and 88 percent for Foster Care Services. While each of these represents a passing level, the questions within a program area are scored individually and must each attain a passing level for the state to exit this Milestone Plan.

### ***Payments to Plaintiffs and Cost of Monitoring***

In 2002, the Federal Court ordered the Division to pay over \$1.1 million for attorney fees to the National Center for Youth Law, the original plaintiff in the David C. lawsuit. Another \$234,507 was paid in FY 2003. Starting in FY 2004, these costs were paid by the Attorney General's Office, with funds appropriated for that purpose to the AG's Office. Court monitors and related costs come to another \$2.5 million. There was an additional \$332,742 paid by the Division in FY 2004. The funding expended to date for this case is a little over \$5.6 million as shown in the following table:

<b>Payments for David C. Case</b>							
<b>Fiscal Year</b>	<b>Plaintiff Attorney</b>	<b>Court Monitor Direct Pmt.</b>	<b>Travel for Court Monitor</b>	<b>Monitoring Panel Direct Pmt.</b>	<b>Practice Model Training</b>	<b>Monitoring Contract</b>	<b>Total</b>
1995	636,000			59,765			695,765
1996				195,973			195,973
1997				121,252			121,252
1998				118,839		328,708	447,547
1999		162,812					162,812
2000		284,948			60,173		345,121
2001		407,903			216,984		624,887
2002	1,118,996	334,929			84,881		1,538,806
2003	234,508	278,419	56,410				569,337
2004		273,209	59,533				332,742
2005		259,710	53,841				313,551
2006		220,382	63,485				283,867
<b>Total</b>	<b>\$1,989,504</b>	<b>\$2,222,312</b>	<b>\$233,269</b>	<b>\$495,829</b>	<b>\$362,038</b>	<b>\$328,708</b>	<b>\$5,631,660</b>

Note 1: Legal Costs of the Attorney General are not included in these figures

Note 2: After FY 2003, legal costs for Plaintiff Attorney were paid by the AG's Office which is a total of \$697,335 (not included in these numbers)

### **RECOMMENDATION**

It is the recommendation of the Analyst that the Division of Child and Family Services is appropriated one-time General Funds of \$269,500 and federal funds of \$59,100 for a total of \$328,600 for FY 2008 for the David C. Court Monitor.