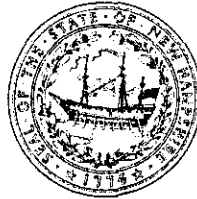


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April 9, 2012

William O'Brien
Speaker of the House
State House
107 North Main Street
Concord, NH 03301

Re: Redress of Grievance Committee

Dear Speaker O'Brien:

At the beginning of the session, you asked my office to attend and evaluate the proceedings of the newly-established House Redress of Grievance Committee, and to contact you if I had concerns regarding the operation of the Committee. At your request, we have regularly attended these hearings. In addition, many state officials have asked my office to represent them and/or appear with them at these hearings, resulting in a substantial commitment of state legal resources. Over the last year, I have observed, with increasing concern, the negative impact the Redress of Grievance Committee is having on the State's effort to protect the health and safety of New Hampshire's children. I write to outline my concerns and request your assistance in addressing them.

On March 25, 2012, the Chairman of the Committee, Representative Paul Ingbreton, publicly expressed his frustration with the Division for Children, Youth and Families ("DCYF"), for failing to answer questions posed by the Committee. Representative Ingbreton described them as "generic questions." *See Union Leader*, March 25, 2012. Representative Ingbreton was commenting on his concerns with DCYF to justify the expansion of subpoena authority for his Committee hearings.

These public comments follow similar complaints made to the Governor and Council in November 2011. At the November 30, 2011 Governor and Council meeting, the Department of Health and Human Services ("DHHS") sought approval of an agreement with the UNH College of Health and Human Services to provide for a Center for Professional Excellence in Child Welfare. The Center has been used to provide training to child welfare professionals in New Hampshire, and to generate standards for holding those professionals accountable based upon measurable criteria. The Executive Council tabled the proposed agreement for several weeks. One Councilor cited a "very, very disturbing e-mail" from a House Representative who advised that DCYF had refused to answer questions from the Redress of Grievance Committee.

In response, I reviewed the questions posed to DCYF. I found the questions highly disturbing. Having reviewed them, I now question whether the Executive Council was properly notified of the nature and tenor of the questions in dispute. The Committee's questions to DCYF demonstrate a bias that would lead any neutral observer to conclude that the Committee is motivated by an agenda that does not include a search for the truth. The questions to DCYF included:

- Under what DCYF policy does it state slandering parents and family members is allowed in order to place a child in foster care?
- Under what DCYF policy does it state the assessment worker has the right to falsely state in her affidavit that the mother's labor was induced due to complications, when it wasn't induced?
- Under what DCYF policy does the worker have the right to threaten a parent into signing a Case plan, telling the parent if she doesn't sign, she will never see her child again?
- What DCYF policy gives DCYF the right to sabotage a parent's drug test results?
- What DCYF policy allows the DCYF worker to make a parent stick a dirty swab which fell on the floor in her mouth for a drug test?
- Under what DCYF policy is a caseworker allowed to commit perjury in court to stop a parent from regaining custody of her child, even when evidence proves compliance?
- What DCYF policy grants immunity to DCYF workers who commit perjury?
- What DCYF policy does NOT allow visits between the parent and child on birthdays, Christmas and other holidays?

Clearly, the Committee is not asking these questions to inform public hearings, but rather, to harass, or perhaps intimidate, DCYF. Since it is obvious that DCYF has no such policies, my office has advised DCYF to refrain from answering these questions while my office requests their withdrawal. The fact that these questions are the basis for expanding the Committee's authority to issue subpoenas is troubling on many levels.

The Committee asking these questions is holding quasi-judicial proceedings, in which the petitioners seek monetary damages, criminal charges and impeachment, among other relief. The targets of these hearings are, commonly, individuals who are responsible for investigating child abuse and neglect cases, and ensuring the safety of our children. Obviously, they would like to respond to the allegations against them. However, they are prohibited from doing so by strict confidentiality rules. See RSA 169-C:25, RSA 170-G:8. These confidentiality rules are important to protect our children and ensure the integrity of our child protection system. Thus, due simply to the nature of their work, they are deprived of a fair hearing. Moreover, unlike

legal proceedings, the Committee's hearings are not governed by due process, rules of evidence or other basic elements of fairness. And, through their comments, Committee members have repeatedly demonstrated a bias against the state employees and officials involved. I believe the one-sided hearings by the Redress of Grievance Committee are having a chilling effect on those who perform an essential function of state government – protecting children from abuse and neglect.

In this letter, I outline the risk to children victimized by abuse and neglect, the programs designed to protect them, and the impact the Redress of Grievance Committee is having on state officials implementing those programs.

Risk to Children

Child abuse and neglect is more prevalent than most people realize. In 2011, over 2,000 children completed forensic interviews at child advocacy centers in New Hampshire for abuse and neglect, with approximately 80% involving a primary report of sexual assault. The median age for reported abuse is 9 years old. The overwhelming majority of abused children know their abuser, with 30-40% of victims abused by a family member. While we must do everything possible to promote and support families, we must also recognize that children commonly choose not to report abuse, or are tentative in reporting abuse, because it is most often inflicted by someone they know, trust and love.

New Hampshire's Statutory Child Protection System

New Hampshire's Child Protection Act, RSA chapter 169-C, creates a system for the protection of any child in New Hampshire whose life, health or welfare is endangered. It further establishes a judicial framework to protect the rights of all parties involved in adjudication of child abuse or neglect cases. DCYF receives annually more than 15,000 reports of suspected child abuse and neglect. When it is determined that a report of suspected abuse or neglect meets the criteria for investigation, an assessment is assigned to the local District Office where the child resides. Of the reports received, between 7,000 and 8,000 are screened-in and sent to the appropriate District Office for assessment.

The primary goals of RSA chapter 169-C are to:

- (a) Protect the safety of children;
- (b) Preserve the unity of the family whenever possible;
- (c) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family;
- (d) Take such action as may be necessary to prevent abuse and neglect of children; and
- (e) Provide protection, treatment and rehabilitation, as needed, to children placed in alternative care.

DCYF's Bureau of Child Protection works to protect children from abuse and neglect while attempting to preserve the family unit. Child Protective Services Workers ("CPSW") work together with families to assess the safety of children, identify needs and develop a case plan. The case plan defines the specific needs of the children and family members and outlines the method by which a family's protective service issues will be resolved with the assistance of DCYF. Services are primarily delivered directly to children and family in their home or community.

The decision to exercise the authority of the court and to bring the child under its protection and jurisdiction represents a belief that this action is in the best interests of the child. It is not intended to be a punitive action against either the parents or the child. The ultimate goal of the court and DCYF is the same – to secure the safety of children, to preserve the unity of families whenever possible, and to provide for the care, protection, and wholesome development of children. Children are separated from their parents only when necessary for their safety. Any such action can be taken only with court oversight and review.

In addition to direct child protection issues, RSA chapters 161-B and 161-C, provide a mechanism for the support of dependent children by those who are primarily responsible for such support. This, in turn, reduces the burden on the taxpayers, who in many instances were paying toward the support of dependent children while those persons primarily responsible were avoiding their obligations. The Legislature put in place a system, which provides for collection of child support by the DHHS through its Division of Child Support Services "(DCSS)" from persons legally liable for child support.

Annually, DCSS serves approximately 36,000 families with children, representing more than 50,000 children who require child support services. Through DCSS, approximately, \$90 million is distributed annually to families who are owed support. Collections are distributed by a centralized State Disbursement Unit.

Redress of Grievance Committee

The Redress of Grievance Committee performs a different role than any other legislative committee. Matters before the Committee are brought by way of a petition. The objective of the Committee is to reach a verdict of founded or unfounded for each petition filed. There are no criteria for filing a petition, other than sponsorship by a legislator. Often, the summaries contained in the petition are not sufficiently detailed to inform the affected public official of the specific allegations. The hearings themselves are not governed by any evidentiary rules, due process, or other safeguards typically associated with adjudicative proceedings. In proceedings protected by constitutional safeguards, the relevant facts and laws are fully vetted. Judges hear from a variety of witnesses in these matters, including both parents and/or guardians of at-risk children, medical professionals, therapists, educators and other professionals. The judge makes a decision based on all of the evidence. None of these basic elements of a fair proceeding are evident in the Committee's hearings. Mere accusation is treated as truth.

The process does not afford those who are the subject of petitions a reasonable opportunity to respond to the allegations of wrongdoing. The subject matter of the petitions often involves confidential matters, such as abuse and neglect cases, which state officials cannot discuss with the Committee. Even when they receive notice of a hearing, they have little opportunity to learn of the substance of the petitioner's allegations, absent attending every Committee hearing. Yet, committee hearings are held at times when agency and judicial branch personnel are otherwise engaged in their official business.

The House has recently adopted rules that allow subpoenas to be issued to compel testimony and production of records before the Committee. This heightens the concern about the lack of fairness. As described above, the child protection matters are subject to strict confidentiality requirements. State officials will be placed in the unenviable position of having to decide whether to honor a legislative subpoena or adhere to the laws of confidentiality. Given the bias of the questioning outlined above, I am concerned that subpoena authority will only aggravate, rather than enhance, the due process concerns I bring to your attention.

The petitions before the Committee include the following requests for relief:

- Costs of medical care, including a kidney transplant.
- Awards of damages to the petitioners.
- Return of custody to the petitioning parent.
- Removal of guardians ad litem.
- Impeachment of marital masters and judges (24 masters and judges to date).
- Holding guardian ad litem criminally liable for their actions.
- Creating a criminal penalty of official oppression against a judge if perjury occurs in a hearing.
- Creating criminal penalties against judges for not recusing themselves.¹

In its first year of operation, approximately 27 petitions have been filed. The grievances have, in large part, been directed against employees of DCYF and individual judges involved in matters involving child safety or child support.² Many of the petitioners have come before the Committee after years of litigation, and while some of those cases are still pending in court. The underlying cases that give rise to the petitions are highly charged, emotional and involve heavily contested proceedings. By the very nature of these cases, any outcome almost inevitably results in animosity and anger.

¹ In May 2011, the Chair of the Redress of Grievance Committee recused himself from a grievance after the Judicial Branch complained that he continued to preside over a child protection-related grievance in which he had a clear conflict of interest.

² Grievances have also been filed against police chiefs, school superintendents, county attorneys, guardians ad litem, court clerks, former marital masters, and in full disclosure, former assistant attorneys general, current assistant attorneys general, and myself. None of the complaints against Department of Justice personnel are related to the child protection matters that are the subject of this letter.

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Even if confidentiality restrictions did not prohibit public officials from testifying before the Committee, hearings on each complaint would, themselves, become separate trials. The sheer number of hearings would result in continuous litigation before the Committee, draining already limited resources away from the agency which has, as its primary objective, the health and safety of children. The effort to respond to each complaint would involve lawyers from my office and multiple witnesses and potentially thousands of pages of documents. Those documents themselves are private, often containing medical and personal information of children and their caregivers.

The Redress of Grievance Committee has become an impediment to the protection of children. Through its petitions, the Committee is targeting those who are simply performing their jobs according to the laws created by the General Court. They seek to remove judges, award damages and return children to placements our courts have already deemed are inappropriate. Affording petitioners another forum to re-litigate these cases simply extends the time during which the childrens' lives are in a state of instability, to their detriment. And, by creating an atmosphere of fear and persecution, the Committee's activities will adversely affect the performance of public officials who are charged with protecting those children.

I would welcome the opportunity to meet with you to discuss my concerns.

Sincerely,



Michael A. Delaney
Attorney General

cc: Peter Bragdon, Senate President
Paul Ingbretson, Chairman, House Redress of Grievance Committee

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