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# Sherry O. Sewell, Grievant.

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE**

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| **IN THE MATTER OF:** | |
| | **DOCKET NO: 26.43-102285J** |
| **Sherry O. Sewell,** | |
| **Grievant**. | |

## ORDER

This matter came to be heard on November 22, 2011 before the Honorable Dewayne Bunch while sitting in Knoxville. The state of Tennessee was represented by Ms. Mickie F. Smith, General Counsel, and the Grievant was represented by Mr. Jonathan Stephens, Counsel for the Grievant with an office in Nashville.

The hearing was conducted in full with numerous witnesses testifying; exhibits were presented and marked into evidence including the underlying document of the grievance process and arguments of counsel were made on behalf of the parties.

## ISSUES

There are two legal issues to be determined from the facts of the case. The first issue is whether the Grievant violated state law, departmental policies or state guidelines. Specifically asserted is that the Grievant violated Tennessee Department of Human Services Rules and the Tennessee Department of Children's Services Policies. The second issue that remains if the Grievant is found to be in violation of state law, departmental policies or other state guidelines, is

what is the appropriate action or remedy by the State against the Grievant in response to any violations of law, policy or rule.

## BACKGROUND

The Grievant is a veteran public employee of the State of Tennessee. The Grievant has served for until 2005 with the Knoxville Community Services which was absorbed into the Department of Children's Services (DCS) in 2005. The Grievant has served since 2005 with DCS. The Grievant has served in good standing during this time period. The Grievant was regularly trained in her profession by the DCS internally and by DCS legal representatives. The Grievant currently serves as a Family Service Worker, Case Manager Level Three (3). The Grievant was serving in this capacity on the date of the triggering incident of this case.

The Grievant was called upon to investigate an incident on May 1, 2008. The Grievant received a Priority One (P-1) call. A Priority One call is one that requires an immediate response. The Grievant responded to the P-1 call. The Grievant then took action by physically removing the children from the alleged problems that called for possible state intervention. The intervention taken by the Grievant caused three children in total to be removed from their home and from their parents and guardians. The Grievant made some contacts with her chain of command and continued the full state intervention into the lives of this family. Eventually an Immediate Protection Agreement (I.P.A.) was entered into by at least one of the parents/custodians of the three children. It is important to note that an IPA **must** be approved by DCS legal representatives. Further an IPA is only valid for up to 72 hours or 3 business days at which time the state intervention must cease or DCS must pursue a court order for the State to continue the state's intervention into the family.

Regrettably, no one pursued not secured a valid court order to maintain the state intervention into the rights of this family. In fact, regardless of who was responsible, the State did nothing further to justify the State's intrusion into this family. This is true despite the fact that the State intervened into the rights of this family for over ninety (90) days. The DCS submitted absolutely no legal documents to a court of competent authority to authorize their actions of intervening in this family and removing the children from their parents and family during this entire time period. Eventually, this matter came to have some legal considerations in July of 2008, some three plus months after which the State wrongfully continued intervention into this family with no legal authority whatsoever.

**RULING**

The job that our DCS workers do is a very difficult and emotionally draining one that most of Tennessee's DCS workers perform in an honorable, effective and legal manner. The DCS workers serve our state in trying circumstances that are demanding and time consuming and they do so with great ability and a vision of making our State a better place for Tennessee families. Tennessee's DCS workers deserve to be commended for their efforts and service to our state. That said, the DCS must comply with the constitutional rights of our citizens. The state cannot intervene in Tennessee families without legal authority to do so. The law is clear and our DCS workers and the Grievant were trained accordingly.

This case presents a clear violation of the rights of the family upon which the State wrongfully and without authority continued to intervene. This intervention was the direct result of the Grievant's acts and omissions as well as a failure to properly oversee the actions of the Grievant by the Grievant's supervisor. Further, even with no authority to intervene, after removing the children from their family and with no State oversight other than the Grievant, the

Grievant failed to adequately conduct proper oversight of the children once removed. Accordingly, the Grievant is found to be in clear violation of Tennessee law, departmental polices and rules. The Grievant is fortunate to remain employed with the state of Tennessee. The issue of potential liability both for the State and the Petitioner remains outstanding. The Grievants' one day suspension is not appropriate under the facts and circumstances of this case. Taking into consideration the failure of the Petitioner's supervisor to properly perform her job of oversight, the Grievant is suspended without compensation for thirty (30) days.

**APPLICABLE LAW**

A). Tennessee Department of Human Services Rule 1120-10-.06.

Examples of Disciplinary Offenses (those alleged in this case)

1) Inefficiency or incompetency in performance of duties.

2) Negligence in the performance of duties.

15) Acts that would endanger the lives and property of others.

18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

B) Tennessee Department of Children's Services Policy 14.12 Part B, which as written in 2008, stated in pertinent part:

1) The case worker **will**

a) Consult with the supervisor, Master of Social Work (MSW), as applicable, and DCS Regional Legal Counsel regarding authorization to file a petition and to remove the child from the home of the present caretaker;

b) Consult with DCS Regional Legal Counsel.

C) Tennessee Department of Children's Services Policy 14.26 Part B, which, as written in 2008, stated that, the caseworker "**must** have at least two (20 face to face visits with the victim/family, unless it is determined that no services are needed…".

D) The constitutional rights of the children, parents and family members, including the right to due process before the rights of the children, the parents and family members were infringed upon the grievant using her state position.

## RULINGS AS TO THE APPLICABLE LAW

Tennessee Department of Human Services Rule 1120-10.06 Disciplinary Offenses

1) As to Inefficiency or incompetency in performance of duties- The Grievant violated this requirement. It is undeniable that the Grievant was inefficient and/or incompetent in performance of the duties and obligations imposed upon her in her position with the DCS.
2) As to Negligence in the performance of her duties- The Grievant violated this requirement. Again, it is undeniable that the Grievant was negligent in her actions by failing to follow the rules. Any and all employees with the Grievant's experience and training must know that the State cannot intervene into a family without legal authority. If this cannot be understood, then the person is not qualified to serve in such a position with the DCS.
3) As to acts that endanger the lives and property of others- The Grievant clearly endangered the children in this case. The Grievant's failure to gain legal authority for her actions of removing the children from their home with legal authority simply cannot be

tolerated. The Grievant's failure to follow up on the children after wrongfully removing them and placing them in another setting is a serious violation that cannot be explained nor rationalized away.

4) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination) - the Grievant clearly failed to follow her chain of command's clear and explicit instructions to involve the DCS legal team in this case. Again, anyone who is serving in the Grievant's role with DCS must understand the vital and mandatory actions of involving the legal system immediately into a case of child removal. The Grievant had numerous opportunities to involve legal into this case over the entire time period. There is no explaining away such an elementary, essential and fundamental action of knowing that the legal system must be involved in an action of state intervention into the affairs of its' citizens.

5) As to TDCS Policy 14.12- The Grievant failed to comply with these requirements. The Greivant's act of simply calling DCS legal is clearly not adequate to comply with the law and constitutional safeguards provided to the citizens of Tennessee. The Grievant must contact and secure the DCS legal team's involvement into any action of child removal and intervention into the family.

6) As to TDCS Policy 14.26 requiring two face to face visits with the family- the Grievant failed to comply with this requirement. The Grievant had removed children from a family and placed them elsewhere without legal authority. Accordingly, the Grievant's argument that she did not see that any services were needed is at best incompetent and at worst part of a wrongful intervention scheme into this Tennessee family.

7) As to the violation of the constitutional rights of this family- The Grievant clearly failed to have any legal authority to involve herself or the State DCS into this case beyond the initial 72 hour period of time. Whether or not the Grievant had authority to act within the 72 hour window is questionable as it does not seem that the Grievant complied with the policies governing the immediate removal of children.

## EXHIBITS

The following exhibits were entered into evidence during the course of the hearing

Exhibit Number

1) The IPA of May 1, 2008. Note that the Grievant did not note that DCS Legal was notified despite the clear box for the recording of such information.
2) The Child and Family Team Meeting Summary of May 9, 2008. Note the acknowledgement that DCS will file a court action and that the Summary is not signed by the "Team Leader/ Supervisor". The exhibit is only of part of the summary.
3) Departmental Policy- Administrative Policies and Procedures: 14.12.
4) Departmental Policy- Administrative Policies and Procedures: 14.26.
5) 1120-10-.06 Examples of Disciplinary Offenses.
6) DCS Memo to the Grievant.
7) DHS Job Performance and Evaluation of June 26, 2008.
8) The underlying record of the administrative process within the file. Not marked.

## FINDINGS OF FACT

1. Sherry Sewell has been employed by the DCS for nineteen (19) years. Ms. Sewell began doing Child Protective Service assessment Sherry Sewell has been employed by the Department of Children's Services for work with the Department April 17, 2007. (TR 237, 3-7; TR 241, 8-11)
2. That Ms. Sewell had only been involved in one or two actions of removal of children prior to the incident of May 1, 2008.
3. On May 1, 2008 Ms. Sewell responded to a priority one call and found that a mother, who had two of her children in a car with her, was about to be arrested because drug paraphernalia was found in that car. There were also concerns that drugs were being manufactured in the car. (TR 18, 21-25; 19 1-25; 20 1-24)
4. The mother, C.P., gave Ms. Sewell some names for potential placement of the children. (TR 19, 14-25; 25, 1-25; 26, 1-25; 27, 1-12)
5. After calling her supervisor, Stephanie Elliot, to conduct background checks on the names that were given to her by the mother, C.P., Ms. Sewell took the two children who had been in the car to McDonalds. (TR 28, 6-22)
6. Ms. Sewell talked with a DCS attorney, Barbara Johnson, who told her that she should not have removed the children and asked her to do checks on the grandmother/aunt, T.P. (TR 29, 5-11)
7. On May 1, 2008 Ms. Sewell was not sure of the relationship of the placement, T.P. to the children (TR 30, 21-25; 31, 1-8)
8. At about 10:15 on the night of May 1, 2008 Ms. Sewell picked up the child, J, who had not been in the car from her grandfather's home where the child resided with her mother and sisters. (TR 32, 12-17)

9. Ms. Sewell then faxed a copy of the Immediate Protection Agreement to the mother, C.P. at Knox County Detention Center "because I (Sherry Sewell) removed the children from the mother and I (Sherry Sewell) did have to get her to sign that it was okay to – for her children to be placed with another relative." (TR 32, 23-25; 33, 1-9; Exhibit 1)
10. At some point during the evening of May 1, 2008 DCS attorney, Barbara Johnson, asked Mr. Sewell to call Susan Kovac
11. , but she did not and no attorney approved the IPA (TR 36, 8-21) Ms. Sewell, instead, called her supervisor, Stephanie Elliot then she called Suzanne Kech who Ms. Sewell testified "indicated that she (Ms. Keck) would call Susan Kovac." (TR 36, 10-21)
12. Ms. Sewell testified that Ms. Kech "indicated" that it was up to her to decide if the mother should have supervised visits with the children. (TR 38, 21-25)
13. Ms. Sewell testified that she "removed" J from the maternal grandfather's home. (TR 44, 7-9)
14. In the IPA faxed to the mother, C.P., at the jail on May 1, 2008 Ms. Sewell set up a Child and Family Team Meeting for May 5, when the issues revolving around the children being "removed" from the home would be addressed. (TR 52, 15-25; 53, 1-10) However, this meeting did not occur until May 9, 2008. (TR 52, 19-21)
15. Ms. Sewell talked with the mother, C.P. on May 6, 2008 and the mother requested overnight visits at the placement home of T.P. Ms. Sewell suggested that they wait until the Child and Family Team Meeting to discuss that. (TR 54, 19-25; 55, 1-6)
16. Ms. Sewell talked with the placement, T.P., on May 6, 2008. T.P. told her "….that the girls didn't know how to wipe themselves, that they were fighting each other, wanting to east junk food, and that she could keep the children until the CFTM. She was willing to keep J.

and allow the other two children to go with J. and F. (the paternal grandfather) I (Sherry Sewell) explained that the children need to stay together. She agreed to attend the CFTM." (TR 55, 13-25; 56, 1-9)

17. Ms. Sewell talked with the mother on May 1, 2008 about her drug use. The mother "…indicated she was hooked on Oxycontin, but denies drug use today." (TR 57, 15-21)
18. On May 1, 2008 Ms. Sewell talked with the paternal grandfather, J. P., about the mother's drug use. "He indicated that Christian told him that she shot up for the first time today." (TR 58, 10-19)
19. On May 9, 2008 Ms. Sewell drug screened the mother, C.P., and she was negative. (TR 59, 10-14)
20. The Child and Family Team Meeting Summary from May 9, 2008 states that the children were displaying some negative behavior since they were removed from their mother. (Exhibit 2)
21. One of the action steps listed in the Child and Family Team Meeting Summary from May 9, 2008 was that DCS would "….contact Legal about continuing IPA and Petition." (TR 63, 8-14; Exhibit 2)
22. Ms. Sewell testified that she called DCS attorney, Kathleen Parsons, and left a voice mail message on May 9, 2008 and she "probably……indicated" that a Child and Family Team Meeting had been held and the maternal grandparents wanted to file a custody petition. (TR 63, 19-25; 64, 1-3)
23. On May 9, 2008 at the Child and Family Team Meeting T.P., the placement for the children, said that she could only keep the children for one or two weeks and that she had neuropathy in her hand and might drop J. (TR 64, 13-20)

24. On May 14, 2008 Ms. Sewell called the DCS office at the Juvenile Court and spoke with DCS attorney, Barbara Johnson, but did not ask her about the IPA. (TR 69, 8-25; 70, 1-25; 71, 1-2; Exhibit 8)
25. Ms. Sewell did talk with DCS attorney, Kathleen Parsons, on May 14, 2008 but did not ask about DCS filing a petition in this case. (TR 71, 4-11; Exhibit 8)
26. On May 15, 2008 Ms. Sewell talked with the mother by phone and told her that S. and D's father could not have any contact with the children. (TR 72, 2-18; Exhibit 8)
27. Ms. Sewell thinks she probably told the placement, T.P., that the mother, C.P., could visit the children as long as she, T.P., was present. (TR 74, 4-8)
28. Ms. Sewell's case notes from May 15, 2008 say that she "talked to T.P. (placement) informed her that Albert (father can't have contact with clients times three, talked with C.(mother), she indicated she – assumed she had to leave her father's home, told her no, informed her the plan would be to allow her supervised visits with her children, but not to take them off alone. (TR 75, 6-14; Exhibit 8)
29. Ms. Sewell told the mother, C.P. that she would be allowed to have supervised visits with her children in her father, J.P.'s home. (TR 76, 9-11)
30. Ms. Sewell talked with the placement, T.P. on May 15, 2008 and T.P told her "she had neuropathy in her arms and legs" and it was getting worse; and she "cancelled an appointment with a specialist due to caring for the children." (TR 76, 23-25; 77, 1; Exhibit 8)
31. On May 16, 2008 Stephanie Elliot, Ms. Sewell's supervisor, told her to contact legal, but she did not do that until May 26, 2008 (TR 78, 15-22)

32. On May 16, 2008 the placement, T.P., told Ms. Sewell that she could not keep the children indefinitely because of D's behavior problems. (TR 79, 6-19; Exhibit 8)
33. On May 21, 2008 Ms. Sewell told the mother, C.P. that her children could not have overnight visits with the paternal grandmother nor could she take the children to the paternal grandfather's house for a visit. (TR 80, 2-23; 81, 10-13; Exhibit 8)
34. On May 21, 2008 the mother, C.P., told Ms. Sewell that she had not checked on alcohol and drug services as Ms. Sewell had requested her to do (TR 81, 1-6; Exhibit 8)
35. On May 29, 2008 the placement, T.P., called Ms. Sewell to ask about food stamp services. Ms. Sewell told her that she did not know about food stamp services in T.P.'s area. (TR 81, 15-24; Exhibit 8)
36. On May 29, 2008 Ms. Sewell told T.P. that she need to cal. Cherokee Health, a mental health facility to inquire about services for the children. (TR 82, 1-20; Exhibit 8)
37. On June 11, 2008 Ms. Sewell talked with the mother, C.P., about alcohol and drug services for C.P. and Ms. Sewell provided C.P. with a telephone number for Child and Family who could provide those services. (TR 83, 19-25; 84, 1-15; Exhibit 8)
38. On June 26, 2008 Ms. Sewell was in Juvenile Court and talked with DCS attorney, Barbara Johnson, but did not ask her about filing a petition. (TR 84, 22-25; 85, 1-10; Exhibit 8)
39. Ms. Sewell testified that she had been working Child Protective Services cases since 2005. (TR 86, 21-25; TR 87, 1)
40. When asked if she had ever thought of discussing the situation with legal, Ms. Sewell testified "And I think in my mind and my heart I knew those kids were placed with this grandmother and that they were doing pretty much okay, so I didn't see the urgency that I needed to, you know, turn to court and I say I need to file this custody petition because my

intention was that the grandparent would have done that and was doing that. (TR 88, 20-25; 89, 1)

41. When asked about the lack of face to face visit as required by policy, Ms. Sewell testified that the policy did not apply if the family did not required services. (TR 90, 5-8). However, Ms. Sewell was on notice as she was aware that the mother, C.P., was in need of alcohol and drug services and, at least one of the children, was in need of mental health services. (TR 89, 9-25; 90, 1-25; 91, 1-7)

42. Ms. Sewell testified that she did not follow the DCS policy requiring at least two face to face visits per month with children DCS has placed outside of the home. (TR 91, 24-25; 92, 1-4)

43. On July 2, 2008 Ms. Sewell called the placement, T.P. and told her that she needed to file a petition for custody of the three children living in her home. (TR 93, 11-13; Exhibit 8)

44. On July 2, 2008 Ms. Sewell talked with the placement, T.P. who told her that she had filed a petition for custody and the hearing was set for August 18, 2008. (TR 93, 24-25; 94, 1-14) Ms. Sewell also talked with T.P. that day about her health issues and her ability to care for the children. T.P. told Ms. Sewell that she thought the children would only be in her home for a few weeks. (TR 94, 15-23; Exhibit 8)

45. On July 2, 2008 Ms. Sewell told T. P. that the mother, C.P. could not live in her home with the children. (TR 95, 4-6). When asked who was supervising the visits between the mother and the children, Ms. Sewell was not sure but did feel that it was “probably” T.P. (TR 96, 11-25; 97, 1; Exhibit 8)

46. On July 2, 2008 Ms. Sewell again talked with the mother, C.P. about her alcohol and drug treatment and the child, D’s, behavior problems. (TR 96, 5-10; Exhibit 8)

47. Ms. Sewell testified that she when to the placement home on July 3, 2008 and that was the first time she had been to that home since May 1, 2008. (TR 97, 2-16)
48. On July 3, 2008 Ms. Sewell called DCS legal and asked DCS attorney, Barbara Johnson to file a petition to remove the children and place them in DCS custody. (TR 97, 13-25; 98, 1-25; 99, 1-15)
49. As of the date of this hearing Ms. Sewell could not remember how long she had been a Child Protective Services Worker with DCS. (TR 101, 6-24; 102, 1-5)
50. Ms. Sewell testified that, after at least two legal trainings during her years with Child Protective Services, she knew that she had to get legal approval to remove children. (TR 102, 6-18)
51. Ms. Sewell testified that she was frequently in Juvenile Court on other DCS matters, knew that the DCS attorneys were housed there, but did not attempt to speak with any of the lawyers about this case. (TR 103, 21-25; 104, 1-4)
52. Ms. Sewell's investigation into the mother's drug use, which Ms. Sewell testified was of concern to her, consisted of two drug screens-the first being negative and the last one being "questionable." (TR 106, 1-17)
53. Ms. Sewell testified that she placed these young children in the home of a person who had health issues and told her she had health issues. (TR 106, 18-24)
54. Ms. Sewell's plan for resolution of this was to have one of the maternal grandparents file a petition for custody. After two months she had not been called to testify in a court hearing involving custody of these children, but this caused her no concerns. (TR 108, 7-25; 109, 1-10)

55. Ms. Sewell testified that she had no concerns about legal liability despite attending at least two legal trainings. (TR 108, 11-19)

56. Ms. Sewell testified that she had "possibly" been with Child Protective Services since 2005 and that this was "possibly" her second removal and that she was told at the very beginning of this episode that she should not have removed the children. (TR 108, 20-25; 109, 3-9)

57. Ms. Sewell appears to be blaming others for not telling her what to do as she was a "new worker" and Ms. Sewell cannot remember if she filed a petition or the outcome of her "possibly" first removal. (TR 109, 22-25; 110 1-2; 110, 24-25; 111, 1-9; 112, 4-20)

58. Ms. Sewell testified that on May 9, 2008 her supervisor did instruct her to call DCS legal and request an IPA. Although she did call DCS legal as instructed, she did not discuss filing a petition or an IPA. (TR 112, 21-25; 113, 1-19)

59. On May 16, 2008 Ms. Sewell's supervisor told her to contact DCS Legal but she did not get in touch with an attorney until May 26, 2008 and that was due to the fact that she was in Juvenile Court and saw DCS attorney, Barbara Johnson, as she walked by the attorneys' office. (TR 113, 21-25; 114, 1-4) Ms. Sewell did not tell the DCS attorney that the children were removed from their home and in a placement and had been for almost a month. The only information she provided the DCS attorney was that the aunt wanted to file a petition for custody. (TR 114, 5-10)

60. Ms. Sewell testified that she was comfortable with the home in which she had placed the children despite the fact that the placement, T.P., consistently told her that she had health problems and thought she was only going to keep the children for a short period of time. (TR 114, 12-25; 115, 1-10)

61. Ms. Sewell's only justification for not providing mental health services to the children was that she did not have time. (TR 115, 11-25; 116, 1-10)
62. Ms. Sewell's justification for not assisting the mother, C. P. with alcohol and drug services appears to be that she was waiting for the grandfather, J.P., to get custody of the children. (TR 116, 11-25; 117, 1-18)
63. Ms. Sewell testified that she did not contact legal to ask about getting an Immediate Protection Agreement (IPA) on May 9, 2008 as directed by her supervisor. (TR 118, 17-21)
64. Ms. Sewell testified that she did not conduct two face-to-face visits a month with the children as required by policy because she did not feel that services were needed for the children, despite the fact that the caregiver had expressed concerns about the children's behaviors, and Ms. Sewell testified earlier that she did talk with the caregiver about getting services to address at least one of the children's behavioral needs. (TR 82, 1-20; Exhibit 8; 118, 22-25; 119, 1-5)
65. Ms. Sewell testified that she did not call DCS Legal and ask to file a petition based on the fact that she had removed children from their parent. (TR 119, 23-25; 120, 1-25; 121, 1-6)
66. Wayne Castile, who was the Deputy Regional Administrator in Knox County at the time the events occurred which led to Ms. Sewell's suspension, testified to the duties and training of a Child Protective Service Worker. (TR 123, 1-25; 124, 1-25)
67. Mr. Castile testified that DCS Policy 14.12 with an effective date of Jan 1, 2008 addresses the responsibility of the Department of Children's Services for reasonable efforts, emergency removals, filing petitions, custody placements and non-custody placements. (TR 20-25; 126, 1-13; Exhibit 3)

68. Mr. Castile testified that Policy 14.12 B covered "legal procedures for removal. One the case worker will (A) consult with the supervisor, Master of Social Work (MSW), as applicable and DCS Regional Legal Counsel regarding authorization to file a petition and to physically remove the child from the home of the present caretaker. (B) Consult with the DCS Regional Legal Counsel whether or not the petition will allege severe abuse. (C) prepare for and testify in all court proceedings pertaining to the removal….." (TR 126, 14-25; 127, 1; Exhibit 3)
69. The Child Protective Service Worker gives DCS Legal the information needed to file a petition for custody. (TR 128, 17-19)
70. DCS Policy 14.26B requires a minimum of two face-to-face contacts per month and at least one of those visits must be at the home during the initial assessment. The reason for this policy is to address the needs of the children and ensure their safety. (TR 130, 13-18; 131, 1-20; Exhibit 4)
71. The worker assigned to the case is responsible for setting up services that are needed and getting a referral for a petition to DCS legal and all personnel receive training addressing those responsibilities. (131, 21-25; 132, 1-6)
72. Mr. Castile testified that Ms. Sewell was inefficient and negligent in the performance of her duties because she did not conduct the required face-to-face visits and did not follow up with Legal to get a petition filed. (TR 135, 18-25; 136, 1)
73. Mr. Castile testified that Ms. Sewell participated in actions that would endanger the lives and property of others by did not checking on the children's safety for an extended period of time. Ms. Sewell did not ensure that the children were safe. (TR 136, 2-8)

74. Mr. Castile testified that Ms. Sewell was insubordinate by not following through on the directives of her supervisor to get either an extension of the Immediate Protection Agreement or filing a petition in court. (TR 136, 13-19)

75. Consideration was given to Ms. Sewell's length of service with DCS and the fact that she had no prior disciplinary action as well as the severity of the situation in which Ms. Sewell put the family, the Department and herself when determining that the appropriate discipline was a one-day suspension. (TR 136, 20-25; 137, 1-24)

76. Susan Kovac, DCS attorney in Knox County, testified that the legal basis for policy 14.12(b) was to protect the due process rights of families because the Department has no legal authority to remove children from their home; therefore, the Department has to file a petition in Juvenile Court when children are removed from their families. (TR 185, 1-21) However, the Department does have inherent authority by agreement with the families to work with them by providing services without removing children from their home. (TR 185, 21-25; 186, 1-8)

77. Ms. Kovac testified that "An Immediate Protection Agreement is voluntary agreement entered into by the individuals who have authority over children, custodians or parents, whoever is legally responsible for the children and the Department to make that emergency plan for the safety of the child. It's a document. It is reduced to writing on a document where the harm is to be identified, the immediate solution is to be identified, the time frame is to be identified and the signatures of the persons impacted by that decision are also on that document." (TR 186, 9-23; Exhibit 1)

78. Ms. Kovac testified that the worker is required to get approval from DCS Legal prior to drafting an Immediate Protection Agreement (IPA) and that was not done in this case. (TR 186, 24-25; 187, 1-8; Exhibit 1)

79. Ms. Kovac described the process for the case manager to obtain approval from DCS legal for the IPA and/or filing of a petition as follows: "If children are, as in this case, are leaving the home, the case manager is to get approval from a supervisor and from a DCS attorney before an Immediate Protection Agreement can be entered into. It's just as with removing a child to foster care, the attorney has to review for legal sufficiency before it's done. If we're asked to approve an Immediate Protection Agreement, one of the things we do right off the bat as part of that agreement is to talk about the time frame and our time frame was 72 hours. We're looking at three business days. So either the children would need to be back home or we would have needed to file something in that time period." (TR 188, 12-24)

80. Ms. Sewell attended at least two DCS Legal trainings conducted by Ms. Kovac and perhaps three. (TR 189, 4-7)

81. Ms. Kovac's legal training is an entire day going through the entire legal process beginning with the investigation. (TR 189, 10-11)

82. The process of Immediate Protection Agreements is a significant part of Ms. Kovac's legal training and she starts by "….alerting the trainees that this is the area of our practice that gives the Legal Department the most willies, the most concern because it presents from our perspective, the greatest opportunity for liability both to the Department and to the case manager. I'm (Ms. Kovac) very firm about that, you know, wake them up because this is really, really, really important stuff. We talk about the importance of approval from Legal.

We talk about the danger of denying due process right to the parents" (TR 189, 16-25; 190, 2-4)

83. In her legal training Ms. Kovac discusses two federal lawsuits in which case workers removed children from their parent, told the parent they could only have supervised visits and did not file a petition in court. In one of those cases the mother won a $600,000 settlement against the State of Tennessee for violation of that parent's rights. "The Federal Court opined that the case manager and the supervisor in that case were not entitled to the protection of being state employees because their actions were outside of policy." (TR 190 8-25; 191, 1-6)

84. In her legal training Ms. Kovac stresses that the IPA policy is to give the parents their due process rights within the three-day time period designated by statute as the time period when children are placed in foster care. (TR 191, 8-17)

85. Ms. Kovac testified that she talks about this case in every training she gives and stresses that failure to comply with the policy could represent a huge liability for the State and for the case manager. (TR 191, 21-25; 192, 1-25; Exhibit 3)

86. Ms. Sewell did not enter her case recordings timely; therefore, no one from legal could even get the information by looking in the DCS computer files known as TnKids at that time. (TR 192, 23-25; 193, 1-9)

87. Ms. Kovac did not become aware of the situation until the crisis in July 2008 occurred which resulted in the children coming into foster care. (TR 193, 12-25; 194, 1-11)

88. There is a procedure in place in Knox County for contacting a DCS attorney-all Family Service Workers are given the cell phone numbers for the five attorneys in Knox County. (TR 194, 16-19)

89. Ms. Kovac testified that she did speak with Suzanne Keck on the night that Ms. Sewell picked the children up. Ms. Kovac was only told that Ms. Sewell was driving around with the children and that should not have been done without permission from DCS Legal. (TR 193, 17-25; TR 194, 1-11)

90. Ms. Kovac explained that an IPA was only given for a short and definite period of time and might not result in a petition being filed. Ms. Kovac testified that is she had been called on this case and had been told that there was a mother in jail, the mother has approved a relative placement in Union County and then the worker requested permission to place the child in that relative home until a Child and Family Team Meeting could be held in two days when a decision could be made about what would happen next, she would have given approval for that. Ms. Kovac would not necessarily made an appointment with the worker at that time because the decisions as to next steps would not be made until the Child and Family Team Meeting. If Ms. Kovac had been the attorney who gave approval for the IPA she would have expected a call from the case manager after the Child and Family Team Meeting to tell her if the decision of the Team was that the children would go home or if a petition needed to be filed because the Team decided that the children needed to be out of the home for a longer period of time. (TR 195, 9-10)

91. Ms. Sewell did not call DCS Legal after the Child and Family Team Meeting which was actually eight days after she picked up the children. (TR 196, 19-21; Exhibit 8)

92. When Ms. Kovac does the legal training she passes out all of the information needed for the Family Service Worker to get in touch with a DCS attorney. (TR 199, 2-24)

93. Ms. Kovac testified that she would not have approved this IPA. (TR 200, 18-19)

94. Ms. Kovac testified that there were several legal problems with the actions taken by Ms Sewell; specifically, without court orders, two children were taken from the park and a third child, who had not been a part of the business at the park was taken from the grandfather's home and a decision was made that the grandfather was not an appropriate placement for the children because he his driver's license had been revoked for not paying child support, the mother was told on more than one occasion that she could not have her children back, and the caregiver was told that the mother couldn't be in the home to help with the children. (TR 200, 5-25; 201, 1-25; Exhibit 8)

95. Ms. Kovac testified that the notes from the Child and Family Team Meeting held on May 9, 2008 made very little sense as we were asking the grandfather, from whose home we removed one child and denied his home as a placement for all three children, was told he could file a petition for custody; and had this been presented to Legal any DCS attorney in Knox county would have said that it did not make any sense. (TR 202, 1-20; 214, 7-15; Exhibit 2)

96. None of the actions taken at the Child and Family Team Meeting on May 9, 2008 were approved by DCS Legal because Ms. Sewell did not call a DCS attorney and explain the situation. (TR 202, 22-25; 203, 7-25; 204, 1-19)

97. While there are several attempts noted in Ms. Sewell's TNKids notes to contact Legal from May 1, 2008 until the children came into DCS custody in July 2008; she called the juvenile court office and left messages identifying herself and asking the attorney, Kathleen Parsons, to call her. However, Ms. Sewell left no message stating the reason for her calls. (TR 203, 7-25; 204, 1-19)

98. Ms. Sewell actually spoke with DCS attorney Barbara Johnson at some point, but Ms. Sewell only asked Ms. Johnson to have Kathleen Parsons call her. Ms. Sewell did not tell Ms. Johnson the reason for her call. (TR 203, 23-25; 204, 1-11)

99. Ms. Kovac testified that "……..there were substantial gaps and many weeks before she (Ms. Sewell) tried again (to call a DCS attorney). Sherry was in the building. Our staff are routinely in the building. She was in that courthouse. She was in our offices. She was seeing us in the hall, not just you have to make a phone call, but there was regular in-person incidental contact, nothing was s aid about this case. (TR 204, 12-19)

100. Ms. Kovac testified that there had been a previous case which involved children who had been removed from a babysitter and DCS could not locate the mother. In that case approval was given by DCS Legal to transport the children until the mother was located. The children in that situation were removed to foster care and then released from foster care as soon as the mother was located. Ms. Kovac explained to the Team Coordinator that evening that there was a big difference between than case and this one in which a case manager, with no approval, put children in a car and driving around with them and not intending to remove them from their parent. (TR 209 1-25; 210, 1-6)

101. DCS Legal did not monitor this situation because a removal is not what was presented to them on the night of May 1, 2008. (TR 212, 13-16)

102. When cross-examined after direct by her attorney Ms. Sewell's testimony changed a little when she said that she was "pretty much a hundred percent sure" that she did explain the situation to DCS attorney, Barbara Johnson on May 1, 2008 (TR 269, 21-25; TR 270, 1-11) from when Ms. Sewell testified that she did not call DCS Legal and explain the situation to

them (TR 119, 23-25; 120, 1-25; 121, 1-6) and her testimony that on May 1, 2008 she may not have explained herself. (TR 271, 12-21)

103. Ms. Sewell testified that she was asked by Barbara Johnson to call Susan Kovac she did not. (TR 270, 22-25; TR 271, 1-11)

104. Ms. Sewell acknowledged in her testimony that she there would have not been a way for anyone to check on the situation using her documentation in TnKids because she did not enter that documentation form May 1, 2008 through June 12, 2008 until July 8, 2008. (TR 271, 25; 272, 1-16)

105. Ms. Sewell testified that the fact that the mother could only have supervised visits with her children was mentioned in the Child and Family Team Meeting held on May 9, 2008.(TR 272, 17-25; 273, 1-5)

106. Ms. Sewell testified that she "probably" followed protocol when she did at least one other removal because she was not written up for anything even though she could not remember the details of that removal. (TR 278, 24-25, 279, 1-7)

107. Ms. Sewell testified on direct that she began taking CPS cases on April 7, 2007. (TR 241, 6-11) yet she could not remember the details of one other removal which could have only been done between April 7, 2007 and May 1, 2008. (TR 279, 1-7)

108. Ms. Sewell testified that she gave both the placement, T.P. and the mother, C.P. the names of providers they could contact for services to assist them. (TR 279, 23-25; 280, 1-25; 281, 1-3; 282, 16-25; 283, 10-21)

109. Ms. Sewell testified that she now wished that she had explained to the situation to DCS Legal. (TR 284, 6-14)

110. Ms. Sewell testified that she did not call Legal as directed by her supervisor, Ms. Elliott, and explain what was going on in this case. (TR 285, 19-25; 286, 1-2)

111. The Court questioned Ms. Elliott regarding whether DCS had any "safe havens, any practices or any safeguards" to insure that when DCS intervenes into a family and removes children that the case is resolved correctly. After a lengthy discussion between the Court and Ms. Elliott, it became apparent that, at the time of this incident, DCS did not have any such safe havens, practices or safeguards to insure that the case is resolved correctly when a child is removed. Ms. Elliott admitted to the Court that she did not document any matters related to the progress of Ms. Sewell's case involving the removal of the children on May 1, 2008. Ms. Elliott said that she currently documents the progress of the removal process including the plan for the children after the IPA is approved. Ms. Elliott simply referred to this change in her documentation process as "lessons learned".

## ANALYSIS

The initial issue to be decided is whether the Grievant failed to adhere to the controlling law and rules that govern her in the performance of her duties as a DCS worker. The Grievant clearly failed to comply with the rules and policies that govern her actions as a State DCS worker that is empowered with authority that comes with great responsibility.

The rights of parents and families shall be respected and shall not be infringed upon unless the facts give rise to the standards of public policy that require such a stringent action as having the State intervene into that family. This delicate balance must be respected and intervention shall only be as provided by the law and the public policy of Tennessee.

In the present case, the Grievant acknowledges and the facts show failures and violations of the DCS policies and rules. Even more concerning is the clear violation of the rights of the children, parents and family members involved in this case. Regardless of the intentions of the Grievant, she clearly acted outside her scope of authority and with color of law. Accordingly the family in this case was subject to state intervention without any legal basis of law by which DCS could intervene into this family.

The Grievant admits that DCS acted improperly and argues that she should not be the only person reprimanded or disciplined for her acts and omissions. The Grievants' primary defense argument is that other DCS workers also failed to perform or comply with State rules and policies or proper supervision and that they are not being sanctioned. The Grievant is correct that others appear to have failed to fulfill their obligations. Those responsible for the supervision of the Grievant and of this case share culpability for the wrongful actions of DCS in this case. However, the only issue that is properly before the Court today is the failure of the Grievant to meet her obligations in this case. Whether the State moves to sanction others for their possible failures to adhere to the rules and policies of the State is not a defense to the clear violations of rule and policy that the Grievant is charged with. It is also well established that the Grievant was properly trained in the areas that the Grievant has been cited as failing to perform or comply with. Accordingly the Grievant should be held accountable for the very serious oversight, failures to comply with policy and the wrongful intervention into the lives of this family that are a clear violation of their constitutional rights.

Accordingly, even mitigating the fact of the Supervisor's failure to conduct proper oversight for the Grievant, the Grievant's errors are unconscionable violations of the States'

policies and rules and of the constitutional rights of the citizens subject to this state intervention under color of law.

The Grievant is ordered suspended without compensation for a period of thirty (30) days.

**IT IS SO ORDERED**.

This Order entered and effective this 1 day of February, 2012

_____
Dewayne Bunch
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2012.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE