

Plaintiffs want DCS held in contempt

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Bredesen fires chief, says he failed to lead change

Even as the beleaguered state Department of Children's Services endures a high-level shakeup, plaintiffs in an ongoing federal case challenging its foster-care program intend to ask a federal judge this week to hold the state in contempt of court.

Gov. Phil Bredesen fired DCS commissioner Michael Miller late Monday and appointed Gina Lodge, the Department of Human Services commissioner, to serve as Miller's interim replacement.

Lodge will continue in her DHS role until a permanent DCS commissioner is found. The search for the DCS commissioner is already under way.

The Cabinet-level changes in Bredesen's administration come as the state braces for further litigation relating to DCS' halting progress in adhering to a federal court plan designed to recast the agency's foster-care programs.

The class-action "Brian A." lawsuit, filed during then-Gov. Don Sundquist's administration on behalf of Tennessee's foster children, was settled more than two years ago when the state and the plaintiffs agreed to a highly detailed improvement plan. "Brian A." is the name of a child in the foster-care system who is one of the plaintiffs in the lawsuit.

The court monitor overseeing the state's progress issued a status report earlier this month that found the state out of compliance on 84 of 136 agreement provisions and in compliance with only 24. The state was found to be in partial compliance with the eight other provisions.

Bredesen cited Miller's inability to provide DCS "the cultural change" that the department needed as one of the reasons he sacked his longtime acquaintance, a man who directed Metro's social services when Bredesen was Nashville's mayor.

Meantime, attorneys with Children's Rights Inc., the New York-based advocacy group that filed the Brian A. case, are preparing to ask U.S. District Judge Todd Campbell to intervene again.

"We have to do this," said David Raybin, one of the attorneys representing the Brian A. plaintiffs. "I think it's time the children get the services that they deserve. We're in a position where we need to ask the court to intervene here."

Should the judge find DCS in contempt, the plaintiffs would strongly consider requesting several possible remedies, including placing the state's foster-care program in receivership. A receiver would control and administer any court-ordered plan to bring the department into compliance.

So far though, the state's progress has been unacceptable, said a top Children's Rights official.

"It has been too slow, and they have no plans to get to where they need to go," said Marcia Robinson Lowry, Children's Rights executive director.

Children's Rights has been working closely with DCS and the court monitor for more than two years, Lowry said. The systemic problems are deep, she said.

"One person," she said, referring to Miller, "is clearly not the issue."

One of the many things that court monitor Sheila Agniel criticized about the state's progress was that DCS did not seem to have an improvement plan, much less a solid record of adhering to the agreement's provisions.

The state is more than halfway through the 54-month period it has been given to come into compliance.

Agniel's 199-page report is a comprehensive look at a massive state agency.

Among its findings, the report states that required face-to-face visits between children and state caseworkers took place in fewer than 40% of cases Agniel reviewed. Reports of abuse and neglect received timely investigations in only 37% of the cases between July 2002 and May 2003, the report states.

Briefed before the report's release earlier this month, a troubled Bredesen told Miller that the report looked like it "was going to shoot us with a large rifle."

By removing Miller, the governor is hoping to jump-start change within the DCS bureaucracy. Lodge, however, said she has no intention of staying in the DCS position permanently.

Bredesen indicated that he probably will not look outside the state for a permanent replacement. However, he might consider someone from outside the field of social services — a retired businessman, for example.

Miller presented the DCS budget to Bredesen on Monday morning. That evening, Bredesen called Miller in to ask him to step down.

The governor said the firing was unrelated to the budget presentation.

It was not one specific thing that cost Miller his job, Bredesen said.

"It's been coming to a head for a couple of months," the governor said, adding that it was clear in his mind the first of this month that Miller would have to leave.

"He was extremely disappointed, but he's a big guy," he said. "I'm not sure he totally agrees with the decision, but I think he understood where I was coming from."

The governor partially blamed himself, saying, "I regret I didn't do a perfect job in selecting Cabinet members."

Bredesen will try to find a temporary spot for Miller, perhaps in the Department of Finance and Administration, to give "him a soft landing."

Miller could not be reached yesterday for comment.