

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 12/28/2012

TIME: 09:43:00 AM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes

CLERK: Patricia Legler

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

**RECEIVED**

JAN - 2 2013

CASE NO: **37-2011-00097858-CU-MC-CTL** CASE INIT.DATE: 09/14/2011

CASE TITLE: **Butterfield vs. Lightbourne**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Misc Complaints - Other

MORRISON & FOLEY LLP  
SAN DIEGO

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 12/7/12 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

On December 7, 2012, the court heard oral argument on plaintiff/petitioner Robert K. Butterfield's petition for writ of mandate, or in the alternative, declaratory relief. Plaintiff during oral argument requested the opportunity to correct some non-substantive errors in the tentative ruling and submissions were made. The court now enters its final ruling, as set forth below:

Plaintiff/petitioner Robert K. Butterfield's petition for writ of mandate, or in the alternative, declaratory relief, is granted. Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation, to strike down such regulations. (*Morris v. Williams* (1967) 67 Cal.2d 733.) Plaintiff has met his burden to show that defendants/respondents Will Lightbourne, Director of California Department of Social Services, and the California Department of Social Services (collectively "DSS" or "department") adopted regulations that were inconsistent and in conflict with Welfare and Institutions Code section 10850.4 and Senate Bill ("SB") 39. Furthermore, the court finds that DSS's adoption of the regulations requiring the identity of the perpetrator was arbitrary, capricious, or without reasonable or rational basis.

Butterfield contends that the regulations adopted in the Manual of Policies and Procedures ("MPP") sections 31-502.33 through 31-502.35, are inconsistent with SB 39 and section 10850.4. These sections state:

**31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS**

.33 When the agency, pursuant to Section 31-502.25, makes the determination that the child fatality was a result of abuse and/or neglect, the child resided with his/her parent or guardian, as defined by Sections 31-002(g)(3) and (p)(1), **and the abuse and/or neglect was inflicted by the parent or guardian**, the county shall release additional documents pertinent to that parent or guardian. ...

.34 When the agency, pursuant to Section 31-502.25, makes the determination that the child fatality was

a result of abuse and/or neglect, the child resided in foster care, **and the abuse and/or neglect was inflicted by the foster parent(s)**, the county shall release additional documents pertinent to the foster parent(s).

.35 When a child fatality has occurred as a result of abuse and/or neglect by a non-residential licensed child care provider, the county shall direct any public request to the appropriate licensing department or agency that has jurisdiction over the facility. (Emphasis added.)

Butterfield is correct that section 31-502.35 gives the licensing agency or department the right to release the records, when it is the custodian of records for the county that is to release the records. DSS contends that because a county child welfare agency is not required to obtain records not in its file, the regulation just gives a referral. However, this is inconsistent with the mandating requirements of SB 39.

Butterfield is also correct that former MPP §31-502.42 improperly required consultation with law enforcement and the district attorney prior to releasing SB 39 documents to the public. However, though Butterfield objects that it was improperly amended, the current version of MPP §31-502.42 only lists the district attorney's determination. It states:

.42 After consultation with the District Attorney, if the release of specific information would jeopardize a criminal investigation or proceeding, that information shall be redacted prior to release.

Nonetheless, due to the potential that this amendment will be later challenged as not properly modified, the court vacates MPP §31-502.42.

Butterfield objects that MPP §31.502.2 et seq. requires a child fatality to be "a result of" abuse and/or neglect to be disclosable under SB 39. Butterfield has shown that DSS acted arbitrarily or capriciously in using the words "result of" rather than "leads to" in its regulations. Welfare and Institutions Code section 10850.4 requires "(b) All cases in which abuse or neglect *leads to* a child's death shall be subject to the disclosures required in subdivision (c.)" (Emphasis added.) The statute further defines the conditions leading to deaths that are "subject to disclosure," and DSS use of "result of" inserts an ambiguity inconsistent with the statute.

Additionally, requiring the release of information conditioned upon the identity of the perpetrator is an arbitrary or capricious act and leads to inconsistencies in reporting abuse. There is no such restriction in Welfare and Institutions Code section 10850.4(c), which states:

(2) For cases in which the child's death occurred *while living with a parent* or guardian, all previous referrals of abuse or neglect of the deceased child while living with that parent or guardian shall be disclosed along with the following documents:...

(3) For cases in which the child's death occurred *while the child was in foster care*, the following documents in addition to those specified in paragraphs (1) and (2) generated while the child was living in the foster care placement that was the placement at the time of the child's death:...

Additionally, this interpretation is consistent with Welfare and Institutions Code section 10850.4(e)(1)(C) which mandates the confidentiality of "Any information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law." Under the Child Abuse Prevention and Treatment Act ("CAPTA"), the federal government gives California funds provided they have a program in place for public disclosure of the findings about the case of child abuse or neglect which results in a fatality. (42 USC §5106a(b)(2)(A)(x) ["provisions which allow for public disclosure of the findings or information about

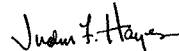
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the case of child abuse or neglect which has resulted in a child fatality or near fatality ;...].") DSS has not shown that this restriction is necessary to protect the child, parent or guardian, especially in light of the legislative intent to maximize public access to juvenile case files in cases where a child fatality occurs as a result of child abuse or neglect. (SB 39(1)(e).) Instead, based upon the statistics provided by Butterfield, the restrictions lead to under reporting or inconsistencies in the reporting of the child abuse cases involving fatalities.

Accordingly, Butterfield's petition for writ of mandate is granted.

DSS requested a statement of decision at the hearing. This ruling will become the statement of decision unless, within 10 days after service of this ruling, a party proposes a different statement of decision. (Cal. Rules of Court, Rule 3.1590(c).) In that event, if there are objections to the proposed statement of decision, that party shall also submit a revised version for the court to consider within 5 days of service of the proposed statement of decision.

**IT IS SO ORDERED.**



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Judge Judith F. Hayes

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** Butterfield vs. Lightbourne

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2011-00097858-CU-MC-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 12/28/2012.

Clerk of the Court, by:   
P. Legler, Deputy

HADARA R STANTON  
DEPUTY ATTORNEY GENERAL  
455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

M A WOODMANSEE  
12531 HIGH BLUFF DR., STE. 100  
SAN DIEGO, CA 92130

EDWARD HOWARD  
3303 PICO BOULEVARD  
SANTA MONICA, CA 90405

TRACEY L ANGELOPOULOS  
OFFICE OF THE ATTORNEY GENERAL  
110 W A STREET # 1100  
SAN DIEGO, CA 92186

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**MORRISON & FOERSTER LLP  
SAN DIEGO**

Additional names and address attached.