

COUNTY OF STANISLAUS

In the Matter of Grievance Review Hearing
#01 for Complainant

Name.
address.
city, CA 95351

**RECOMMENDED
DECISION**

Pursuant to the authority of the Director, I recommend the attached decision.

July 5, 2008

PATRICIA POULSEN, Grievance Review Officer

Agency: Stanislaus County
County Representative: Ellene Stammler
Hearing Date: June 16, 2008

Release Date:

IMPORTANT MESSAGE

You may appeal this decision to the Superior Court in the County wherein you reside within 60 days of the date that the Decision was mailed to you. In your appeal request, state the date you received this decision and why your appeal should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

The complainant's grievance is denied to the extent that the Grievance Review Officer has determined that the complainant's status and entry on the Child Abuse Central Index (CACI) should be as Inconclusive/Undetermined for the finding made in the "FACTS" below.

FACTS

The complainant, the ER Social Worker _____, and a Stanislaus County Grievance Hearing Representative appeared and testified at the hearing. Based on the testimonial and documentary evidence which was produced at the hearing, the Grievance Review Officer (GRO) made the following findings of fact:

The county's Grievance Review Hearing Representative along with the investigating social worker testified that the entry on the CACI was due to the following.

The county began with the County hearing representative questioning their only witness, _____, the Emergency Response social worker who had responded to the referral. The referral document itself became Exhibit A. The referral was a 10 day referral and alleged that a child had been the victim of child molest by an individual who was not living in the home. The social worker then discussed the investigation process for this matter. The social worker referred to the Delivered Service Log which was later admitted into evidence as Exhibit B.

The Social Worker discussed her interview with all the children who were in the home at the time of the home call. The victim D was asked about good and bad touch and knew the difference between right and wrong. The victim D disclosed that the Complainant had placed his hand in her pants and he had rubbed her vagina and touched her butt area while everyone was sleeping. She said that the complainant was her mom's boyfriend and this had occurred when she was 6 years old and this had occurred about 10 times. There was only the one alleged victim of abuse by the Complainant. None of the other minors residing in the home reported any abuse by the Complainant and no one else saw the abuse of victim D by the Complainant. The social worker testified that once her investigation was complete, that her supervisor reviewed her paperwork to ensure that the investigation had been done correctly. Later, the social worker stated that the children were all interviewed individually and separately from the victim's mother. Mom had told the social worker at the time of the investigation that she did not know the exact location of the Complainant. The social worker also testified that there was no sexual abuse examination of the victim.

The County also submitted into evidence Exhibit C, a police report. Although the police report only addressed allegations pertaining to another perpetrator and did not name the Complainant, it did provide information about the victim D and the victim's demeanor when interviewed by the police officer. Victim D's mother at that time told the police officer that she believed the victim.

The Complainant asked questions of the social worker. He again asked why no physical exam was conducted on the victim and the social worker explained that at the time of this investigation, that the police did not normally recommend that victims have this exam. The Complainant asked why it has taken nearly 10 years to hear about this and wondered why no police warrant had been issued. The County staff explained that a warrant would have come

from police and the DA and that the role of child protective services did not include issuing warrants. The Complainant asked whether there was a follow up interview with the child to see if she could and been fabricating the story and County staff explained that that was not County practice at the time of this investigation. Complainant asked if mom was interviewed separately from the child and the Social Worker said that they were interviewed separately. Complainant said that he had done a lot of bad things and that he was going through drug rehab, parenting, and anger management at this time but that this has topped everything. .

The Complainant then presented his case. He did not have any witnesses nor did he have any documents for consideration at this hearing. The Complainant said he did not live in the house at the time in question nor was he around to have committed this act. The Complainant said that he only lived in the home of the victim from 1995-1998. He said that he never returned to the home after this time as he had lived with another woman in 1998 for 1 1/2 years and after leaving this woman lived with another woman until about 2003. He reported that he has been to a custody hearing in which he obtained rights to see his birth child (half sibling to the victim). He thought that the custody hearing took place in 2001, 2002, or 2003. He stated he has a hard time recalling specific dates. He wondered whether the victim could have meant to name another man instead of the Complainant. The Complainant said that he has suffered from hearing about this allegation and that it is not true. The Complainant's concern too is that it took so many years before he even heard about this report. During the hearing the Complainant asked for a definition of unfounded and it was explained to him so that he understood.

The County Hearing Representative then asked questions of the Complainant. He was asked as to how old the victim was at the time he lived in the home. At first he testified that the Victim D was not in school but later stated that she could have been. He even said he could not remember who specifically the victim was. The County Hearing Representative stated that the victim was the oldest child of the mother, The Complainant further believes that the victim's mother knew his whereabouts at the time of the initial referral.

The Grievance Review Officer (GRO) reviewed all of the evidence and admitted all such evidence into the record which will be sealed after presentation to the Director of Stanislaus County. The GRO finds that such evidence presented by the county was reliable and credible. Further the GRO finds that the evidence presented by the Complainant was not as reliable/credible and that the GRO gave less weight to the Complainant's testimony due to the fact that the Complainant was inconsistent in his testimony as he really could not recall some specific dates in order to show he could not have been in the home at the time of the alleged incidents. He testified he was not around at the time the victim D stated the abuse took place. However, the victim D stated the incidents took place when she was 6 years old and this would have been during the years of 1995-1998 when the complainant testified he was in fact living in the home with the victim. Complainant testified to the fact that he is currently in drug rehab and this leaves some doubt as to whether he could have been under the influence during the time of the incidents and may not have total recall as to what may have transpired.

Therefore, the GRO finds that the complaint failed to meet his burden of proof in that it is found that the complainant could not prove that he did not commit the following acts on the minor D who was 6 years old at the time of the abuse which took place on or about 1996-1997.

Such lack of new proof would result in a finding that the alleged acts could have taken place.

Therefore, the GRO finds that the complainant status on the CACI should remain Inconclusive(Undetermined) and that his name should therefore remain the same as when initially entered.

It is recommended that the Director of Stanislaus County adopt this Recommended Decision within thirty (30) days of when this Decision is rendered.

LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

California Penal Code Section 11167.5(b)(11) authorizes counties to provide suspects with reports including the child abuse investigation report. Additionally, Penal Code Section 11167(e) requires the county, when making contact with the suspect, to provide the suspect with information concerning the complaints and allegations against the suspect. The CDSS recommends that each county consult with their county counsel regarding issues of confidentiality of child abuse records.

All County Information Notice No. I-22-08 (ACIN) was issued on March 28, 2008, and provides some general questions and answers to the grievance appeals process for complainants who want to have their names removed from the Child Abuse Central Index (CACI).

CONCLUSION

It is concluded that the complainant's name should remain on the CACI in the category of (Inconclusive/Undetermined).

ORDER

The grievance appeal is denied.