

**COURT IMPROVEMENT PROGRAM TRAINING**

# **Building a Defense and Helping Families in the Child Welfare System**

**A Respondent Parent Counsel Curriculum for Improvement of  
the Child Welfare System**



# **Building a Defense and Helping Families in the Child Welfare System:**

**Attorney Training for Respondent Parent Counsel**

**Module 2-Disposition through Termination**



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**2010**

Court Improvement Program

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## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM

### BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM MODULE 2: DISPOSITION THROUGH TERMINATION

Time: 6 hours of training content

Purpose: To promote and protect the safety, permanency, and well-being of children and families by assuring a sufficient level of competency and expertise among all counsel representing parents.

Competencies/  
Learning Objectives:

- Participants will understand the law governing child welfare proceedings.
- Participants will be able to analyze how the law impacts a particular case.
- Participants will be able to develop reasoned defenses and case plans.
- Participants will develop effective trial advocacy skills.
- Participants will understand and utilize out of court advocacy on behalf of their clients.
- Participants will understand the professional culture of child welfare cases, including the role of collaboration.
- Participants will be knowledgeable about national best practices in child welfare care.
- Participants will develop a sense of community, both regionally and statewide, with other respondent parent counsel, identifying lawyers who can possibly provide mentorship or support.

Materials All materials as well as this curriculum are provided in electronic and printed format.

Faculty Resource 1:	PowerPoint Presentation
Handout 1:	Agenda
Handout 2:	Evidence and Objections
Handout 3:	Trial Preparation
Handout 4:	Annotated Federal Statutes

## **BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM**

Handout 5:	Dispositional Hearing Checklist
Handout 6:	CORE Services and Funding
Handout 7:	Treatment Plan for the Tillman Family
Handout 8:	Collaboration vs. Zealous Advocacy Article
Handout 9:	Permanency Planning Hearing Checklist
Handout 10:	Permanency Planning Hypotheticals
Handout 11:	Termination Hearing Checklist
Handout 12:	Sample Cross Examination
Handout 13:	CJD 04-05
Handout 14:	CJD 87-01
Handout 15:	Insider's Guide to Colorado Practice Material
Handout 16:	Resource Guide
Handout 17:	Bibliography

### **Additional Materials Not Included as Handouts:**

Colorado Children's Code: All participants should bring a copy of the code, Title 19 of Colorado Revised Statutes.

At the training, several copies of C.R.S. Court Rule Book 2, C.R.S. Titles 14 and 22 and Volume 7 of the CDHS regulations should be available.

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
WELCOME AND FEEDBACK LOOP**

**WELCOME AND FEEDBACK LOOP  
SESSION 1**

**Time:** 10 minutes

**Purpose:** To introduce the training materials for the day and to review any additional thoughts from the previous days' discussions.

**Materials:** Handout 1: Agenda

**Description of Activity:**

*Welcome participants to Day 2 of the Respondent Parents Counsel Training, and thank them for taking the time out of their busy schedules to improve their system.*

*Briefly go over the agenda for the day and the topics that will be covered. Make sure that participants do not have any remaining questions from the previous day. If there are questions, take a few moments to answer them or write them down so that you can ensure that they are answered throughout the day.*

*Point out the CLE forms and reimbursement forms that are available. Check to see if participants have all the handouts necessary for the day.*

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
DISPOSITIONAL/TREATMENT PLAN HEARING**

**DISPOSITIONAL/ TREATMENT PLAN HEARING  
SESSION 2**

**Time:** 65 minutes

**Purpose:** To further explore the law of the dispositional hearing.

**Materials:** Handout 5: Dispositional Hearing Checklist  
Handout 6: CORE Services and Funding  
Faculty Resource 1: PowerPoint Presentation

**Description of Activity:**

*The following corresponds with the PowerPoint presentation slides set forth in Faculty Resource 1.*

☞ Slide 1: Disposition

☞ Slide 2: Dispositional Hearing

- ▶ What is it?
  - Required whenever a petition for dependency or neglect has been sustained.
- ▶ Purpose:
  - To determine what disposition is in the child's best interests.
- ▶ Timing:
  - Immediately following the adjudication or adjourned for a separate date
  - In an EPP case, the hearing must happen within 30 days of adjudication. For older children, it must take place within 45 days.

*Failure to hold a dispositional hearing is reversible error. The court cannot hold a dispositional hearing without first entering orders of adjudication. See In the Interest of J.L. 121 P.3d 315 (Colo. App. 2005).*

*Most typically, a treatment plan for each member of the family is proposed and adopted at the dispositional hearing. For this reason it is also called the treatment plan hearing.*

*The dispositional hearing can be held immediately following the adjudication or can be adjourned for a separate date. The timelines must be followed unless good cause is shown and that it is in the best interests of the child to continue the disposition.*

*If children are placed out of the home, placement may also be addressed at the dispositional hearing.*

☞ Slide 3: Dispositional Hearing

- ▶ Who is present?



**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
DISPOSITIONAL/TREATMENT PLAN HEARING**

- Respondent Parents & their Attorneys
- Department & County Attorney
- GAL
- ▶ What evidence is considered?
  - C.R.S.§ 19-3-507 (1):
    - Social History Report
    - Family Services List
    - Evaluation for Placement
    - Statement About Reasonable Efforts
  - NCFAS:
    - Family Strengths
- ▶ What are the options?
  - Parents may be ordered to take classes, undergo evaluations, or participate in therapy or other treatment.
- ▶ A Handbook for Families in Dependency and Neglect Cases:
  - [http://www.courts.state.co.us/userfiles/File/Administration/Executive/JP3/Handbook\\_for\\_Families\\_in\\_D\\_N\\_cases.pdf](http://www.courts.state.co.us/userfiles/File/Administration/Executive/JP3/Handbook_for_Families_in_D_N_cases.pdf)

*All parents should have a dispositional hearing. Cases can be bifurcated if one parent is on a different track than the other because of delays of service, incarceration, domestic violence, or other reasons.*

*The Department typically writes up a treatment plan and provides it to all parties and the court in advance of the hearing. Pursuant to C.R.S.§ 19-3-507 (1), the Department is required to submit a social history report, family services list, evaluation for placement, and a statement about reasonable efforts. The report is admissible, and the parents can cross-examine the maker of the report at the hearing. Remember also that according to the NCFAS, the family strengths should be included in the family services plan.*

*Federal law requires that parents be involved in the development of their treatment plan. Colorado has been criticized in the federal review for failing to do so. Whether parents have participated in the development of the plan is also a question asked by the state administrative review process. Just signing the plan is not considered enough involvement – parents should have an opportunity to be heard and consulted on the development of the plan.*

*It may be best to ask for an electronic copy of the treatment plan well in advance of the hearing. This gives counsel more time to review the plan with the client and to let other parties know if counsel will be objecting to any elements or asking for revisions. Right after an admission or adjudication is entered, consider setting an office appointment with the client for a few days prior to dispositional hearing.*

*In very serious cases, the Department can request that the respondent parent be given no treatment plan. If so, then the Department must plan to move for termination of parental rights and must file a separate motion for termination*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING

### 🖨 Slide 4: Elements of a Good Treatment Plan

- ▶ Considers the individual strengths of the parents;
- ▶ Considers the individual needs of the parents;
- ▶ Tailors services designed to meet those needs;
- ▶ Prioritizes the service needs in a manner capable of success;
- ▶ Simple, clear language and measurable objectives and action steps;
- ▶ Not overwhelming;
- ▶ Considers the religious, cultural, and language needs of the family;
- ▶ Emphasizes the family's strengths;
- ▶ Coordinates services and eliminates duplications;
- ▶ Is manageable and designed for success, considering parents work schedules and transportation needs;
- ▶ Considers any special needs of the parents and children

### 🖨 Slide 5: Elements of a Bad Treatment Plan

- ▶ Generic, not tailored to the family;
- ▶ Overly burdensome;
- ▶ Inflexible;
- ▶ Fails to address every family member;
- ▶ Fails to address barriers to complying with the treatment plan

*The treatment plan needs to address each member of the family. It must address the safety concerns that brought the family before the court. It must be reasonably designed for success.*

*An appropriate treatment plan is defined at C.R.S. §19-1-103(10) as one that is “reasonably calculated to render the particular [parent] fit to provide adequate parenting to the child within a reasonable time and that relates to the child's needs.” The appropriateness of a treatment plan is measured by its likelihood of success in reuniting the family.*

*Communicate with the caseworker and GAL about the appropriateness of the treatment plan. If collaboration fails, set it for a contested hearing. If the parents are indigent and are asked to pay for services, always object.*

### 🖨 Slide 6: Treatment Plans Continued

- ▶ What if no treatment plan is offered?
  - Next steps:
    - The Department has the option to show by clear and convincing evidence why a parent should not be entitled to a treatment plan, under C.R.S. §19-3-508.

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING

- If the Department believes that a parent is not entitled to a treatment plan, it may choose to file a motion to terminate.
- If the court finds that the parent is not entitled to a treatment plan, and the Department has not filed a motion to terminate, then a permanency hearing will be scheduled.
- Timing:
  - The permanency hearing must be scheduled within 30 days
- Options:
  - Proceed to a permanency hearing or to termination.

*Special circumstances under which a parent may not be entitled to a treatment plan include abandonment, significant mental health or deficiency that is not able to be rehabilitated, incarceration, serious bodily injury to the child or a sibling, habitual abuse, patterned sexual abuse, or torture.*

### Slide 7: Treatment Plans Continued

- ▶ What services are available?
- ▶ Finding services
- ▶ Getting services ordered
- ▶ Timely referrals
- ▶ Waitlists
- ▶ Evidence based research

*The reality is that there are never enough services or the right services for our clients. Services are rarely very convenient, and they can be very difficult to access. So, we have to make the most of what we have.*

*Let's look at Handout 6: Core Services. This handout details all of the services across Colorado, which counties have what services, and where the sharing agreements are. Identifying what services are available in your area is the first step. Then, getting clear written referrals is the next step. The caseworker should make sure that the client knows when and where to be, in writing. Counsel might want to monitor for this to make sure it is happening. Once counsel has looked at what your county offers, counsel should make some follow up phone calls to the Department to see where these services are offered, what the services entail, and to learn about the referral process.*

*In addition, RPC should make sure that caseworkers are making timely referrals. RPC can ask for a copy of the referral in writing when it has been made. RPC can also ask that referrals be attached to the next court report.*

*If counsel believes the caseworker is not making timely or appropriate referrals, there are several options. Counsel call and talk to the caseworker about the problem. Counsel can speak with the caseworker's supervisor about it. Counsel can call the county attorney and request action. Counsel can file a motion to the court asking for an order for a referral,*

## **BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING**

*asking for compliance with a previous order, or even seeking contempt for failure to comply with an order. Counsel can seek a no reasonable efforts finding.*

*Counsel can also consider doing the caseworker's job for him or her. Counsel can call the agencies, find out what the process is for intake, and get the client enrolled. Research shows that having someone take a parent to his or her first intake appointment greatly increases the chances that the parent will attend and engage. Counsel can also of course ask the caseworker to take the client.*

*Counsel can also ask that services be staggered so that the client is not overwhelmed with having to do everything at once. Help empower the client to use any available support that she has, develop new support, and to advocate for herself. Clients should keep a journal of all their appointments and how long it takes to get to these appointments. This will enable counsel to demonstrate why a parent may not be compliant with all aspects of the treatment plan.*

### Slide 8: Visitation Plans

- ▶ What should it include?
  - When visits will happen
  - Plan for progression of visits: Vol. 7.301.24 (J) “The visitation plan shall specify the frequency, type of contact, and the person(s) who will make the visit. At a minimum the plan shall provide the methods to meeting the following:
    - The growth and development of the child;
    - The child's adjustment to placement;
    - The ability of the provider to meeting the child's needs;
    - The appropriateness of the parent and child visitation, including assessment of risk;
    - The child's contact with parents, siblings, and other family members;
    - And visitation between the child and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached.”

### Slide 9: Visitation Plans, continued

- ▶ Where?
  - At the Department: ask for permission to allow the parent to take the child outside the visitation room.
  - In the community: have potential visitation hosts contact the Department to get approved.
- ▶ Timing for progression?
  - Should not depend on the parent's compliance with the treatment plan
- ▶ Safety concerns?
  - Should be specific and observable
  - If necessary, ask the Department to conduct a visitation assessment and report back to the court.

## **BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING**

*For families with children in out of home placement, visitation is absolutely the key to healthy family functioning. Parents and children need to see each other as often as possible in the most home like setting possible. They need to enjoy activities together. Parents need to stay involved in all aspects of their child's life, even when the child is in out of home placement. The visitation plan submitted by the Department during the dispositional hearing should consider these principles.*

*The court cannot delegate all visitation decisions to the Department and the GAL. People ex rel. D.G. 140 P.3d 299 (Colo. App. 2006). Many treatment plans include a visitation plan that details when visits will happen and how they will be changed. If the recommendation for visitation is that it needs to be only Department supervised visits, ask the Department to put on the record what the specific, observable safety concerns are. If they cannot articulate any, ask for the Department to conduct a visitation assessment and submit a report to the court. It is also recommended that counsel ask that a plan for progression of visits be outlined in the visitation plan.*

*The absolute minimum visitation plan should be at least 2 hours once a week. If the Department does not have the resources, then ask for a court order that visits take place at an outside agency, or better yet, are supervised or monitored by someone in the community. Find visitation agencies in your community that provide low cost visitation, or safe exchanges, where they monitor the transfer of custody from caregiver to parent. If parents are limited to Department, try to get them out of the little visitation room. RPC can seek permission for the parent to take the child to the park, outside for a walk, down to the building cafeteria, or anywhere that gets them out of the confines of a little office room.*

*Visitation should not be a privilege earned by the parent's compliance with the treatment plan. Visitation needs to be maintained regardless of the parent's success. If a parent is having positive drug tests, for example, visits should not be decreased as a punishment, or increased as a motivator for staying clean. Rather, visitation is a right for every family that is separated and the Department cannot succeed at termination if it has withheld visitation for non-safety reasons. Of course, if the client appears under the influence of drugs or alcohol AT a visit, then a visit may be canceled at that time.*

*Ask your client for any family member, church member, or friend who may be able to supervise visits outside of the agency.*

*Explain to clients what to expect from visitation and how to succeed. Parents need to continue to set limits for their kids and be able to discipline their children productively in visits. They should be able to plan for a visit and come prepared with supplies, an activity, and/ or an idea for something to do during the visit.*

*Remember also that just because the child is in out of home placement does not mean the parent automatically loses medical or educational decision making. RPC should seek permission for the client to attend medical appointments and school events with the child. RPC can also seek telephone and written contact for the client with his or her children. Of*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING

*course it should be impressed upon parents the importance of maintaining these contacts. Parents should know who to call if they are running late to a visit and how to ask appropriately to reschedule a visit.*

*Note that under 7.304.53, court and parents must be given written notice ten days before any determination which affects the parent's visitation rights, unless the child's health or wellbeing is endangered. The caseworker must keep a copy of the notification in the file.*

### Slide 10: Reasonable Efforts

- ▶ How is it defined?
  - Acting with diligence and care (C.R.S. §19-1-103(89))
  - The Department should provide the following resources:
    - Screenings, assessments, and individual case plans;
    - Home based family and crisis counseling;
    - Informational and referral services to available public and private assistance resources; and
    - Visitation services.

### Slide 11: Reasonable Efforts, continued

- ▶ The Department may provide additional resources when funding is available.
  - Transportation to these services when other transportation is not available;
  - Child care;
  - In home supportive homemaker services;
  - Diagnostic, mental health, and health care services;
  - Drug and alcohol treatment, after care services;
  - Financial services to avoid placement; and
  - Family preservation services.

*According to federal law, the Department must make reasonable efforts to prevent the removal of a child from his or her home, and must make reasonable efforts to reunify the family once removal has occurred. This requirement ties federal funding to certain requirements of case planning. The funding source is commonly referred to as Title IV-E funding.*

*The reasonable efforts requirement does not, however, entitle a parent to a separate civil rights claim against a state for failing to make reasonable efforts. See Suter v. Artist M., 503 U.S. 347 (1992). Rather, the requirement is merely made on states to enable them to be eligible for federal dollars.*

*In some states, a failure on the part of the Department can be used as a defense to a termination of parental rights. A 2009 Michigan case, for example, found that it may not terminate a parent's rights if the Department has failed to comply with its required*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM DISPOSITIONAL/TREATMENT PLAN HEARING

*procedures and the failure affected the outcome of the case. In Re Rood, 763 N.W.2d 587 (Mich. 2009). Colorado has not yet followed this case or reasoning.*

*What happens when the Department is not making reasonable efforts? Certainly a motion and order for no reasonable efforts is possible. In addition, some RPC have had success in arguing that child support should not be ordered, or should be stayed, because the Department has failed to provide reasonable efforts to reunify the family.*

### 🖥️ Slide 12: Outside Opinions

- ▶ What can you get?
  - Entitled to an expert under C.R.S. §19-3-607
- ▶ How can you pay for it?
  - The state pays for the cost of one expert for indigent parents (C.R.S. §19-3-607)
  - Expert fees are limited by Chief Justice Directives 04-05 and 87-01
- ▶ How do you get it entered?
  - Qualify the witness as an expert
  - If requesting appointment of an expert, do so within a reasonable amount of time prior to the hearing. *People in re L.G.*, 737 P.2d 431, 434 (Colo. App. 1987) (aff'd by *People in re K.T.*, 129 P.3d 280 (Colo. App. 2005)).
  - Because hearings under the Children's Code are relaxed, the express terms of C.R.C.P. 26 do not apply. *People in re K.T.*, 129 P.3d at 1082.

*Respondent parents are entitled to an expert under C.R.S §19-3-607. The court has set procedures for how the experts are to be paid and a limitation on fees: this is handled in Chief Justice Directives 04-05 and 87-01. These will be distributed later in Handouts 13 and 14. Most RPC are nervous to use an expert early in the case and then not have the funds available for one later in the case, particularly at termination.*

*The expert opinion is protected by attorney-client privilege, unless the children are present during the expert's evaluation.*

### 🖥️ Slide 13: Appeals

- ▶ Final order:
  - Adjudication of dependency and neglect becomes a final order and therefore appealable, upon disposition. *In re Interest of T.R.W.*, 759 P.2d 768 (1988).
  - What is an appealable issue? Most appeals come from the termination of parental rights hearings and often center on treatment plan issues.
  - To be safe, raise the issue of appropriateness of the treatment plan at trial in order to preserve it for appeal.
    - Compare People in Interest of B.J.D., 626 P.2d 727 with People ex rel. M.S., 129 P.3d 1086.

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
DISPOSITIONAL/TREATMENT PLAN HEARING**

*The question is under what circumstances are treatment plans appealable. Must counsel raise the issue of appropriateness of the treatment plan at disposition, or at any subsequent hearings, in order to save the issue for appeal? Colorado has conflicting case law on this issue, so to be safe you should raise the appropriateness issue at the trial level. Two conflicting cases to look at are:*

*In People in Interest of B.J.D., 626 P.2d 727 (Colo.App.1981), the court held that it would be unconscionable to terminate a parent-child relationship based on a treatment plan that was so inappropriate that “[n]on-compliance was virtually assured and lack of success was a foregone conclusion,” even though the parent did not object to the plan or seek modification.*

But, in People ex rel. M.S. 129 P.3d 1086, (Colo. App. 2005), the father stipulated to the appropriateness of the treatment plan. According to the court, because of this, “it was incumbent upon father to bring any changed circumstances to the court's attention prior to the termination hearing. He failed to do so, and the court upheld the termination.”

**10 MINUTE NETWORKING BREAK**



**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
EXERCISE 1- DISPOSITIONAL/TREATMENT PLAN HEARING**

**DISPOSITIONAL/TREATMENT PLAN HEARING  
EXERCISE 1**

**Time:** 60 minutes


**Purpose:** To discuss appropriate treatment plans, crucial services, and develop a cross examination based on services.

**Materials:** Handout 7: Treatment Plan for the Tillman Family

**Description of Activity:**

*Instruct participants to break into the same small groups that they were in the previous day. Participants should have already read the proposed treatment plan the night before.*

*In their small groups, participants should develop a theory of the case for disposition. They should consider the following questions:*

 Slide 14: Dispositional Hearing Exercise

- ▶ What elements of the treatment plan, if any, will you oppose, and how?
- ▶ Will you contest the treatment plan and set it for a contested hearing? Why or why not?
- ▶ Assuming you are setting for a contested hearing, what will your evidence be at the hearing?
- ▶ What arguments will you make?

*Allow them to spend 30 minutes discussing the treatment plan in their small groups, and then reconvene as a large groups and spend 30 minutes discussing the different courses of action.*

## **COLLABORATION VS. ADVOCACY SESSION 3**

**Time:** 45 minutes

**Purpose:** To examine what it means to zealously advocate for clients in a cooperative and ethical manner.

**Materials:** Handout 8: Collaboration vs. Zealous Advocacy

### **Description of Activity:**

*Participants should come to the session prepared to discuss Handout 8. This handout should be given to the participants the day before to review prior to the discussion. Make sure that everyone has a copy of the article and has read it. For the next 45 minutes, lead the participants through an interactive discussion on what it means to zealously advocate for their clients in a manner that is still cooperative and ethical. Below are some questions for discussion, but allow participants to ask their own questions and guide the conversation.*

 Slides 15 and 16: Collaboration vs. Advocacy Discussion

- ▶ *What does it mean to zealously advocate?*
- ▶ *What does collaboration mean?*
- ▶ *Do you believe that collaboration is effective?*
- ▶ *How do you let your client know that you are working for them even though you cooperate with other parties?*
- ▶ *How do smaller jurisdictions collaborate? What about larger jurisdictions?*
- ▶ *What is the decorum of each stakeholder in the courtroom? Do you give your colleagues professional courtesy?*
- ▶ *For those of you who are guardians ad litem in some cases and respondent parent counsel in other cases, what message do you think this sends to your respondent parent clients? How can you overcome this?*

## **ONE HOUR NETWORKING LUNCH**


## **PERMANENCY PLANNING HEARING SESSION 4**


- Time:** 45 minutes  
**Purpose:** To further explore the law of permanency planning  
**Materials:** Handout 9: Permanency Hearing Checklist  
Faculty Resource 1: PowerPoint Presentation

### **Description of activity:**

*The trainer spends 30 minutes on a PowerPoint presentation, exploring in depth the statute and case law around this area.*

*The following corresponds with the PowerPoint presentation slides set forth in Faculty Resource 1.*

 Slide 17: Permanency Planning

 Slide 18: Permanency Planning

- ▶ How is it defined?
- ▶ What does it mean for parents? For children?

*What does permanency mean in a comprehensive way? Brainstorm with participants. Expect to come up with a list such as:*

- *Safe, nurturing stable home environment and set of relationships*
- *Opportunity to live in permanent home, one which can be returned to for support even as an adult*
- *Intended to last indefinitely*
- *Gives child a sense of belonging and a definitive legal and social status*
- *Reflects child's wishes*
- *Reflects parent's wishes*
- *Enhances stability and reduces disruption*
- *Includes growing up with siblings*
- *Supportive and nurturing adults who care*
- *Extended family*
- *Connections to community of origin*
- *Physical, emotional, and mental needs met*
- *Educational needs met and educational opportunities provided*
- *Safety*
- *Religion and culture preserved*
- *Opportunities for healing*
- *Whenever possible, return to a safer, stronger family of origin*

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
PERMANENCY PLANNING HEARING**

📄 Slide 19: Permanency Planning Hearing C.R.S. §19-3-702

- ▶ Who is present: Anyone entitled to who wishes to be there
- ▶ Purpose: To determine the future status of the child
- ▶ Notice: All parties, caregivers, and subject children are entitled to notice and an opportunity to be heard at the permanency hearing.
- ▶ Timing:
  - EPP: Must be held 3 months after dispositional hearing
  - Non-EPP: Must be held within 12 months of removal
- ▶ Evidence: A written plan prepared by the Department and submitted to the court at least 3 days before the hearing
- ▶ Standard of proof: By a preponderance

*If at disposition, the court determines that no treatment plan was devisable, then the permanency hearing must happen within 30 days. A permanency hearing can also happen anytime someone requests a permanency hearing.*

*The Department is required to prepare a written plan and submit it to the court at least three days before the hearing. The plan should review the progress or lack thereof that parties are making on the treatment plan. It should also state a permanency plan for each child, and what efforts the department is making to finalize the permanency plan.*

*The National Council on Juvenile and Family Court Judges recommends that the court make findings regarding the facts and circumstances supporting any proposed permanency goal, and that the court should adopt a specific plan to ensure the permanency goal.*

📄 Slide 20: Adopting a Permanency Goal


- ▶ What are the options?
  - Reunification with parent or parents
  - Adoption
  - Legal Guardianship
  - Placement with a fit and willing relative (APR)
  - OPPLA (group care, long term foster care, independent living)

*Legal Guardianship: Guardianship is when the person has complete control of the child's care and the right to make major life decisions affecting the child, without the oversight of DHS. Guardian cannot make financial decisions (unless also appointed as conservator) and to agree to adoption. The Guardian is not legally responsible to support the child. Guardianship is preferred when the child has bonded with the caretaker, but the caretaker does not want to adopt the child or it would harm the child to terminate parental rights and pursue an adoption. They are very flexible, and there are very few rules/laws governing them, which can be good and bad. Since there are no clear laws saying how a guardianship is revoked or changed, judges have lots of leeway when deciding.*

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*Placement with a fit and willing relative (Allocation of Parental Rights- APR): An APR order gives the caregiver the right and obligation to care for the child and to make whatever decisions the judge grants when the order is signed. A custody order does not permanently end the rights of the parents, but they can only visit the child as provided in the order. The right to make educational decisions does not automatically come with a custody order, so it needs to either be requested separately, or the order must grant “all decision-making.” A custody order can be changed by the court. A change can only be requested once every two years, unless the judge believes that there has been a change in the custodial parent’s circumstances which create a danger to the child’s physical health or which significantly impairs the child’s emotional development because of the environment in which the child is living.*

*OPPLA (group care, long term foster care, independent living): OPPLA stands for other planned permanent living arrangement. Federal regulations define it as any permanent living arrangement not enumerated in the statute. Planned means the arrangement is intended, designed, considered, premeditated or deliberate, and includes physical placement of the child. In order to adopt an OPPLA goal, the court must first document a compelling reason why no other goal works.*

 Slide 21: Concurrent Planning

- ▶ What does it mean?
  - The Children’s Code states that efforts for adoption or placing child with a legal guardian or custodian may be made concurrently with efforts to preserve and reunify parents. C.R.S. §19-3-508 (7).
- ▶ What are the options?
  - Some courts will combine any of the permanency goals in a concurrent plan, but notice that section 508 says only adoption or custody/guardianship can be combined with reunification.

*Concurrent planning is addressed at C.R.S. §19-3-508 (7). Young people with an APPLA goal of independent living/emancipation are not entitled to Chafee services if they are living at home.*

 Slide 22: ICWA, Governed by 25 U.S.C. §1912(e)

- ▶ Standard of proof: Clear and convincing evidence
- ▶ Notice to parents, Indian custodian, and tribes usually 10 days w/ 20 additional days if requested. Requirements found at Fed. Reg. Vol. 44, Nov. 1979, B.5.
- ▶ Adoptive Placement Preferences: 25 U.S.C. § 1915(a).
  - Member of the child's extended family;
  - Other member of the Indian child's Tribe; or
  - Other Indian families.

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- ▶ Foster Care or Pre-adoptive Placement Preferences: 25 U.S.C. § 1915(b).
  - Member of Indian child's extended family;
  - Foster home licensed, approved, or specified by the Indian child's tribe;
  - Indian foster home approved by authorized non-Indian licensing authority;
  - An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- ▶ Tribal law supercedes above placement preferences. 25 U.S.C. § 1915(c).

*Remember that in ICWA cases, 25 U.S.C. § 1912(e) governs. The court may not order foster care placement without determining that clear and convincing evidence including expert testimony shows that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. §1912(e). The order must be supported by clear and convincing evidence and the testimony of a qualified expert witness.*

*Also, Department must be making active efforts to reunify, not reasonable efforts.*

📄 Slide 23: Contesting Permanency Planning

- ▶ Parent not entitled to a permanency hearing. In re M.B. 70 P.3d 618 (Colo. App. 2003)
- ▶ C.R.S. §19-3-702 (2.5) EPP cases:
  - Court may order termination filing unless: Parent visiting regularly and child benefits OR termination criteria have not been met.
- ▶ C.R.S. §19-3-702 (3) Non-EPP cases:
  - Court first determines whether child shall be returned.
- ▶ If not returned, is there a substantial probability of return in 6 months?
- ▶ C.R.S. §19-3-702 (3.5):
  - Findings as to whether procedural safeguards applied to preserve parental rights in regards to visitation and change of placement.
  - Cannot delegate all decision making regarding visitation to Department/GAL.
  - Finding that reasonable efforts have been made to ensure goal.

*The parent is not entitled to a permanency hearing. In In re M.B., 70 P.3d 618 (Colo. App. 2003), the court found that there was no error when magistrate transferred the case to the district court for a termination hearing, without first conducting a permanency hearing about the change of goal. The court found that the parent was not entitled to a permanency hearing before the transfer because the parent was able to litigate the same issues at termination.*

*In thinking about strategies to employ in a permanency planning situation, it is important to rely on the statutory language. Let's look at EPP cases first. Assessing before you go into a PP hearing what risk there is that either the Department is asking for a goal of adoption, or*


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*that the court MAY order a termination, is a critical first step. Note that court may order termination filing unless: parent visiting regularly and child benefits or termination criteria have not been met.*

*Check with your client about visitation and any excuses he or she may have for missed visitation. Try to obtain documentation around missed visits. Then, in non EPP cases, remember that the court starts by determining if the child shall be returned, or a substantial probability of return within six months. Prepare your arguments around those elements. Then, always remember to argue for procedural safeguards to preserve parental rights in regards to visitation and change of placement.*

*Court cannot delegate all decision making regarding visitation to the Department/GAL. Ask for an order that visitation may not be reduced without a court order, but that visitation may be increased with discretion of caseworker and GAL. Try to get an agreement on the record as to under what circumstances visitation will be increased. If visits are still supervised only, ask for a court order that visits be videotaped and provided to you for review. Consider reviewing the tapes with a supervisor for specific instructions as to what safety concerns the Department is seeing, and what is causing the requirement for continued supervision.*

*Note that the court must make findings that reasonable efforts have been made to ensure the permanency goal. While this is a routine goal just recited by many courts, consider this as a point of advocacy.*

 Slide 24: Out of Court Advocacy

- ▶ Team decision-making
- ▶ Family group conferencing
- ▶ Other agency staffings for change of goal

*Some departments have policies that they must convene some type of staffing if or when they are contemplating or implementing a change of placement. These staffings take different forms – team decision making meetings, family group conferencing, or agency staffings. Ask what the policy is of your department. Also ask what the policy is when there is not agreement to the plan.*

*It is crucial to receive adequate notice of the staffing ahead of time, so counsel may be present. It is not typical practice to have RPC present, so make sure to request notice of any staffings for the client. If counsel cannot attend, encourage the client to bring someone who is supportive – perhaps a victim advocate, parent mentor, or at least a family member or friend.*

*These meetings can be a great place to direct or change the movement of the case, help explain the treatment plan and progress to the client, and empower the client to have a say in the case planning.*

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🖨 Slide 25: Placement Decisions and Permanency Hearing

- ▶ Continuing placement:
  - EPP Cases:
    - Court can order the Department to show cause as to why it should not file for termination at the permanency hearing.
    - Exceptions : when parents are visiting regularly, to the child's benefit, or when the termination criteria have not yet been met
  - Non-EPP Cases:
    - Court first considers whether the child shall be returned to the parent.
    - Must address whether reasonable efforts to find a safe and permanent place for child have been made.
    - If the child is not to be returned, the court should address whether *there is* a substantial probability that the child will be returned within 6 months.
- ▶ The court is required to make findings whether to return home if the parent can provide reasonable parental care. *See In re A.W.R.*, 17 P.3d 192

*Reasonable parental care is defined as at a minimum, "providing nurturing and protection adequate to meet the child's physical, emotional, and mental health needs." In re A.W.R., 17 P.3d 192 (Colo. App. 2002).*

🖨 Slide 26: Children in Court

- ▶ Purpose:
  - Children in Colorado, and across the country, are increasingly being invited to court to participate in and observe proceedings that affect their lives.
  - In Colorado, C.R.S. §19-3-702 provides children with the right to participate in their case at the permanency hearing.
- ▶ Pros for having children appear in court:
  - Many children want to go home, and providing children the opportunity to express that to the court can be very persuasive.
  - This may be particularly important if the GAL and the child's position are different. The child should be afforded the opportunity to speak directly to the judge.
- ▶ Cons:
  - Some practitioners and judges believe that it can be harmful to children to have them in court.
  - Some parents do not want their children hearing negative information about them.

*Under C.R.S. §19-3-702, the court conducting a permanency hearing shall consult with the child in an age appropriate manner regarding the child's permanency plan. This has been*




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*construed by some courts to mean children must be present, children of a certain age must be present, or that the child's position can merely be stated by the GAL.*

*If the GAL is not supportive of reunification, consider whether he or she is the best person to report the child's wishes to the court. RPC may wish to file a motion under this section to have the child appear in court and speak to the judge in chambers.*

*The cons of this practice are that some practitioners and judges believe it is harmful to have children in court and that the children should not be exposed to the adult issues being dealt with in court. It is a good idea to check with the client about their preferences in regards to the child's appearance.*

 Slide 27: Appeals of Permanency Planning Decisions

- ▶ Final Order:
  - Permanency hearings alone are not final orders and cannot be appealed.
  - Dispositional orders can be appealed.
  - Termination orders can be appealed as a matter of right.
- ▶ Interlocutory Appeals:
  - No interlocutory appeals or appeals viable at any other points during the case.
- ▶ Magistrate/District Court Judge:
  - PP orders made by a magistrate may be appealed to the district court.
  - Parents can withdraw their consent to a magistrate before the permanency hearing and ask that it be set before the trial court.

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
EXERCISE 2: PERMANENCY PLANNING HYPOTHETICALS**

**PERMANENCY PLANNING: HYPOTHETICALS  
EXERCISE 2**

**Time:** 45 minutes

**Purpose:** To apply the permanency options in practice

**Materials:** Handout 10: Permanency Planning Hypotheticals

**Description of Activity:**

*In this activity, participants review and discuss various case scenarios and the permanency options available for families. Participants are asked to examine the permanency options in their role as RPC. Participants are to consider what counsel they would provide to their clients under the given facts.*

*Participants should be broken into small groups of 5 to 8 for discussion. Then they will spend five minutes reading the short fact scenarios and 15 minutes discussing them. The last 10 minutes or so should be used to discuss the hypotheticals in the large group. The hypotheticals provide difficult facts for exploring permanency in a domestic violence example, for a teen parent, and for a non-custodial father.*

*The questions below are provided on the handout for participants to consider:*

☞ Slide 28: Permanency Planning Exercise

- ▶ What are the permanency options?
- ▶ How will you advocate for what the client wants? What is the best advocacy route?
- ▶ How will you counsel these clients?

**15 MINUTE NETWORKING BREAK**

## **TERMINATION OF PARENTAL RIGHTS HEARING SESSION 5**

**Time:** 45 minutes


**Purpose:** To further examine the termination of parental rights stage of a child welfare case

**Materials:** Handout 11: Termination Hearing Checklist  
Handout 12: Sample Cross Examination of a Caseworker  
Handout 13: CJD 04-05  
Handout 14: CJD 87-01  
Faculty Resource 1: PowerPoint Presentation

### **Description of Activity:**

*In this activity the trainer reviews the termination statute and case law in Colorado. The following corresponds with the PowerPoint presentation slides set forth in Faculty Resource 1.*

 Slide 29: Termination of the Parent Child Legal Relationship

 Slide 30: Termination Hearing

- ▶ Purpose:
  - To terminate the parent-child legal relationship and to make the child available for adoption
- ▶ Timing:
  - Must be held within 120 days of the motion for termination's filing.
- ▶ Evidence Considered:
  - The rules of evidence apply, including hearsay, and the court considers the testimony of the witnesses and any exhibits.
  - The court cannot consider polygraph examination, or the opinion of an expert who bases an opinion on polygraph evidence. *In re M.M.*, 215 P.3d 1237 (Colo. App. 2009).
- ▶ Standard of Proof:
  - Clear and convincing evidence
  - ICWA: proof beyond a reasonable doubt

*Termination must be filed for every child who has been in the care of the Department 15 of the past 22 months, unless good cause is shown, such as the child is in a relative's care. In reality, the motion for termination gets filed either more quickly, or not, depending on the jurisdiction.*

*Parental rights can be terminated as to only one parent, but that is atypical.*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM TERMINATION OF PARENTAL RIGHTS

*The burden is on the department to prove by clear and convincing evidence that the grounds for termination exist and that it is in the child's best interests to terminate. If it is an ICWA case, then the proof must be beyond a reasonable doubt.*

*Parties are not entitled to a jury trial. Children over 12 must consent to an adoption.*

### Slide 31: Statutory Grounds for Termination

- ▶ Most common: failure to complete treatment plan
  - Requires 4 elements:
    - Child was adjudicated dependent or neglected
    - The Court ordered treatment plan failed
    - Parent is unfit
    - Parent's conduct or condition is unlikely to change within a reasonable time
- ▶ Others: unfitness, abandonment for 6 months or more.

*Unfitness may be based on mental illness, child's injury, habitual abuse, child sexual abuse, incarceration for 6 years or more, or torture. Abandonment means parent had no intent to parent, and did not parent, for 6 months or more.*

*Parent's failure to visit, without good cause, shows that the plan has failed. The plan has failed if the parent is unable or unwilling to give "reasonable parental care," which includes at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental needs and condition.*

*The amount of time a parent is given to work his or her treatment plan really varies. The court has held that 9 months is enough time between adopting the treatment plan and the termination hearing. In re T.S.B., 757 P.2d. 1112 (Colo. App. 1988), *aff'd* 785 P.2d 132 (Colo. 1990).*

### Slide 32: Termination With No Treatment Plan

- ▶ Grounds, C.R.S. §19-3-508 (1)(e)(1):
  - At disposition, the court must order a treatment plan unless it finds that no treatment plan can be developed to address the parent's unfitness.
- ▶ Procedure:
  - If no treatment plan is devisable, then the court must hold a permanency hearing w/in 30 days unless a termination motion is filed.
  - Court can hold dispositional and termination hearing at the same time.
  - Cannot hold termination hearing if there was no dispositional hearing.
- ▶ Defenses?
  - None of the grounds for failing to provide a treatment plan are mandatory

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM TERMINATION OF PARENTAL RIGHTS

- *In re E.IC*, 958 P.2d 511 (Colo. App. 1998): Court may adopt a treatment plan for parent who will be incarcerated for at least 6 years given factors such as the child's age and supportive family members.

*Only certain grounds can be considered: Abandonment, mental health, incarceration for 6 years or more, gravely disabling injury to the child, death or serious bodily harm to a sibling, habitual abuse, patterned sexual abuse, or torture. In reality, the ground most typically used is incarceration.*

*Other defenses that people have seen?*

### Slide 33: Termination Process

- ▶ Filing of motion:
  - The Department or GAL must file a separate motion for termination
  - Must be filed at least 30 days before the termination hearing
- ▶ Pretrial hearing
- ▶ Setting a hearing:
  - EPP cases: must set a hearing on the motion within 120 days of filing the motion unless good cause is shown for an extension.
- ▶ Trial management: witness lists, subpoenas
- ▶ Options/relinquishment counseling

*Typically, the court will schedule at least one pretrial hearing to review trial issues and progress on the treatment plan. This is often a chance to seek a delay in the setting of the termination hearing. The court must advise the client as to her rights in a termination action. These rights include the general rights entitled to respondents, with the addition of the right to a court appointed independent expert if indigent.*

*Be prepared to exchange witness lists at least 10 days before trial, and to issue subpoenas (either attorney or court), well in advance. Experts and expert reports must be exchanged 15 days before trial.*

*If the client is considering relinquishment, he or she needs to receive relinquishment counseling prior to entering the relinquishment. This is also called "options" counseling in some places. The Department should provide this service.*

### Slide 34: Admissions

- ▶ Relinquishment or confessing the motion?
- ▶ Filing a motion or making oral record
- ▶ Appeals

*Again, for relinquishment there is a counseling prerequisite. Also, most courts prefer to that RPC file a motion or petition for relinquishment in advance of the hearing, and that counsel take testimony from the parent as to the voluntariness of the relinquishment.*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM TERMINATION OF PARENTAL RIGHTS

*To confess the motion of termination does not require counseling and typically happens on the day of trial. An advantage to relinquishment relates to any future children the respondent may have. A prior involuntary termination can be grounds to find a parent unfit, and not eligible for a treatment plan, in any subsequent dependency and neglect cases that he or she may have.*

### 🖨 Slide 35: Experts- For the Defense

- ▶ When?
  - File a motion to the court requesting the appointment of, and payment for, an independent expert after the motion for termination has been filed.
  - If the expert will be testifying, his or her report must be made available to all parties at least 15 days before trial.
- ▶ Paying for them:
  - Indigent respondents are entitled to one court appointed expert at state expense
  - If the parent is dissatisfied with the expert's report, he or she cannot seek another expert at state expense.

*Generally speaking, an expert retained by the parent is subject to attorney-client privilege and may not reveal the parent's communications. Counsel may also prevent the expert from testifying for the other side. If, however, the expert conducts an evaluation with the parent and anyone else, such as the child in a parent child interactional, that is not protected information.*

### 🖨 Slide 36: Good Experts for the Defense

- ▶ Who are they?
  - Substance Abuse Counselors
  - Parenting Educators
  - Mental Health Professionals
  - Probation/Parole Officers
  - Case Managers
  - Check to make sure your expert's license is in good standing, and not subject to restrictions or disciplinary action: <https://www.doradls.state.co.us/alison.php>
- ▶ What makes an expert good for the parent?
  - APA Guidelines: Guidelines for Psychological Evaluations in Child Protection Matters (APA 1999): available online at <http://www.apa.org/practice/guidelines/child-protection.pdf>

*Finding a good expert can be difficult. Looking for a neutral party with the appropriate expertise is crucial. Discovery is the first place to start in seeking experts for your clients. Although respondent parents are entitled to hire one expert of their choosing, counsel should also seek out treatment providers who have worked with the client and have expertise and good recommendations to share. These experts can be found by identifying everyone*

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*who has worked with your client, and conducting initial interviews. Also, clients may be a great resource and may be able to refer you to professional with whom they have established good rapport.*

*If looking to hire an expert for an evaluation, counsel must find an expert willing to accept state pay for an evaluation. Remember to review and reference Handout 13: CJD 04-05 and Handout 14: CJD 87-01, which deal with experts.*

*Types of Evaluations: Most counsel seek a psychological evaluation, psychiatric evaluation, or parent child interactional. The first two may be sought under the theory of defense that the treatment plan was not reasonable or appropriate because of a misdiagnosis. The latter may be sought to show the parent's capacity for parenting, to contest the "unlikely to change within a reasonable time," or to illuminate the parent child bond.*

*A good expert will review the information from the department (remember garbage in, garbage out), assess the parent's strengths and weaknesses, and give credible opinions. The expert should be able to educate you about the department's position, their treatment plan, and its appropriateness and the chance for success under the treatment plan. What else have participants seen that makes a good expert?*

*Sharing information with other counsel is also helpful – ask around for recommendations. However, do not stop with just the usual suspects. Do your own research about possibly untapped professionals in the community.*

*Lastly, you do not want to find out on cross examination that your expert has been the subject of discipline action in his or her field. Check the Department of Regulatory Agencies online, and the link above is a good place to start.*

### Slide 37: Depositions

- ▶ Who to depose?
  - Careful decisions about who to depose need to be made.
- ▶ Rules governing:
  - Colorado Rules of Civil Procedure R. 26, 27, 30, 31.
- ▶ How to use deposition?
  - Can be used for formulating a theory of defense, preparing for cross examination, and impeachment material.
- ▶ Paying for it:
  - There is a disagreement regarding who will pay for them and whether they are permitted under the CJDs.
  - An application has to be made to the court to approve the expense.

*Depositions are very rare in dependency and neglect practice.*

### Slide 38: Getting Ready for Trial

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- ▶ Discovery
- ▶ Trial notebooks
- ▶ Pretrial motions
- ▶ Witness selection
- ▶ Client communication and preparation
- ▶ Preparation and practice

*It is important to understand the county's provision of discovery. Make sure to ask for updated records and to get all visitation notes, not just the summaries in the caseworker's files. Counsel can consider asking that visits be videotaped and can obtain copies for review.*

*Counsel should consider all the necessary elements of trial practice and allow plenty of time to prepare and over-prepare. Handouts 2, 3, and 11 are good resources to review prior to trial.*

### Slide 39: Getting Ready for Trial Continued

- ▶ Decision making between lawyer and client
- ▶ Objectives
- ▶ Method
- ▶ Emotional aspects

*Talking to the client about potentially losing parental rights to his or her children will certainly be a difficult and emotional conversation. It is most important to listen to the client and learn about the client's objectives, concerns, and desires concerning his or her child, the legal process, and counsel's representation. RPC should fully inform the client about the possible outcomes of litigation. Take the time to explain the pre-trial and trial process, as well as the client's options for appeal should the result be unfavorable. The client will make the final decision about how to proceed, and it is the advocate's duty to make sure the client is fully informed and emotionally ready to decide.*

### Slide 40: Trial

- ▶ Failure to Appear:
  - If the client fails to appear on the day of the termination trial, the court will proceed by default. The Department may choose to proceed with an offer of proof, submit the termination report written by the caseworker, and/or call the caseworker to the stand to testify.

*Under the CBA Ethics Committee Formal Opinion 114, the attorney may agree to, or not object to, presentation by offer of proof, if the client does not appear. The attorney must, however, continue to advocate for the client, even in the client's absence.*

### Slide 41: Parent as Witness- Preparation for Direct Examination

- ▶ What to ask:



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- Walk the client through a basic social history, including early family life, adolescent development, significant life occurrences, and overcoming hardships.
- Ask about motivation, parent-child relationship, and parenting experiences.
- ▶ How to proceed:
  - Emphasize the client's parenting ability and ability for change. The goal is to portray for the court the treatment plan through the client's eyes, and her compliance and rehabilitation.
  - Be as specific as possible, and use examples that may have outside verification as well.

*Perhaps the most successful direct examinations focus on humanizing the client and attacking the unlikely to change within a reasonable period of time element of the case. Many clients begin to comply at the end of the treatment plan, perhaps when they start to realize how serious the case has become.*

### Slide 42: Other defense witnesses

- ▶ Who?
  - Those who have experience with the client and can attest to client's strengths and ability to appropriately parent.
  - Service providers who can talk about client's motivation and success in treatment.
- ▶ What purpose?
  - To present a picture of the client not otherwise seen by the court
  - To humanize the client
  - To illustrate the client's strengths, when not under the glaring spotlight of the Department
- ▶ Background checks for non-professional witnesses: no surprises on cross!
- ▶ Limit inquiry? Careful not to open the door too broadly

*Early in the case counsel should talk to the client about people who know her well and who support her. Keep a list of potential witnesses who have experience with the client, who have seen her grow or change, who can talk about her strengths and not just her weaknesses, and who have observed her with her children. It is important to encourage this person to continue to play a role in your client's life throughout the case, and perhaps even get permission for this person to attend, observe, or even supervise visits at different points.*

*RPC may also want to consider witnesses who can attest to client's ability to maintain a home, plan a schedule, and maintain employment. Additionally, service providers who can talk about the client's treatment, and success, and motivation are helpful witnesses.*

*For non-professional witnesses, a background check is probably a worthwhile inquiry. Counsel should ask potential witnesses about any child welfare history, either in Colorado or other states. Be careful in witness interviews to understand where there may be pitfalls. For example, a friend might also be the client's dealer. This could be a disaster waiting to happen on the stand.*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM TERMINATION OF PARENTAL RIGHTS

### Slide 43: Successful Defenses

- ▶ Cause of action
- ▶ Proof
- ▶ Case law
  - *In re M.B.*, 70 P.3d 613, 627 (Colo. App. 2003)
- ▶ Impact

*Unfortunately, there is very little Colorado appellate law overturning terminations. The reversal rate for terminations in 2007 was 4.1%. “Dependency and Neglect Appeals Under C.A.R. 3.4”, Eibsen and Gray, 36 Colo.Lawyer 10, 55 (2007). Counsel have at times won at the trial level by arguing a less drastic alternative to termination is appropriate. However, the case law on less drastic alternatives really focuses on the child’s needs and is not very useful.*

*In considering less drastic alternatives, the trial court must give primary consideration to the physical, mental, and emotional conditions and needs of the child C.R.S. §19-3-604(3). Thus, long-term placement or legal guardianship with a relative is not a viable less drastic alternative if the child needs a stable, permanent home that can be assured only by adoption. *In re M.B.*, 70 P.3d 613, 627 (Colo. App. 2003).*

*Other states similarly have a wealth of good case law for parents at the termination stage. New York has had success with older children freed for adoption. In part because the D&N process and appeals can take several years, the appellate courts there consider the current circumstances of the child at the time. In the intervening years, the parent may have rehabilitated or the child has decided against adoption.*

*Are there other examples of good defenses?*

### Slide 44: ICWA

- ▶ Burden of proof:
  - Proof beyond a reasonable doubt
- ▶ Witnesses:
  - The expert does not need to be qualified in cultural practices or affairs unless the parent’s deficiencies have a cultural component. *People in Interest of A.N.W.*, 976 P.2d 365 (Colo. App.1999).
- ▶ Required findings:
  - Continuing custody with the parent would result in serious emotional or physical damage to the child; and
  - The department made active efforts to reunify the family.

*ICWA cases require proof beyond a reasonable doubt. A qualified expert must show that continuing custody with the parent would result in serious emotional or physical damage to the child, and the department made active efforts to reunify the family.*

## BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM TERMINATION OF PARENTAL RIGHTS

*The Court has found that: “if termination is based on parental unfitness unrelated to Indian culture or society, then... it is sufficient if the witness has substantial education and experience in his or her area of specialty.” People in Interest of A.N.W., 976 P.2d 365 (Colo. App.1999).*

*In that case, the unfitness was based on father’s emotional illness, a consideration that the court found to be culturally neutral. “Thus, the witness qualified to testify as an expert pursuant to 25 U.S.C. § 1912(f) and was not required to have special knowledge of Indian life.” Id.*

### 🖨 Slide 45: When the court enters the order

- ▶ At the end of the trial, the court delivers the findings and order from the bench.
- ▶ Sometimes it is a bad moment:
  - How to prepare your client
  - What to do while the court is reciting the decision
- ▶ Afterwards: Goodbye visits and memory books

*Counsel must decide how to prepare the client for the court’s decision, the termination process, and help the client decide whether or not he or she wants to stay for the entire decision. Make sure to have accurate contact information for the client at this point. During the decision, many parents break down or leave the courtroom. The courts often address parents directly, and are compassionate and sympathetic. Nonetheless, the rendering of the decision can be very difficult for parents.*

*Most attorneys seek a goodbye visit for their clients after the court enters the orders. Many departments also have protocols about goodbye visits, and some counties encourage parents to make memory books for their children. It is important to be able to contact the client after the termination decision to discuss the possibility of an appeal and any process for goodbye visits.*

### 🖨 Slide 46: Appeals C.A.R. 3.4

- ▶ Timeline:
  - C.A. R. Rule 3.4 requires that a notice of appeal must be submitted to the court of appeals within 21 days of the order terminating parental rights.
  - The record for appeal is due 40 days after filing the notice of appeal.
- ▶ Requirements:
  - The parent must sign the notice of appeal, or counsel must state that the parent has authorized the filing of the appeal.
- ▶ Elements:
  - Notice of Appeal and Designation of Record,
  - Record,
  - Petition on Appeal and copies of D & N petition, motion to termination, trial court’s adjudicatory order, and/or order of termination, and rulings on any post-trial motions.

**BUILDING A DEFENSE AND HELPING FAMILIES IN THE CHILD WELFARE SYSTEM  
TERMINATION OF PARENTAL RIGHTS**

- ▶ Which attorney?
  - Typically, trial counsel handles appeals by their clients. There may be designated counsel in your county available as appellate attorneys.

*Counsel may ask for an expedited, unedited version of the record to use in preparing the appeal.*

*The record for appeal is due 40 days after filing the notice of appeal. The notice of appeal and designation of record must be signed and filed by the TRIAL ATTORNEY!*

## **CONCLUSION: HOW CAN I IMPROVE THE SYSTEM? BEST PRACTICES?**

### **SESSION 6**

**Time:** 45 minutes

**Purpose:** To

**Materials:** Faculty Resource 1: PowerPoint Presentation  
Handout 15: Insider's Guide to Colorado Practice Material  
Handout 16: Resource Guide  
Handout 17: Bibliography

#### **Description of Activity:**

*During this session, participants are back in a large group. Participants will share their own stories of success in trial practice from disposition to termination of parental rights. Ask the participants to share what theories have worked, what experts have they used, what services have they utilized, and what other advice do they have to share with colleagues.*

*In addition, participants will discuss the complicated advocacy ethics of practicing with the same people and before the same judges over time. Ask participants to consider critically how they advocate for clients, when the institutional pressure is to not waste the court's time and preserve your own credibility at all cost. The following slides will help stimulate the conversation and allow participants to examine their own practices.*

🖨 Slide 47: Concluding Discussion: How Can I Improve the System?

🖨 Slide 48: Improving the System and Best Practices

- ▶ Are we, at times, unconsciously providing a form of “wink wink” advocacy – where we signal to the court that although we are making this request on behalf of the client, we do not really think the request should be granted?
- ▶ Are we telling each client's story in a fair, empathetic, persuasive manner?
- ▶ What success stories can we share with each other? What triumphs can we share? What tips do we have for each other?
- ▶ Best Practices

*Review resource material. Handout 13 from the previous day is the evaluation for this training – please have participants spend a few minutes completing it and turning it in. Handout 15 is a basic legal research review guide from CU Law Librarian, Alan Pannell. Handout 16 is a general guide to juvenile law resources reprinted from the Colorado Lawyer, and Handout 17 is the Bibliography from this training.*

*Answer any final questions participants may have. Thank participants for attending the training and provide them with some motivating thoughts to conclude the training.*

**AGENDA- DAY 2**  
**Respondent Parent Counsel Training**  
**Building a Defense and Helping Families in the Child Welfare System**

<b>8:30 am – 9:00 am</b>	<b>Registration and Breakfast</b>
9:00 am – 9:15 am	Welcome and Feedback Loop
9:15 am – 10:20 am	Dispositional Hearing PowerPoint Presentation
<b>10:20 am – 10:30 am</b>	<b>Break and Networking</b>
10:30 am – 11:30 pm	Dispositional Hearing Exercise- <i>Breakout Groups</i>
11:30 am – 12:15 am	Collaboration vs. Advocacy Discussion
<b>12:15 pm – 1:15 pm</b>	<b>Networking Lunch</b>
1:15 pm – 2:00 pm	Permanency Planning Hearings PowerPoint Presentation
2:00 pm – 2:45 pm	Permanency Planning Exercise- <i>Breakout Groups</i>
<b>2:45 pm – 3:00 pm</b>	<b>Break and Networking</b>
3:00 pm -3:45 pm	Termination Hearing PowerPoint Presentation
3:45 pm – 4:30 pm	Discussion and Conclusion: How Can I Improve the System? Best Practices?

**EVIDENCE AND OBJECTIONS<sup>1</sup>**

**1. INTRODUCTION**

These materials are not intended as a review of the law of evidence, but deal only with specific evidentiary areas that commonly arise. With this in mind, the following materials should help familiarize you with evidence problems and provide a basis for further research. Basic evidentiary sources include the Colorado Rules of Evidence (C.R.E.), found in Volume 12 of the Colorado Revised Statutes, Bailin, et al., COLORADO EVIDENTIARY FOUNDATIONS, and Best, et al, COLORADO EVIDENCE 2004 COURTROOM MANUAL.

**2. CHECKLIST OF COMMON OBJECTIONS**

**a. Objections to the Form of the Question:**

- i. Ambiguous: The question is vague or is capable of more than one interpretation.
- ii. Argumentative: Jury argument in the guise of a question.
- iii. Asked and Answered: Repetitive, unnecessary, and time-consuming.
- iv. Assumes a Fact Not in Evidence: Exception for hypothetical questions.
- v. Calls For Narrative Answer: Danger is that witness will stray.
- vi. Compound: Two or more questions in one.
- vii. Leading: Generally not permissible on direct; generally allowed on cross.
- viii. Mischaracterizes the Evidence: Either testimony or an exhibit.
- ix. Testimony by Counsel: Even cross-examination must be by question

**b. Objections to Exhibits:**

- i. Hearsay: C.R.E. 801 et seq.
- ii. Insufficient Foundation: C.R.E. 901 et seq.
- iii. No Authentication: C.R.E. 901 et seq.
- iv. Not Original Document: C.R.E. 1002
- v. Prejudicial and Not Probative: C.R.E. 401, 42 and 403
- vi. Reading From Exhibit That Has Not Been Admitted: Foundation first.

**c. Objections to Testimony:**

- i. Calls for Legal Conclusion: Invades the province of the judge.
- ii. Calls for Conclusion or Speculation by Witness: C.R.E. 602
- iii. Examination Outside the Scope of Direct or Cross Examination: C.R.E. 611
- iv. Hearsay: C.R.E. 801 et seq.
- v. Improper Lay Opinion: C.R.E. 701

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<sup>1</sup> Excerpted from the Criminal Practice Manual, written by Clinical Professors H. Patrick Furman, Robert Dieter, and Ann England, for the Criminal Defense Clinic at the University of Colorado Law School.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

- vi. Improper Expert Opinion- Foundation: C.R.E. 702
- vii. Improper Expert Opinion- Basis of Opinion: C.R.E. 703
- viii. Irrelevant: C.R.E. 401
- ix. Outside Scope of Witness' Knowledge: C.R.E. 602
- x. Parole Evidence Rule Violated: Admissible if writing is ambiguous.
- xi. Prejudicial or Inflammatory: C.R.E. 403
- xii. Privileged: Codified at C.R.S. 13-90-107
- xiii. Remote so Not Probative: C.R.E. 403
- xiv. Speculative: C.R.E. 602
- xv. Unresponsive: May be made only by examining counsel.
- xvi. Witness Reading Memoranda: This is hearsay.

### 3. **DEMONSTRATIVE EVIDENCE AND DIAGRAMS**

#### a. **Demonstrative Evidence:**

Demonstrative evidence depicts something at issue in the case. It is not admissible unless it fairly and accurately portrays or illustrates relevant facts, and helps the jury understand the testimony about those facts. Examples of demonstrative evidence are photographs, diagrams, models, charts, summaries, re-enactments, videotapes, skeletons, sketches, etc. Demonstrative evidence is distinguished from real evidence in that real evidence is an object which is significant in and of itself, like a bloody shirt in an assault case, a bag of marijuana in a possession case, etc.

#### b. **Diagrams:**

Most diagrams are demonstrative evidence. Demonstrative diagrams have no probative value themselves, but serve merely as a visual aid to the jury in comprehending the testimony of a witness. If the diagram has significance beyond this purpose, it is documentary evidence and requires a different foundation.

Admission of diagrams is discretionary with the trial judge. Admissibility is determined by whether the diagram will be helpful or will tend to confuse or mislead the trier of fact. Once the proper foundation is established (i.e., that it is authentic and a true and accurate representation of what the witness is trying to describe), the diagram may be admitted. If it is admissible only as an aid to understanding testimony, the manner in which it was produced is generally of no significance, although you may want to lay this foundation for advocacy reasons. A diagram need not be a perfect recreation of the scene to be admissible.

A diagram should not be shown to the jury until a proper foundation has been established. Likewise, if a diagram is to be used during opening statement, counsel must ask permission of the court and represent that a proper foundation will be laid through a particular witness. There may be times when it is appropriate to stipulate to the admission of such an exhibit; but this is less



## HANDOUT 2: EVIDENCE AND OBJECTIONS

frequently the case when the exhibit is offered as evidence other than for illustrative purposes. If the exhibit is offered only for illustrative purposes, you may want to request a cautionary or limiting instruction to the jury to that effect.

### c. Foundations:

The foundation for every exhibit is different.<sup>2</sup> What follows is an example of a typical foundation, offered to support the introduction of a drawing of the Pearl Street Mall. The drawing is being used to illustrate the officer's testimony about where the defendant was found as part of a prosecution of the defendant for violating a court order to stay off of the mall.

- i. Are you familiar with the physical layout of the Pearl Street Mall? *Yes*
- ii. Where is that mall? *In downtown Boulder, Colorado.*
- iii. How is it that you are familiar with the mall? *I've lived here for over twenty years and that portion of town is also part of my regularly assigned police beat.*
- iv. May I approach the witness? *The Court: You may.*
- v. Let me show you what has been marked for identification as Exhibit "A". Have you had an opportunity to examine it? *Yes, I have.*
- vi. What is it? *It's a map or drawing of the mall and the surrounding area.*
- vii. Who created this drawing? *I did.*
- viii. When was it created? *About an hour ago.*
- ix. Is this drawing a fair and accurate representation of the Pearl Street Mall as it existed on the day you arrested the defendant? *I believe so.*
- x. Is this drawing to scale? *No, but all the buildings and streets and the like are in the right spots.*
- xi. Would the use of this diagram help the jury understand your testimony? *I think it would.*
- xii. Your honor, I offer People's Exhibit A.
- xiii. The Court: Any objection, counsel?
- xiv. Defense counsel: No objection as long as the jury is instructed that the map is being admitted only for the limited purpose of helping explain the testimony and not as an accurate map of the area.
- xv. The Court: It will be admitted subject to that limitation.

### 4. SAMPLE EXHIBIT CHECKLIST

In re: \_\_\_\_\_ Hearing Type: \_\_\_\_\_ Date: \_\_\_\_\_ Judge: \_\_\_\_\_

NO.	DESCRIPTION	OFFERED/ADMITTED
1/A	_____	_____
2/B	_____	_____
3/C	_____	_____
4/D	_____	_____

<sup>2</sup> See Colorado Evidentiary Foundations, Bailin et al., Chapters 1 and 4.

5. **GENERAL PROCEDURES FOR HANDLING EXHIBITS**

a. **Mark the Exhibit for Identification:**

In courts with a reporter, the actual marking will be done by the reporter. In courts without a reporter (most county and municipal courts) the marking is done by counsel or the court. Exhibits are marked in sequence with either a number or letter of the alphabet, for example: PEOPLE’S EXHIBIT “A” or DEFENDANT’S EXHIBIT “1”. In all subsequent testimony, the Exhibit should be referred to by that designation. Groups of items of a similar nature may be marked and identified collectively as a single exhibit.

To avoid delay and loss of interest by the judge or jury, try to mark exhibits prior to trial, during a recess or all at one time. Exhibit stickers are available from the court or Legal Aid. If the court reporter is marking the exhibits, be sure the reporter has finished marking the exhibit before beginning your examination of the witness.

Some courts are now requiring that as many exhibits as possible be pre-marked and placed into juror notebooks. Only those exhibits that both parties believe will be admitted should be placed in these notebooks.

b. **Lay the Proper Foundation With the Witness:**

Until admitted, the exhibit should be referred to as “What has been marked for identification as Exhibit A.” Once admitted, the exhibit should thereafter be referred to as “Exhibit A.” Once the exhibit has been marked, counsel should describe it for the record. This description need only be sufficiently detailed to distinguish the exhibit from all other exhibits in the case. As noted, the specific foundation varies according to the exhibit, but all foundations must meet certain requirements:

Relevancy: The exhibit must be relevant and material to an issue in the case, i.e. it must bear upon a fact of consequence to the case. The fact need not be contested.

Authenticity: The exhibit must be clearly identified as to what it purports to be and the exhibit must be authentic, i.e., it must be in fact what it purports to be.

Condition: Physical evidence must be in the same condition as it was at the relevant time and the chain of custody must be established.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

Fairness and/or Accuracy: Photographs, drawings, models and the like must be shown to be fair and accurate representations of what they purport to be. Also, an exhibit may not be prejudicial or inflammatory.

Opposing counsel may ask permission of the court to “voir dire” or to “examine the witness on foundation.” Voir dire is discretionary with the court and is restricted to questions concerning the evidentiary foundation for admissibility or competency of the exhibit, that is, authenticity of a document, chain of custody and the like. Questions directed to the weight to be given the exhibit, once it is admitted as evidence, must be asked during cross-examination.

What follows is a typical foundation for a photograph offered to illustrate the testimony concerning the scene of an alleged assault.

- Q: Let the record reflect that I am offering Defendant’s proposed Exhibit 1 to the prosecutor. May I approach the witness?
- A: The Court: You may.
- Q: I hand you what has been marked for identification purposes as Defendant’s Exhibit 1. Do you recognize that?
- A: Yes, I do.
- Q: What is it?
- A: It’s a picture of my front yard.
- Q: What is your address?
- A: 1920 Ford Avenue, Boulder, Colorado.
- Q: Are you familiar with that yard?
- A: Yes, I’ve lived there for three years.
- Q: Did you live there on the day the assault allegedly occurred?
- A: Yes, I did.
- Q: Who took the picture?
- A: My wife did.
- Q: When did she take it?
- A: About an hour after the fight.
- Q: Is it a fair representation of how your yard looked that day?
- A: Yes.
- Q: Your honor, I’d offer Defendant’s Exhibit 1.
- A: The Court: Any objection?
- Q: The Prosecutor: May I voir dire the witness, your honor?
- A: The Court: You may.
- Q: Did you say that the picture was taken about an hour after the fight?
- A: Yes.
- Q: So, it was taken about 7:00 p.m., right?
- A: That’s right.
- Q: It was darker at 7:00 p.m. than it was when the fight occurred, wasn’t it.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

- A: A little, I suppose.
- Q: Your honor, I object on the ground that while the photo may show the same area, the difference in the lighting situation will tend to confuse the jury. This photo makes the area seem much darker than it really was at the time of the fight.
- A: The Court: Any response?
- A: By Defense Counsel: Your honor, that objection goes to weight, not admissibility. The witness has testified that it is a fair and accurate depiction.
- A: The Court: I'll admit it.

### c. **Admit the Exhibit:**

The record should clearly reflect that the exhibit has been offered into evidence and the court has either rejected or received the exhibit as evidence. Sometimes the court will reserve a final ruling on admissibility subject to “connecting-up” the exhibit into evidence prior to resting.

Sometimes, counsel may also wish to show or read from the exhibit to the trier of fact. “If the court pleases, may I show Defendant’s Exhibit No. 1 to the jury?” Alternatively, counsel may have copies of an exhibit to pass out to jurors.

### d. **Examine the Witness:**

The witness is not allowed to testify concerning contents of the photograph or explain its significance until this foundation has been laid and the exhibit formally offered and admitted into evidence by the court. Only now may the witness describe the yard in detail and relate what is depicted in the photograph to other evidence concerning the assault.

During cross-examination, opposing counsel may repeat some of the foundation questions asked on voir dire, and may now ask the questions going to the importance or meaning of the exhibit. It is completely within the power of the jury to determine what weight, if any, to give this photograph or any other exhibit admitted in the case.

### e. **Juror Notebooks:**

All the “paper” exhibits intended on being used at trial can be bound together in a three-ring notebooks or some other method. Each exhibit should be clearly marked with the exhibit number. The jurors will be able to refer to this copy in the jury room during deliberations. Juror notebooks may also be used during trial so the jurors may refer to an exhibit when it is admitted into evidence.

6. **“GUT-CHECK GUIDE” TO EVIDENTIARY FOUNDATIONS<sup>3</sup>**

a. **Some General Observations:**

Trials are adversarial forums where parties attempt to establish facts and recreate a past event or circumstance. Parties do this by presenting testimonial evidence through witnesses or by introducing documentary, real or demonstrative evidence.

The purpose of a trial is to ascertain the truth. Although the rules of evidence are designed to facilitate the ascertainment of the truth, sometimes the rules sacrifice the ascertainment of truth to uphold special societal values (See Rules 407-411; 501).

b. **Evidence Must be Relevant:**

“Relevance” is a necessary condition of admissibility with respect to all evidence. Colorado Rules of Evidence 401 and 402. Evidence is relevant if, as a matter of logic, experience, and accepted assumptions concerning human behavior, it possesses “any” tendency to make the existence or “non-existence” of a fact that is of consequence to the determination of an action more or less probable than it would be without the evidence.

c. **Foundations for Evidence:**

The proponent of the evidence has the burden of showing that the evidence is admissible. C.R.E. 901(a).

Although leading questions may be used to establish a foundation, is counsel in fact testifying?

An opponent can ask questions to show that the evidence does not satisfy the requirements of admissibility. This “voir dire” or questioning in aid of making an objection is distinct from the right to cross-examine on the evidence as to weight and credibility. C.R.E. 104 (e).

Foundation is a matter of law. C.R.E. 104(a). Simply stated, “foundation” is all the various components of admissibility. The court must conclude that the foundation which is offered is sufficient to permit a reasonable juror to find that the evidence in question is what its proponent claims it is and otherwise satisfies the rules of evidence. If upon consideration of the evidence, its authenticity and the challenge by the opponent, as a whole, the court determines that the evidence is sufficient to support a finding by a reasonable juror that the matter in question is what its proponent claims, the evidence will be admitted. All that is required is a prima facie showing on this threshold question. The ultimate decision is with

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<sup>3</sup> © 1987 by Robert J. Dieter.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

the jury to decide whether or not to rely on the evidence and they are so instructed - the “Weight” vs. “Admissibility” question. Proof of authenticity may be direct or circumstantial. The proponent need only establish a rational basis from which the jury may conclude that the evidence is what it purports to be.

### d. Evidence Must be More Probative Than Prejudicial:

C.R.E. 403 almost always overrides all the other rules. Even if an exhibit is properly authenticated, or fair and accurate, or otherwise admissible, if the court determines that the probative value is significantly outweighed by the danger of unfair prejudice, a waste of time, confusion of the jury, etc., the Court may exclude the exhibit pursuant to C.R.E 403.

### e. What Kind of Evidence is This? The Four Categories:

#### i. Is This Testimonial evidence?

*Relevance:* C.R.E. 401. Does the testimony have some rational tendency to prove or disprove a fact in issue?

*Personal Knowledge:* C.R.E. 602. Where is this person getting this information? Unless the person is an expert, the witness must be testifying from his own observations and sensory perceptions.

*Opinions:* C.R.E. 701 and 702. Is the witness stating opinions or facts? Is the witness testifying to something that requires special knowledge, skill, experience, training or education? If so, the witness needs to be qualified as an expert.

*Hearsay:* C.R.E. Art. 8. Is the statement which this witness is testifying to or about a statement made while the declarant was testifying at a trial or other hearing? If not, and if the content of the statement is being offered to prove the truth of the matter asserted by the declarant in the statement, the testimony is hearsay and an exception is required. The usual exceptions to hearsay are:

1. It's not hearsay because it's not offered for the truth.
2. If offered for the truth, the statement reveals the speakers state of mind. C.R.E. 803 (3).

*Privilege:* C.R.E. 501; § C.R.S. 13-90-107. Is the testimony a privileged communication?

*Competency:* C.R.E. 601 and 104(a). Is the witness competent?

## HANDOUT 2: EVIDENCE AND OBJECTIONS

*Character Evidence:* C.R.E. 404, 405, 607, 608 & 609. Is this evidence about a person's behavior on a prior occasion? Such testimony is inadmissible under C.R.E. 404 unless it is about a conviction for a crime (C.R.S. §13 -90-101 and F.R.E. 609), it bears on a witness' truthfulness (C.R.E. 608), it concerns an ultimate issue in the case (C.R.E. 608), and it is offered for some other purpose than to show that a person acted in conformity with the behavior on that other occasion (C.R.E. 404b). In criminal trials, it may also be admissible character evidence if it is appropriately at issue and is about the victim (C.R.E. 404(a)(1)) or the defendant (C.R.E. 404(a)(2)).

*Habit or Routine Practice:* C.R.E. 406. This is not character evidence and is admissible to prove that the person acted in conformity with his or her habit.

### ii. Is This Demonstrative Evidence?

*Relevance :* C.R.E. 401. What does this stuff demonstrate and how does this tend to prove or disprove something of consequence in this case?

*Authentication:* C.R.E. 901(a). Is this a fair and accurate representation of what it is supposed to demonstrate? Will it help the witness testify in a way that the jury will better understand the testimony? Remember, the purpose of a trial is to ascertain the TRUTH and a jury is not helped to ascertain the truth by misleading demonstrative evidence.

### iii. Is This "Real" Evidence?

*Relevance:* C.R.E. 401. What is this "thing"? If this is the "very thing," it is relevant because of what it is. If it is not the "very thing," it is irrelevant (unless it is perhaps demonstrative evidence).

*Authentication:* C.R.E. 901(a). How does the witness know this "thing" is what he says? What is the basis for identification?

*Chain of custody:* Is this something that, if tampered with, its relevance would change? Is its present condition in court the same or different from its condition at the relevant time?

### iv. Is This "Documentary" Evidence?

*Relevance:* C.R.E. 401. What fact of consequence to the determination of this case does this document tend to make more or less probable than it would be without it?

*Authentication:* C.R.E. 901(a). Is this document genuine, i.e., how do we know it is what it purports to be? Unless the document is self-authenticating

## HANDOUT 2: EVIDENCE AND OBJECTIONS

under C.R.E. 902, a live witness must authenticate it. Self-authenticating documents are documents which in the normal course of events are unlikely to be forged or fraudulent, are presumed to be authentic and do not require extrinsic foundational evidence. Is this document generated by a process? If so, a witness must authenticate the process. C.R.E. 901(b)(9).

*Hearsay:* C.R.E. 801 – 807. Documents are out-of-court written statements and generally hearsay. The usual exceptions for documents are C.R.E. 803 (6) and (8). The theory of reliability under C.R.E. 803(6) is based on two circumstances: necessity and inherent reliability. Therefore, was this document generated under circumstances which indicate a lack of trustworthiness?

*Original Document Rule:* C.R.E. Art. 10. Is the document being offered to prove the truth of its contents? If so, the original document or an acceptable substitute therefore must be produced.

### 7. **MAKING OBJECTIONS**

As a general proposition, an objection must be both timely and adequately specific. C.R.E.103(a).<sup>4</sup> The failure to make an objection that is both timely and appropriately specific may waive any objection to the evidence on appeal.

To make an objection, counsel should stand and state “Objection,” and then state the grounds for the objection. For example: “Objection, your honor, that question calls for hearsay.”

Generally, counsel should state all of the alternative grounds that counsel considers appropriate. It is important to express yourself completely prior to the Court’s ruling because once a judge has ruled, it is uncommon for the court to change a ruling. Of equal importance is the fact that a ground for an objection that is not raised to the trial court will generally not be considered on appeal. On the other hand, a ground for admissibility that was not argued by counsel or considered by the trial court may be considered on appeal under the harmless error doctrine.

Counsel should wait until opposing counsel has completed the question before objecting. The final portion of a question may render it unobjectionable. An exception to this rule exists when the question itself is objectionable, such as if counsel starts to ask a leading question about a topic that the court has already declared inadmissible.

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<sup>4</sup> See also “Courtroom Objections” by Jamison & Multz, Vol. 9 The Colorado Lawyer, pages 1768-84 (September 1980).



## HANDOUT 2: EVIDENCE AND OBJECTIONS

Counsel should not proceed until the court has ruled on the objection. It may be necessary at times to call to the court's attention that, in all the excitement and argument about the objection, the court has not yet ruled on the objection.

Watch for counsel who attempt to testify themselves or to make a speech while making an objection. An example of a speaking objection is, "Your honor, I object to that leading question. If counsel wants to testify, counsel ought to get up on the witness stand and take the oath like every other witness." The Court generally disfavors these sorts of objections, although they may be appropriate if the objectionable question is particularly egregious or outrageous or if counsel is making the same objectionable question repeatedly.

The response to an objection should be equally succinct. For instance, "Your honor, the statement is not hearsay because we are offering the statement only to show the effect it had on the listener, not for its truth." However, a speaking response may be appropriate if the objection is to relevance. Counsel may well be entitled to make a 'mini-closing' to show the court the relevance of the testimony being adduced.

Sometimes, a continuing objection is in order. For example, counsel has begun a series of questions concerning a certain matter of a witness, which opposing counsel finds objectionable and interposes an objection to question #1 of the series and is overruled. He objects again to questions #2 and #3 and is again unsuccessful. At this point he realizes the futility of continuing to object again and again and so he requests the Court to entertain his continuing objection to all of the remaining questions in the series. This simply means that he is asking the Court to consider each of the remaining questions as though each had been objected to as before and said objections overruled as before. This may make sense if counsel believes the entire subject is covered by a privilege; it makes less sense when the objection is relevancy, because relevancy is often determined on a question by question basis.

The phrase 'same objection' may be appropriate when counsel asks a question, opposing counsel objects, the Court rules on the objection and counsel then asks another question that is objectionable on the same ground. It is not unusual for counsel to try to re-phrase a question only slightly in an effort to avoid an objection, but to fail in this effort. It is not unheard of for counsel to ask the same question again, hoping that opposing counsel is not paying attention. Rather than stating the word objection and then the grounds again, opposing counsel simply says, "Same objection."

If the argument about an objection is likely to be lengthy or to contain references to evidence that has not yet been deemed admissible, it may be necessary to approach the bench. The court may hear argument at the bench, outside the hearing of the jury, or may send the jury out of the courtroom. In either event, make sure that a proper record is made of what occurs and whether it occurs within, or out of, the hearing of the jury.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

Keep in mind that your witness' only defense to mistreatment by opposing counsel's cross-examination is your objection; thus, protect your witness. Judges will sometimes rule erroneously, so move on, and note it for appeal. Objections are sometimes used by opposing counsel to break your train of thought or to discourage your pursuit of a certain line of questioning; do not let them rattle you.

Everyone makes mistakes. If you ask an objectionable question, admit it and tell the court you will re-phrase it. This helps your credibility with both the court and the jury (as long as it does not occur too frequently). Similarly, if you do not wish to argue an objection, you may render your question a nullity by simply saying, "I will withdraw the question." An objection may similarly be withdrawn. Remember, never ask a question you know to be objectionable.<sup>5</sup>

Objections need not be limited to the questions of counsel and the answers of witnesses. Counsel can object to questions, statements, or conduct on the part of anyone in the courtroom (including the judge or clerk or audience) that counsel believes to be improper.

### 8. **OFFER OF PROOF**

"... [H]e who would obtain reversal of a judgment because of the exclusion of evidence offered by him must in connection therewith make a timely and adequate offer of proof."<sup>6</sup>

#### a. **General:**

When, after objection by opposing counsel, the court precludes or excludes evidence or testimony of a witness, it is often necessary to make an offer of proof. C.R.E. 103(a)(2). An offer of proof has two purposes: (1) to better inform the court so that its ultimate ruling is based upon a complete understanding of the entire matter, and (2) to make an adequate record for appeal so that the reviewing court can determine if the exclusion of evidence, if error, is prejudicial or harmless.

An offer of proof is made, ordinarily, by stating to the court: (1) what the testimony of the witness would be if permitted to answer the question, (2) the purpose and object of the testimony sought to be introduced; and, (3) all facts necessary to establish its admissibility, including relevancy to the case. *Id.* An offer of proof is not required where relevancy and materiality of the answer (to a proper question) is apparent from the context of the question itself.<sup>7</sup>

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<sup>5</sup> C.R.P.C. 3.1

<sup>6</sup> *Denver Decorators Inc. v. Twin Teepee Inc.*, 163 Colo. 343, 349, 431 P.2d 8 (1967)(emphasis added).

<sup>7</sup> *Wooten v. Byers School District No. 320*, 156 Colo. 89, 396 P.2d 964 (1964); *Buckstaff v. Russell*, 151 U.S. 626, 14 S.Ct. 448, 38 L.Ed. 292 (1894).

## HANDOUT 2: EVIDENCE AND OBJECTIONS

An offer of proof is inadequate if the witness is not present and ready to testify.<sup>8</sup>

### b. **On Cross-Examination:**

Ordinarily, offers of proof are not required on cross-examination, but where it does not appear what benefit would be obtained from the use of evidence which counsel attempts to introduce on cross-examination, the reviewing court is unable to determine in what way exclusion of the evidence was prejudicial.<sup>9</sup>

### c. **Challenge to a Witness:**

When an objection to a witness is that he or she is incompetent to testify, counsel should make an offer of proof showing that the witness is competent or otherwise within an enumerated exception to the disqualifying section of the statute.<sup>10</sup>

### d. **Series of Offers:**

Consider making a series of offers as to specific points. In this way, failure to make a sufficient offer as to one point (which would negate the entire offer) will not necessarily result in a loss of the entire offer. Note that counsel must also get a separate ruling as to each phase of the series.<sup>11</sup>

### e. **How to Make an Offer:**

Question and Answer Method: Ask the witness questions and have the witness testify directly outside the presence of the jury as follows:

“May it please the Court, as this time I wish to make an offer of proof outside the presence of the jury” (Jury removed). “I wish to make an offer of proof by the witness, Sally Smith, in question and answer form” (Proceed with examining the witness).

Narrative method: Have counsel recite the anticipated testimony into the record outside the presence of the jury. The recital must state specific facts, not conclusions.

“May it please the Court, I wish to make an offer of proof in narrative form. The defendant offers to prove by the witness, Sally Smith, and she will testify, if permitted, that on the morning of January 20, 1980, she was at the plaintiff’s place of business located at 12 Elm Street in Boulder, Colorado;

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<sup>8</sup> *Johnston v. Johnston*, 123 Colo. 28, 224 P.2d 949 (1950).

<sup>9</sup> *Rhodig v. Cummings*, 160 Colo. 499, 418 P.2d 521 (1966).

<sup>10</sup> *Parker v. Hilliard*, 106 Colo. 187, 102 P.2d 734 (1940).

<sup>11</sup> *See Operative Service Corp. v. McIntyre Pump Co.*, 85 Colo. 519, 277 P. 773 (1929).

## HANDOUT 2: EVIDENCE AND OBJECTIONS

that the plaintiff, Fred Jones, and John Jones, the plaintiff's partner were present at that time ...”

Written Statement of Testimony: Counsel can attempt to introduce a written statement, preferably signed by the witness, setting forth the expected testimony. The document should be marked as an exhibit and introduced into the record for appeal.

An offer of proof as to real evidence generally consists simply of marking the item for identification and introducing it as an exhibit for the record on appeal. Be certain the foundation is complete.

References include: C.R.E. 103, 104; Colorado Digest, Trials, Key 45-49; 75 Am. Jur., Trials § 128 et seq.; and 89 A.L.R.2d 279

### 9. **PHOTOGRAPHS**

#### a. **General:**

A photograph is admissible in evidence on the same basis as a map or diagram to illustrate or explain the testimony of a witness.<sup>12</sup> The modern trend also recognizes that in a proper case, once admitted, the photograph has probative value as direct evidence itself.<sup>13</sup>

Some useful references are: Scott, Photographic Evidence-Preparation and Presentation (2nd Ed. 1968); C.R.E. 1001 et seq. and Photographs as Evidence, 9 AM. Jur. POF 147.

#### b. **Admissibility and Authenticity:**

A photograph is admissible when it is shown that it is a correct likeness of the persons or objects which it purports to represent, and that fact may be shown by the person who made it or by another competent person.<sup>14</sup>

Photographs are admissible into evidence when shown to be a true and correct representation of the object, person or site depicted.<sup>15</sup> C.R.E. 901(a) & (b)(1). Photographs are not admissible if the objects have been posed or arranged in a material fashion which distorts the scene, although the trier of fact can be cautioned about the changes and the photograph admitted.<sup>16</sup> If conditions have

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<sup>12</sup> *Reed v. Davidson Dairy Co.*, 97 Colo. 462 (1935).

<sup>13</sup> *U.S. v. Taylor*, 530 F.2d 639 (5th Cir. 1976).

<sup>14</sup> *Mow v. People*, 31 Colo. 72 P. 1069, 351 (1903); accord, *Kortz v. Guardian Life Ins. Co. of America*, 144 F.2d 676 (10 Cir. 1944).

<sup>15</sup> *Dolan v. Mitchell*, 179 Colo. 359, 502 P.2d 72 (1972). See generally 9 ALR 2d. 899.

<sup>16</sup> *Green v. Denver*, 111 Colo. 390, 142 P.2d 277 (1943); *Reed v. Davidson Dairy Co.*, *supra*.

## HANDOUT 2: EVIDENCE AND OBJECTIONS

been slightly changed, the photograph can be admitted at the court's discretion if it is shown to be a correct likeness in all other respects for which it is offered.<sup>17</sup>

Generally, any occurrence witness, party, or other competent witness can verify the photograph and it is unnecessary to authenticate the photograph through the person who took the picture and developed it unless the correctness of the photograph is in issue.<sup>18</sup> Of course, it must be shown that the verifying witness has personal knowledge about the person, object or scene depicted. The sufficiency of the verification is a preliminary question of fact to be decided by the trial judge.<sup>19</sup> Generally, a chain of custody need not be shown as a condition of admissibility, although counsel may wish to lay such a foundation for advocacy purposes.

### c. Relevancy:

The subject matter represented by the photograph must relate to some pertinent fact in issue and the photograph must tend to prove or disprove a disputed or material issue in the case; otherwise, the photograph is irrelevant and inadmissible.

Some general tests of relevancy are:

- i. The photograph tends to prove or disprove some disputed or material fact in issue in the case.<sup>20</sup>
- ii. The photograph assists the trier of fact in understanding the case and is not misleading or confusing.
- iii. The photograph corroborates oral testimony or other evidence.<sup>21</sup>
- iv. The photograph contradicts or impeaches a witness.<sup>22</sup>
- v. The photograph assists in illustrating or explaining the testimony of a witness.<sup>23</sup>

Even though relevant and having probative value, a photograph may be inadmissible because it is of such a character as to deliberately inflame or excite the passions and prejudices of the jury.<sup>24</sup>

### d. Discretion of the Trial Judge:

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<sup>17</sup> *Id.*

<sup>18</sup> *Dolan v. Mitchell, supra.*

<sup>19</sup> *Wold v. City of Boulder*, 91 Colo. 44, 9 P.2d 931 (1932); *Sandoval v. People*, 172 Colo. 383, 473 P.2d 722 (1970).

<sup>20</sup> *Dolan v. Mitchell, supra.*

<sup>21</sup> *Maynes v. People*, 119 Colo. 149, 200 P.2d 915 (1948); *DeSalvo v. People*, 98 Colo. 368, 56 P.2d 28 (1936); *Ferguson v. Hartford Ins. Co.*, 2 Colo. 507, 290 P.2d 229 (1955).

<sup>22</sup> *Burr v. Green Bros. Sheet Metal Inc.*, 159 Colo. 25, 409 P.2d 511 (1966).

<sup>23</sup> *Claxton v. People*, 164 Colo. 283, 434 P.2d 407 (1967).

<sup>24</sup> *Archina v. People*, 5 Colo. 8, 307 P.2d 1083 (1957)(morgue photographs). *See Martinez v. People*, 124 Colo. 170, 235 P.2d 810 (1951).

## HANDOUT 2: EVIDENCE AND OBJECTIONS

As a general rule, the admission or rejection of photographic evidence is a matter that rests within the sound discretion of the trial judge.<sup>25</sup> The trial judge's ruling will not be reversed on appeal unless a prejudicial abuse of discretion is shown.<sup>26</sup> It is an abuse of discretion not to receive relevant photographs into evidence.<sup>27</sup>

The fact that the photograph is cumulative to oral testimony is not a good ground for objection.<sup>28</sup> The attempted introduction of a number of photographs that depict the same scene, particularly if that scene is gruesome, may be grounds for keeping out some of the photographs.

### e. Making the Record:

When referring to photographs during the trial, be certain you refer to them by exhibit number. When a witness uses a photograph to point out places or objects, be careful to make the record reflect precisely what the witness is indicating.

### f. Getting the Photograph into Evidence:

A verifying witness (photographic qualifications, familiarity with scene as it appeared on the date in question) and the foundation identifying the subject matter of the picture as a fair representation are necessary to get the photograph into evidence.

- Q. Are you familiar with the intersection of 12th and Elm Streets in Boulder, Colorado, as the intersection existed on January 19, 1980? *Yes*
- Q. I hand you what has been previously marked for identification as Defendant's Exhibit 3, and ask you if you can identify it? *I can.*
- Q. What is it? *It's a photo of that intersection.*
- Q. Does the photograph fairly represent the condition of the intersection of 12th and Elm Streets in Boulder, Colorado, as it existed on January 19, 1980? *It does.*
- Q. Would this photograph assist you in explaining your testimony to the jury? *It would.*
- Q. I offer Defendant's Exhibit 3 into evidence.

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<sup>25</sup> *Reed v. Davidson, supra; Potts v. People, supra; Stout v. People*, 464 P.2d 872, 171 Colo. 142 (1970).

<sup>26</sup> *Stout v. People, supra; People v. Hosier*, 186 Colo. 116 525 P.2d 116 (1974).

<sup>27</sup> *People v. Murata*, 161 Cal. App.2d 369, 326 P.2d 947 (1958).

<sup>28</sup> *Potts v. People*, 114 Colo. 259, 159 P.2d 912 (1945); *Hampton v. People*, 171 Colo. 153, 465 P.2d 394 (1970); *Dolan v. Mitchell, supra*.

**TRIAL PREPARATION HANDOUT<sup>29</sup>**

**TRIAL PREPARATION:**

1. Subpoena Witnesses
2. Subpoena Duces Tecum (documents)
3. Prepare Trial Notebook
  - General--Research/Strategy
  - Voir Dire/Jury List
  - Pretrial Matters
  - Opening Statement
  - Exhibits/Discovery/Reports
  - Cross-Examination of Department Witnesses
  - Motion to Dismiss/Directed verdict
  - Respondent's Case
  - Closing Argument
  - Jury Instructions
  - Miscellaneous/Things To Do
4. Prepare Respondent's Witnesses and Respondent

**TRIAL PREPARATION CHECKLIST:**

You are now in the process of preparing for trial. If your case does proceed to trial, you can expect to spend 30-40 hours on trial preparation.

**Motions:**

- Motion to Dismiss, Grounds\_\_\_\_\_
- Motion in Limine, Grounds and Evidence\_\_\_\_\_
- Motion for Discovery
- Motion for Written Interrogatories
- Motion for Expert Assistance if at Termination
- Other\_\_\_\_\_

**Witnesses:**

List all witnesses whose names appear anywhere in the social services reports or whom you intend to call. Attach a witness interview form for each.

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<sup>29</sup>Excerpted from the Criminal Practice Manual, written by Clinical Professors H. Patrick Furman, Robert Dieter, and Ann England, for the University of Colorado Criminal Defense Clinic.

**HANDOUT 3: TRIAL PREPARATION**

Respondent Witnesses

Name & Address	Interviewed	Written Statement	Subpoenaed
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____
e. _____	_____	_____	_____

Petitioner’s Witnesses

Name & Address	Interviewed	Written Statement	Subpoenaed
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____
e. _____	_____	_____	_____

**Fact Investigation:**

Indicate the date each task performed and who performed it, if applicable.

- \_\_\_\_\_ Obtained discovery
- \_\_\_\_\_ Inspected scene
- \_\_\_\_\_ Photographed scene
- \_\_\_\_\_ Diagrammed scene
- \_\_\_\_\_ Re-enacted events
- \_\_\_\_\_ Explored possible defense
- \_\_\_\_\_ Obtained all reports (e.g., accident/medical/alcohol treatment reports)
- \_\_\_\_\_ Obtained and reviewed client’s criminal/traffic record
- \_\_\_\_\_ Scientific testing/retesting performed
- \_\_\_\_\_ Other \_\_\_\_\_



**HANDOUT 3: TRIAL PREPARATION**

**Theory of Defense:**

a. My theory of defense is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Organizing the defense theory for trial:

	Brainstormed	Rough Draft	Final Draft
Closing	_____	_____	_____
Motions	_____	_____	_____
Voir Dire	_____	_____	_____
Objections	_____	_____	_____
Instructions	_____	_____	_____
Witness (a)	_____	_____	_____
Witness (b)	_____	_____	_____
Witness (c)	_____	_____	_____
Witness (d)	_____	_____	_____
Witness (e)	_____	_____	_____

c. Trial notebook prepared with sections for:

- 1. Things to do \_\_\_\_\_
- 2. Pretrial matters \_\_\_\_\_ Motions filed \_\_\_\_\_
- 3. Legal issues \_\_\_\_\_ Motions filed \_\_\_\_\_
- 4. Voir dire \_\_\_\_\_
- 5. Opening \_\_\_\_\_
- 6. Each witness \_\_\_\_\_
- 7. Motion for directed verdict \_\_\_\_\_
- 8. Instructions \_\_\_\_\_ Prepared (2 copies) \_\_\_\_\_
- 9. Closing \_\_\_\_\_
- 10. Exhibits \_\_\_\_\_ Marked \_\_\_\_\_

**HANDOUT 3: TRIAL PREPARATION**

**Things To Do:**

1. Factual investigation - What still needs to be done?

\_\_\_\_\_  
\_\_\_\_\_

2. Legal Investigation - What still needs to be researched/ developed?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Transcripts:

	Motions	Trial	Other
Requested	_____	_____	_____
Obtained	_____	_____	_____
Copied	_____	_____	_____
Indexed	_____	_____	_____

Motion to Incur Costs for Preparing Transcript at State Expense:

Prepared \_\_\_\_\_ Filed \_\_\_\_\_

Granted/Denied by Judge \_\_\_\_\_

4. Have you:

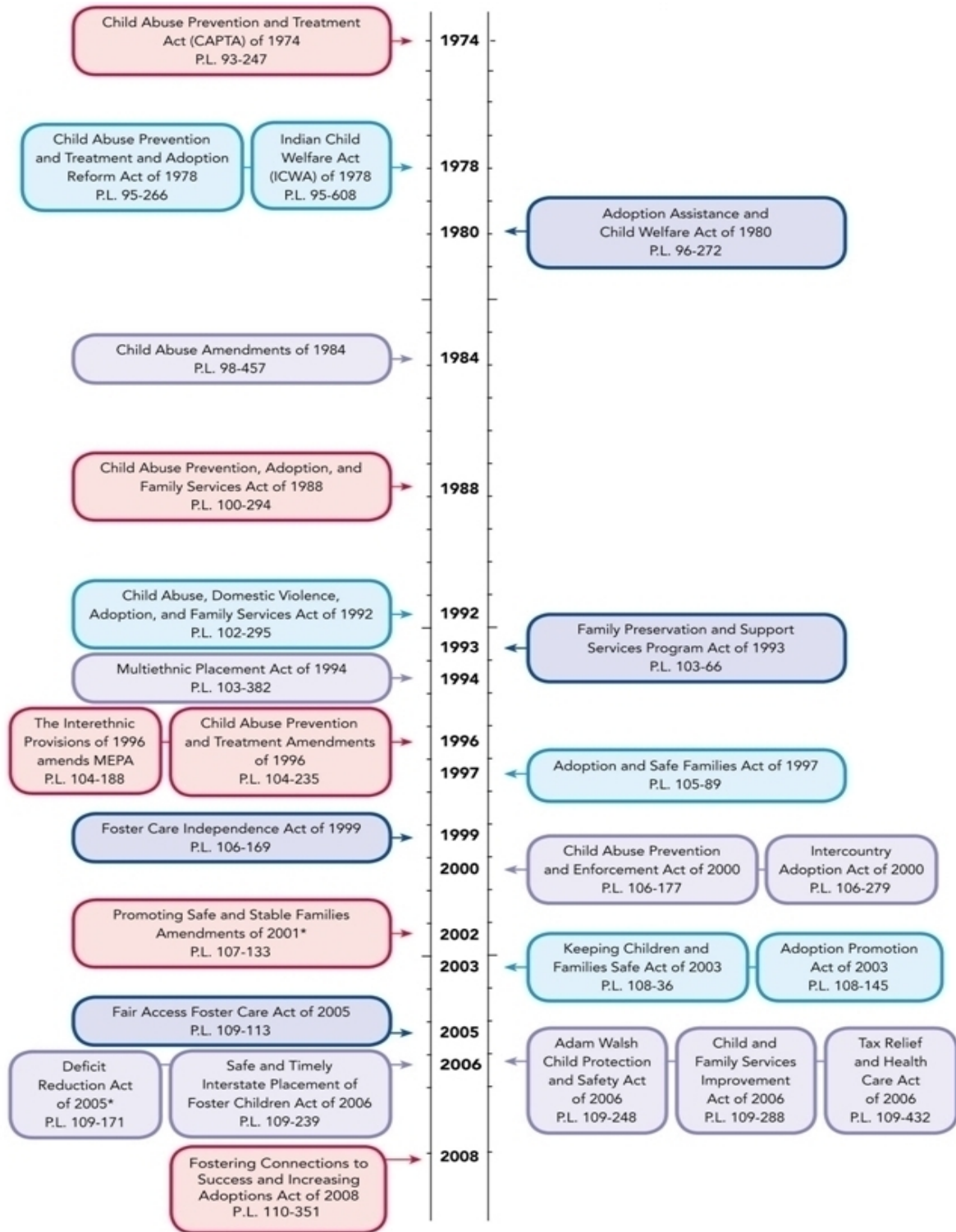
- Reviewed audio ( ) video ( ) tapes on voir dire?
- Observed an actual voir dire?
- Made clean copies of all reports?
- Done sample direct and cross with client?
- Discussed physical appearance with client?
- Discussed physical appearance with each witness?
- Prepared for disposition, in case you lose?

**Final Efforts To Resolve Case:**

- Final effort to resolve case with county attorney.
- Final effort to resolve case with client.

## HANDOUT 4: ANNOTATED FEDERAL STATUTES

### ANNOTATED FEDERAL STATUTES<sup>30</sup>



<sup>30</sup> Modified from Child Welfare Information Gateway, <http://library.childwelfare.gov>

## HANDOUT 4: ANNOTATED FEDERAL STATUTES

[\*Fostering Connections to Success and Increasing Adoptions Act of 2008: 110 P.L. 351; 122 Stat. 3949; 2008 Enacted H.R. 6893; 110 Enacted H.R. 6893.\*](#)

This Act amends Title IV-E to permit states to claim federal reimbursement for part of the cost of providing kinship guardianship assistance to relatives who become legal guardians of children who have been in foster care. The Act also amends Title IV-B to authorize Family Connection Grants for support of kinship navigator programs and other services to help children in, or at risk of entering, foster care to reconnect with family members. It provides or revises requirements for case-by-case waiver of licensing standards for relatives; adoptive or guardianship placement for children older than age 18; a transition plan for children aging out of foster care; short-term training for child welfare agencies, relative guardians, and court personnel; educational stability of the child while in foster care; ongoing oversight and coordination of health care services for any child in a foster care placement; placement of siblings in the same foster care, kinship guardianship, or adoptive placement; foster care and tribal programs operated by Indian tribal organizations; and adoption of children with special needs.

[\*Child and Family Services Improvement Act of 2006 : Public Law 109-288 : S. 3525\*](#)

This Act reauthorizes the Promoting Safe and Stable Families (PSSF) program through FY2011, and increases set-asides for Indian tribes. The Act reserves funds for States to develop activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology, as well as to support monthly caseworker visits to children in foster care.

[\*Safe and Timely Interstate Placement of Foster Children Act of 2006 : Public Law 109-239 : H.R. 5403\*](#)

This requires each state plan for foster care and adoption assistance to provide that the state shall have procedures for orderly and timely interstate placement of children; complete home studies requested by another state within a specified period; and accept home studies received from another state. Commonly referred to as the ICPC.

[\*Adoption Promotion Act of 2003 : Public Law 108-145 : H.R. 3182\*](#)

This reauthorizes the adoption incentive program under Title IV-E; provides additional incentives for adoption of older children (age 9 and older) from foster care.

[\*Foster Care Independence Act of 1999 : Public Law 106-169 : H.R. 3443\*](#)

## HANDOUT 4: ANNOTATED FEDERAL STATUTES

This Act amends Title IV-E of the Social Security Act to provide states with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency.

[Adoption and Safe Families Act of 1997 : Public Law 105-89 : H.R. 867](#)

ASFA seeks to promote the safety, permanency and well-being of children in foster care; accelerate the permanent placement of children in care; and increase the accountability of the child welfare system.

[Personal Responsibility and Work Opportunity Reconciliation Act of 1996 : Public Law 104-193: H.R. 3734.](#)

This Act limits eligibility for federal foster care and adoption assistance payments to children in families that would have been eligible for Aid to Families with Dependent Children (AFDC). It requires states to consider giving preference to adult relatives over non-relative caregivers when choosing a placement for a child [Note: The AFDC program was replaced by Temporary Assistance for Needy Families (TANF)].

[Multi-Ethnic Placement Act of 1994: Public Law 103-382](#)

This Act prohibits states from making foster care or adoption placements based on matching the race, color, or national origin of the prospective parents and child. It also requires states to actively recruit potential adoptive and foster parents who reflect the race, color, and national origin of the children in its foster care population.

[Adoption Assistance and Child Welfare Act of 1980 : Public Law 96-272](#)

This authorized appropriations for adoption and foster care assistance to the states. It required states to provide adoption assistance to parents who adopt a child who is AFDC-eligible and is a child with special needs. For foster care assistance, states are required to make reasonable efforts to prevent placement or to reunify children with their families.

[Indian Child Welfare Act : Public Law 95-608 : S. 1214](#)

ICWA established standards for the placement of Indian child in foster or adoptive homes and to prevent the breakup of Indian families. It was enacted in 1978.

[Child Abuse Prevention and Treatment Act : Public Law 93-247 : S. 1191](#)

## HANDOUT 4: ANNOTATED FEDERAL STATUTES

Enacted in 1974, it established the National Center on Child Abuse and Neglect; authorized funding for fiscal years 1974 through 1977 for demonstration projects on the prevention, identification, and treatment of child abuse and neglect.

### *The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)*

The UCCJEA governs which state has jurisdiction over the individuals. The Act outlines the two most relevant jurisdictional options for our cases. The most relevant options are emergency jurisdiction and home state jurisdiction. Emergency jurisdiction allows a court to make findings and enter orders necessary to protect a child on an emergency basis when a child is located in that state. The home state is where the child has lived for least 6 consecutive months before the proceedings.

The process of UCCJEA: The UCCJEA provides for inter-court communication and allows courts to coordinate evidentiary hearings in both states.

## HANDOUT 5: DISPOSITIONAL HEARING CHECKLIST

### DISPOSITIONAL HEARING CHECKLIST<sup>31</sup>

#### BEFORE:

- ❑ Review the treatment plan. Is it reasonable and calculated for success?
  - Are services culturally appropriate?
  - Are services geared to the needs of the parent and children?
  - Are services available in parent's first language?
  - Can services be consolidated?
  - How far and how often is parent being asked to travel?
  - Are any additional services needed?
- ❑ Re-interview client and strategize regarding desires and position on the following:
  - Treatment plan recommendations
  - Placement (with client, previously noncustodial parent, relative, current caretaker)
  - Need for services, and whether services are reasonably tailored to client's needs
  - Ability to substantially comply with treatment plan within allotted time
  - Visitation with client, siblings, grandparents, and others
  - Availability of a visitation supervisor: friend, family, church member, co-worker, other
  - Ability to be involved in child's life through attendance at school events, doctor appointments, or other similar events. Identify events and activities
  - Assess client's support system
- ❑ Assess and formulate positions on the following:
  - Current safety risk to child if in custody of one or both parents
  - What can be done to prevent/eliminate need for removal (changes in living environment, services), or to facilitate return home.
- ❑ Individualized services needed for family and children. (C.R.S. §19-1-107 (2.5) for possible services in EPP cases)
- ❑ Provide client copy of treatment plan
- ❑ Review the need for expert testimony
- ❑ Review client's compliance with interim services and get updates from service providers.
- ❑ Consider filing motions such as: change of placement, submission of letters from service providers, evaluations, increase visitation, decrease substance abuse monitoring, need for inpatient treatment, sibling visitation or reunification, explore kinship placement, interpreter services.

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<sup>31</sup> See, Judicial Council of California/Administrative Office of the Courts, California Dependency Guide (2007), C. Robinson, "Case Assessment and Planning" in *Child Welfare Law and Practice*, 715-29 (Donald Duquette et al. eds., 2010), J. Cohen and M. Cortese, "Cornerstone Advocacy in the First 60 days: Achieving Safe and Lasting Reunification for Families", 28 *Child Law Practice* 3, 2009, and National Council of Juvenile and Family Court Judges, *Improving Court Practice in Child Abuse and Neglect Cases*, 1995.

## HANDOUT 5: DISPOSITIONAL HEARING CHECKLIST

### DURING

- ❑ Advocate positions identified above in keeping with any additional evidence received.
- ❑ Request appropriate orders such as:
  - Case plan specific to the family and children
  - Special services (i.e., foreign language, geographical concerns)
  - Protective order under C.R.S. § 19-3-207 (2) to protect statements made during the course of treatment from being used against the respondent
- ❑ Present evidence as to client's compliance with interim treatment plan orders, or changed circumstances.
- ❑ Ensure court addresses:
  - Placement
  - Services
  - Visitation with client, siblings, grandparents, and other appropriate persons
    - Advocate for visits outside of the agency – agency visits do not fairly depict family functioning
  - Whether the department has made reasonable efforts to prevent or eliminate the need for removal
  - Setting the next hearing

### AFTER

- ❑ Develop timeline of important dates and calendar reminders.
- ❑ Discuss with client how to keep track of important dates.
- ❑ Ask Caseworker to provide you with a written copy of service referrals.
- ❑ Consult with client to explain court rulings and answer questions.
- ❑ Discuss interim objectives with client (when should services have begun, when should visitation increase, etc.), and instruct client to contact you when appropriate.
- ❑ File necessary forms/motions if pursuing appeal.



## CORE SERVICES AND FUNDING

### Core Services: Detailed Descriptions and Local Availability<sup>32</sup>

#### **Home-Based Intervention:**

Home Based Intervention services are provided primarily in the home of the client and include therapeutic, concrete, and collateral services as well as crisis intervention, depending on the needs of the child and family. Studies have shown that certain home-based interventions provided by nurse practitioners (e.g., Nurse-Family Partnerships, The Family Connections Project) have a positive effect on child abuse and neglect cases and future child behavior problems (WSIPP, 2007). In addition, emerging evidence indicates that these kinds of programs are also effective in preventing or reducing involvement in the child welfare system (WSIPP, 2008). Intensive Family Preservation services (in-home crisis intervention services) have been shown to prevent or reduce child welfare involvement (WSIPP, 2008). Two counties (Eagle and Pitkin) reported that they do not have home-based intervention services available. One county (Boulder) noted that they would like to expand capacity of home based teams to provide immediate family coaching services in order to prevent most out of home placements.

#### **Intensive Family Therapy:**

Intensive Family Therapy programs typically involve intervention with all family members and aim to improve family communication, functioning and relationships. Some specific intensive family therapy programs (such as Multisystemic Therapy and Functional Family Therapy [FFT]) have been shown to be effective in reducing family problems, juvenile delinquency, and substance use and have also been shown to be cost-effective (Washington State Institute for Public Policy, 2007). Studies are currently underway regarding the effects of Multisystemic Therapy on subsequent child abuse and neglect. Another family therapy program, Parent–Child Interaction Therapy, has been shown to be cost-effective in preventing or reducing child welfare involvement (WSIPP, 2008).

#### **Life Skills:**

Life Skills programs are generally provided in the home and teach household management, accessing community resources, parenting techniques, and family conflict management. Life skills training is a component in many successful child welfare programs, including various nurse home-visitation programs and the Triple-P Positive Parenting Program (WSIPP, 2008).

#### **Day Treatment:**

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<sup>32</sup> Modified from Core Services Evaluation Annual Report 2008-2009. Available online at: [http://www.cdhs.state.co.us/childwelfare/PDFs/Core\\_Services\\_Program\\_Evaluation\\_Annual\\_Report\\_SFY\\_2008-2009\\_9-29-09\\_Signed\\_Full\\_Final.pdf](http://www.cdhs.state.co.us/childwelfare/PDFs/Core_Services_Program_Evaluation_Annual_Report_SFY_2008-2009_9-29-09_Signed_Full_Final.pdf)

## **HANDOUT 6: CORE SERVICES AND FUNDING**

Day Treatment programs are comprehensive, highly structured services that provide education to children and therapy to children and their families. One example is the Chicago Child Parent Centers program, which provides a government-paid pre-school and kindergarten program that also provides parenting assistance and helps involve parents in their child's learning. The program has shown promising child safety, permanency, and well-being outcomes and has been identified as a cost-effective program in preventing or reducing involvement with the child welfare system.

Forty percent of counties (26 counties) reported no day treatment services were available for children. However, in addition to the 44 counties that reported having day treatment programs, three counties indicated they provide day treatment alternatives in their county designed services. Another county reported that funds are set aside in case day treatment is needed, but there is not a local program available. For many of the Western Slope rural counties, Colorado West Mental Health has a day treatment program (which has been described as "well developed") that is utilized by multiple counties.

### **Sexual Abuse Treatment:**

Sexual Abuse Treatment refers to therapeutic intervention designed to address issues and behaviors related to sexual abuse victimization, sexual dysfunction, sexual abuse perpetration, and prevention of further sexual abuse and victimization.

### **Mental Health Services:**

Mental Health Services include diagnostic and/or therapeutic services to assist in the development of the family services plan, and to assess and/or improve family communication, functioning and relationships. Because this category is broad in the types of services included, it is difficult to make comparisons with evidence based practices. However, one county did report that parenting skills training and home visitation (two strategies generally proven effective) were included in mental health services.

No counties reported that mental health services were not available to children and families. Many contract for these services through their local community mental health center or regional Behavioral Health Organization (BHO), or participate in a multiple county contract for services. One rural county reported that there is a gap in service because the BHO services do not meet local needs.

### **Substance Abuse Treatment Services:**

Substance Abuse Treatment Services include diagnostic and therapeutic services to assist in the development of the family services plan, to assess and/or improve family communication, functioning and relationships, and to prevent further abuse of drugs or alcohol. One substance abuse-focused program, the Family Treatment Drug Court in California, has shown positive effects in reducing child abuse, the number of OOH placements, and permanent OOH placement (WSIPP, 2008). All but two counties (Eagle and Gunnison) reported that substance abuse treatment services were available in their

## HANDOUT 6: CORE SERVICES AND FUNDING

counties. Nearly all counties (97%) provide substance abuse treatment services to children and families. Many rural counties provide shared services, in multi-county plans or through their regional MHSA.

### County Designed Services:

County Designed Services are provided as part of the Core Services Program and are designed by counties to meet specific local needs. Nearly three-fourths (74%) of the counties reported using county designed services to meet the needs of children and families in their communities.

As mentioned in the discussion of day treatment programs, many counties use county designed programs to provide more locally appropriate services for children who would otherwise receive traditional day treatment. In addition, county designed services often include evidence based practices such as mentoring, Multisystemic Therapy, Functional Family Therapy (FFT), Parents as Teachers, Family Treatment Drug Court, Dialectic Behavior Therapy (DBT), Wraparound, and nurse home visitation programs.

County designed services are also used to serve populations who may not benefit from traditional treatment or therapy programs. For example, three (3) counties have implemented play therapy programs for young children who do not yet possess the verbal or reasoning skills needed for traditional therapy approaches. Several counties have implemented programs targeting adolescents. Examples include a mini-bike program in Larimer County where riding time on mini-bikes is used as an incentive for teenagers; a youth-centered permanency program in Arapahoe County that focuses on preparing young adults for emancipation; and a Dialectical Behavioral Treatment program designed specifically for adolescents and created as a regional county designed program in La Plata, San Juan, Montezuma, Archuleta and Dolores counties. The table below shows county designed services as listed in each individual county Core Services plan. Programs highlighted in **bold** font are established evidence based programs (EBP) that have been proven to be effective either in reducing family involvement with the child welfare system or in reducing child problem behaviors. Programs highlighted with *italics* either share program features with a named EBP but have not necessarily been specifically named as effective programs, or have been documented as promising or research based programs in the core services plans submitted to Child Welfare. Please note that these classifications are based on information provided in county Family Preservation/Core Services Commission Reports. Additional programs in this list may be based on EBPs, but were not classified as such due to lack of information. For example, some programs were listed by the name used locally without description of the service.

### County Designed Programs:

County	Service Type on Core Plan
Adams	<i>Supervised Therapeutic Visitation Service</i> <i>Youth Intervention Program</i>

## HANDOUT 6: CORE SERVICES AND FUNDING

Alamosa	Discovery Group Family Decision Making Conferences <i>Intensive Mentoring Program</i>
Arapahoe	<b>Multisystemic Therapy- Synergy</b> <b>Multisystemic Therapy- Savio Direct Link program</b> <i>Family Group Conferencing (Youth Centered Permanency, LINKS)</i>
Archuleta	Intermediate/Middle School/High School Responsibility/Mentoring
Baca	None
Bent	None
Boulder	Adoption Counseling <i>Community Evaluation Team (CET)</i> Family Group Decision making
Broomfield	Day treatment alternative <b>Multisystemic Therapy</b>
Chaffee	<i>Chaffee County Mentoring</i> Youth at Crossroads
Cheyenne	None
Clear Creek	None
Conejos	<i>Intensive Mentoring</i>
Costilla	<i>Intensive Mentoring Project</i>
Crowley	None
Custer	None
Delta	<i>Mentoring</i> <i>Multisystemic Therapy – Local modification called Family Intervention Team</i> Day Treatment Alternative
Denver	Emerson Street School – alternative school <b>Multisystemic Therapy</b> Savio Direct Link Program Denver Effect/Family Outreach Domestic Violence Intervention <i>Team Decision Making</i> <i>Supervised Visitation</i>
Dolores	Day Treatment Alternative
Douglas	None
Eagle	None
Elbert	<b>Multisystemic Therapy</b> <i>Family Coaching/Youth Mentoring</i> <i>Youth Mentoring</i>
El Paso	Mediation Services Nurturing Program Day Treatment Alternative Domestic Violence <b>Functional Family Therapy</b> <b>Multisystemic Therapy</b>
Fremont	Day Treatment Alternative

## HANDOUT 6: CORE SERVICES AND FUNDING

	Family Group Conferencing
	Adolescent Support Group
	<b>Functional Family Therapy</b>
	<i>Parenting Skills</i>
	<i>Supervised Visitation</i>
	<b>Family Treatment Drug Court</b>
	<i>Nurturing Foster Care Support Group</i>
Garfield	<i>Adolescent Mediation</i>
Gilpin	None
Grand	<i>Day Treatment Alternative</i>
	<i>Parent Child Visitation</i>
	<i>Parenting Time/Supervision</i>
Gunnison	Therapeutic Mentoring
Hinsdale	Therapeutic Mentoring
Huerfano	Reconnecting Youth
Jackson	Day Treatment Alternative
Jefferson	<b>Multisystemic Therapy</b>
	<i>Team Decision Making</i>
Kiowa	None
Kit Carson	<b>Functional Family Therapy</b>
Lake	Intensive Family Therapy (IFT)/School Partnership
La Plata	Play Therapy
	<b>Multisystemic Therapy</b>
	<b>Adolescent Dialectical Behavioral Treatment (DBT)</b>
Larimer	Foster Care/Kin/Adoption Support Groups
	<b>Multisystemic Therapy</b>
	<i>National Youth Project Using Mini-Bikes (NYPUM)</i>
	<b>Functional Family Therapy (FFT)</b>
	Parent Child Conflict Mediation
	Family Options 1 – Family Safety and Resource Team
	Family Options 2 – Family Unity Meetings
	Family Options 3 – Family Group Conferencing
	Substance Abuse Petty Offenders
	<i>Youth Intervention Program</i>
	Youth Services
	<b>Nurturing Program - Life Nurse Visiting Program</b>
	Community Based Family Services and Support
	Child Mentoring and Family Support
Las Animas	None
Lincoln	Family Group Conference
	Foster Care\Adoption Support Program
Logan	Play Therapy
Mesa	<i>Structured/Supervised Parenting Time</i>
	Day Treatment to Adolescents
	<i>Rapid Response</i>
Moffat	<i>Day Treatment Alternative</i>

## HANDOUT 6: CORE SERVICES AND FUNDING

Mineral	None
Montezuma	Day Treatment Alternative <b>Adolescent Dialectical Behavioral Treatment (DBT)</b>
Montrose	<i>Promoting Healthy Adolescents Trends PHAT</i>
Morgan	Structured Parenting Time Day Treatment Alternative Family Group Decision Making
Otero	Play Therapy
Ouray/San Miguel	Day Treatment Alternative
Park	None
Phillips	None
Pitkin	None
Prowers	None
Pueblo	Visitation Center <i>For Keeps Program</i>
Rio Blanco	<i>Day Treatment Alternative</i>
Rio Grande/Mineral	<i>None</i>
Routt	<i>Day Treatment Alternative</i>
Saguache	None
San Juan	<b>Multisystemic Therapy</b> <b>Adolescent Dialectical Behavioral Treatment (DBT)</b>
Sedgwick	None
Summit	Youth Outreach /Mediation Day Treatment Alternative <i>Mentor Supported Substance Abuse Treatment for Adolescents</i> <b>Multisystemic Therapy</b> <i>Team Decision Making</i>
Teller	<b>Multisystemic Therapy</b>
Washington	Foster Care/Adoption Intervention
Weld	<i>Teamwork, Innovation, Growth, Hope and Training (TIGHT)</i> <b>Multisystemic Therapy</b> <i>Foster Parent Consultation</i> <b>Functional Family Therapy</b>
Yuma	None
Southern Ute	<b>Multisystemic Therapy</b>
Indian Tribe	

### Sources of Additional Funds Identified in Core Services Commission Reports:

- Health Care Policy and Finance (HFPPF)
- Additional Case Management Fund
- Asset Forfeiture Dollars
- Catholic Charities
- Child Development Service Fund
- County Governments

## HANDOUT 6: CORE SERVICES AND FUNDING

- Division of Behavioral Health-Additional Family Services (AFS)
- Excess IV-E Funding
- Family to Family
- Fund Raisers
- Grants
- Access to Recovery
- Child Welfare Block Grant
- Federal Grants
- Gates Foundation
- Local grants
- VALE Grants
- Healthier Communities Fund
- House Bill 1414
- House Bill 1451
- Judicial Districts
- Local Boards of Cooperative Education
- Local Departments of Public Health
- Local Mental Health Centers
- Local Nonprofit Organizations
- Local School Districts
- Medicaid covered services
- Parent Fees
- Promoting Safe and Stable Families
- Senate Bill 94
- Southern Ute Community Action Program
- Special Property Tax
- Temporary Assistance to Needy Families/Colorado Works

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

### TREATMENT PLAN FOR THE TILLMAN FAMILY

#### INSTRUCTIONS:

Read the proposed treatment plan below. The individuals addressed in the treatment plan are different than those used in Module 1 of the RPC training. In order to simplify for the treatment plan hearing, only two children, Derek and Mary Ann are addressed. Additionally, only one father, Derek Latham is addressed. Furthermore, here they are placed with Jennifer Tillman, the maternal grandmother. The mother's sister, Monica is no longer involved.

Assume you represent either respondent mother, Tonia Tillman, or respondent father, Derek Latham, Sr. While reading, consider a theory of the case for disposition. What elements of the treatment plan, if any, will you oppose, and how? Will you contest the treatment plan and set it for a contested hearing? Why or why not? Assuming you are setting for a contested hearing, what will your evidence be at the hearing? What arguments will you make? Prepare preliminary direct or cross examinations for your contested hearing. Spend 15 minutes reading the treatment plan and preparing, and we will spend 15 minutes discussing the different courses of action.

#### ADDITIONAL FACTS:

Ms. Tillman has made all of her visits, and the case aide tells you that she is a wonderful mother and there are no safety concerns during her visits. The maternal grandmother (MGM) is willing to supervise visits, and she wants Tonia to come live with her and the children to help take care of the children.

Tonia reports she has been so sad and crying all the time because her children are not with her. She says she has not been doing any drugs, but she has been missing appointments because she is overwhelmed and lacks motivation and energy. She wants her children returned today.

Derek Sr. reports that his visits are great, he is employed and has a suitable home. He does not know why the kids are not being placed with him. No one has been to his home. He has contacted a day care, has identified a pediatrician, and is ready to start parenting the kids today.

#### FAMILY SERVICES PLAN

##### PART 1: FAMILY INFORMATION

Court Case#: 2009-JV-000 Hearing Type: Dispositional Date/Time: 11/20/20\_\_ at 2:00

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#### FAMILY MEMBERS

**Name:** LATHAM, DEREK LAMONTE

**DOB:** 1/17/1972

**Relationship:** Father of DEREK L. LATHAM

Employer/School: Comcast

**Name:** TILLMAN, TONIA



## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

**DOB:** 10/28/1973

**Relationship:** Mother

**Employer/School:** Unemployed Everest College

**Name:** LATHAM, DEREK LAMONTE

**DOB:** 4/13/1996

**Relationship:** subject child

**Employer/School:** Granite Middle School

**Name:** TILLMAN, MARY ANN

**DOB:** 8/11/2004

**Relationship:** subject child

**Employer/School:**

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### **OTHERS INVOLVED**

Provider: Jennifer Tillman, Special Respondent

### **Family Assessment Update**

Current Custody Update: The children remain placed with Jennifer Tillman the maternal grandmother.

Current Situation: Ms. Tillman continues to visit the children as ordered from the visitation hearing. The visits with her son, Derek, are cordial, and Derek is pleasant and talks about school and sports. They have no problem ending the visit. Ms. Tillman has attended all visits. Mary Ann often cries during visits, and is resistive to attending and ending the visits. The case aide has intervened and given mother feedback on visits. However, Ms. Tillman seems to forget the feedback during the next visit.

Ms. Tillman has completed her initial intake for drug and alcohol treatment. Outpatient groups and individual treatment are recommended, as well as UA monitoring. Mother has had a difficult start to treatment, often forgetting or not understanding what she is expected to do. Ms. Tillman is also struggling with employment.

Mr. Latham continues to visit with Derek. The visits are a good example of positive interaction. Mr. Latham helps with homework and the two of them often play football or baseball in the park. Mr. Latham completed his intake for domestic violence treatment and the provider recommended no treatment.

Mary Ann has stabilized in her grandmother's care although she often has outbursts surrounding the visits. Mary Ann is enrolled in school, but she often has difficulty paying attention and often progresses up the sanction system frequently missing recess.

Derek is enrolled and attends school regularly. He is easily distracted and reports that he finds school boring.

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

As to ICWA, the tribe has responded and stated that the children are not eligible for enrollment.

**OBJECTIVE #1: Ms. Tillman will maintain a sober lifestyle by complying with substance abuse and mental health treatment recommendations.**

**ACTION STEPS:**

- A. Ms. Tillman will participate in an intake as scheduled by the MHC and other treatment providers to include individual therapy and psychiatric services.
- B. Ms. Tillman will abstain from alcohol and illegal drug use.
- C. Ms. Tillman will participate in UA's as recommended by DHS and/or substance abuse treatment providers.
  - 1. Any missed/failure to show for a UA on the date and time scheduled will be measured as positive.
  - 2. Any failure to produce a UA will be measured as positive.
  - 3. Any flushed or altered UA will be measured as positive.
- D. Ms. Tillman will not decrease or stop her monitoring or treatment modalities without the written approval of the treatment providers.
- E. Increasing visits will depend on her compliance with treatment plan.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will work with the MHC as scheduled and structured by the providers with 100% compliance. Ms. Tillman will make progress in her treatment goals as evidenced through her improvement in her adult functioning. Her treatment providers will report that she is making progress in her treatment goals. Ms. Tillman will participate with UA's as recommended by DHS with 100% compliance. Ms. Tillman will abstain from alcohol and illegal drug use, with 100% compliance. Ms. Tillman will not decrease or stop her monitoring or treatment modalities without the written approval of the treatment providers, with 100% compliance.

**OBJECTIVE #2: Ms. Tillman will maintain her relationship with her children, Derek and Mary Ann.**

**ACTION STEPS:**

- A. Ms. Tillman will participate in supervised visits with Derek and Mary Ann each week, as scheduled and structured by DHS and the GAL.
- B. Ms. Tillman will show up on time for her visits. Visits will be cancelled 15 minutes after start time if Ms. Tillman has not arrived for the visit.
- C. The visits can be increased, decreased, altered to become unsupervised or supervised at the discretion of the caseworker and GAL as assessed to be in the best interest of the child.
- D. Ms. Tillman will take the feedback given during visitation and utilize that feedback throughout her future visits.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will participate in supervised visits with her children at DHS each week, as scheduled and structured by DHS and the GAL with 100% compliance. Ms. Tillman will show up on time for her visits. Visits will be cancelled 15 minutes after start time if Ms. Tillman has not arrived for the visit.

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

**OBJECTIVE #3: Ms. Tillman will stabilize her lifestyle and improve her adult functioning in order to appropriately parent her children.**

### **ACTION STEPS:**

- A. Ms. Tillman will have no further law violations.
- B. Ms. Tillman will obtain and maintain employment to demonstrate the ability to financially support herself and her children.
- C. Ms. Tillman will ensure that her children receive the appropriate medical attention and that she has Medicaid or medical insurance.
- D. Ms. Tillman will have all of her children available at least once a month for their face to face contact with their DHS caseworker.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will have no further law violations. Ms. Tillman will demonstrate the ability to financially support herself and her children by working with 100% compliance. Ms. Tillman will ensure that her children are covered by insurance or Medicaid when she is the primary caregiver for the children, with 100% compliance. Ms. Tillman will ensure that her children receive the appropriate medical attention when they are in her care, with 100% compliance. Ms. Tillman will ensure that her children receive the appropriate supervision, food, clothing and shelter when she is in her care, with 100% compliance. Ms. Tillman will provide a nurturing, safe and developmentally appropriate environment that encourages her children to, thrive and grow when she is in her care, with 100% compliance.

**OBJECTIVE #4: Ms. Tillman will obtain and maintain safe and stable housing.**

### **ACTION STEPS:**

- A. Ms. Tillman will obtain and maintain housing.
- B. Ms. Tillman will allow DHS access to her home so that the safety and appropriateness of Ms. Tillman' home can be assessed on a regular basis and she will follow all recommendations from DHS around creating a safe home environment.
- C. If Ms. Tillman chooses to have roommates, those roommates will complete a background check through DHS prior to them moving into the home.
- D. Ms. Tillman will notify the caseworker in writing within two business days of any change of address, phone number or household composition.
- E. Ms. Tillman will maintain a home environment free from alcohol, illegal drugs and violence.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will obtain and maintain affordable housing, with 100% compliance. DHS will assess the safety and appropriateness of Ms. Tillman' home on a regular basis and she will follow all recommendations from DHS around creating a safe home environment, with 100% compliance. If Ms. Tillman chooses to have roommates, those roommates will complete a background check through DHS with 100% compliance. Ms. Tillman will notify the caseworker in writing within two business days of any change of address or household composition, with 100% compliance. Ms. Tillman will maintain a home environment free from alcohol, illegal drugs and violence, with 100% compliance.

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

**OBJECTIVE #5: Ms. Tillman will allow monitoring of the treatment plan progress.**

**ACTION STEPS:**

- A. Ms. Tillman will contact the caseworker once per month to go over treatment plan progress.
- B. Ms. Tillman will allow unannounced home visits by the caseworker and Guardian ad litem.
- C. Ms. Tillman will sign all requested releases of information in order to monitor progress of the treatment plan and to gather necessary information.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will contact the caseworker once per month to go over treatment plan progress, with 100% compliance. Ms. Tillman will allow unannounced home visits by the caseworker, with 100% compliance. Ms. Tillman will sign all requested releases of information, with 100% compliance.

**OBJECTIVE #6: Ms. Tillman will work to enhance her ability to parent.**

**ACTION STEPS:**

- A. Ms. Tillman will participate in parenting classes through a DHS provider.
- B. Ms. Tillman will implement parenting techniques in her interactions with her children.

**MEASUREMENT OF SUCCESS:** Ms. Tillman will participate in parenting classes with 100% of attendance. She will implement parenting techniques' so as to better parent her children.

### **FAMILY SERVICES PLAN**

#### **PART 3A: TREATMENT PLAN**

**FOR PARENT: Derek Latham Sr.**

**OBJECTIVE #1: Mr. Latham will stabilize his lifestyle and improve his adult functioning in order to appropriately parent his children.**

**ACTION STEPS:**

- A. Mr. Latham will maintain employment to demonstrate the ability to financially support himself and his child.
- B. Mr. Latham will ensure that the child receives the appropriate medical and dental attention when they are in his care and that they have Medicaid or medical insurance.
- C. Mr. Latham will ensure that the child's emotional, physical, educational and developmental needs are appropriately met when he is in his care.

**MEASUREMENT OF SUCCESS:** Mr. Latham will maintain employment to demonstrate the ability to financially support himself and his children. Mr. Latham will ensure that the children are covered by insurance or Medicaid, with 100% compliance. Mr. Latham will ensure that the

## **HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY**

children receive the appropriate medical and dental attention when they are in his care, with 100% compliance. Mr. Latham will ensure that the children receive the appropriate supervision, food, clothing and shelter when they are in his care, with 100% compliance.

**OBJECTIVE #2: Mr. Latham will obtain and maintain safe and stable housing.**

**ACTION STEPS:**

- A. Mr. Latham will obtain and/or maintain safe and affordable housing.
- B. Mr. Latham will allow DHS access so that the safety and appropriateness of his home can be assessed on a regular basis and he will follow all recommendations from DHS around creating a safe home environment.
- C. If Mr. Latham chooses to have roommates, those roommates will complete a background check through DHS prior to any placement or visitation of the child in his home.
- D. Mr. Latham will notify the caseworker in writing within two business days of any change of address or household composition.
- E. Mr. Latham will maintain a home environment free from alcohol, illegal drugs and violence.
- F. Mr. Latham will participate in a Domestic Violence assessment and follow any treatment recommendations.

**MEASUREMENT OF SUCCESS:** Mr. Latham will obtain and maintain affordable housing, with 100% compliance. DHS will assess the safety and appropriateness of Mr. Latham's home on a regular basis and he will follow all recommendations from DHS around creating a safe home environment, with 100% compliance. If Mr. Latham chooses to have roommates, those roommates will complete a background check through DHS with 100% compliance. Mr. Latham will notify the caseworker in writing within two business days of any change of address or household composition, with 100% compliance. Mr. Latham will maintain a home environment free from alcohol, illegal drugs and violence, with 100% compliance.

**OBJECTIVE #3: Mr. Latham will allow monitoring of the treatment plan progress.**

**ACTION STEPS:**

- A. Mr. Latham will contact the caseworker once per month to go over treatment plan progress.
- B. Mr. Latham will allow unannounced home visits by the caseworker.
- C. Mr. Latham will sign all requested releases of information in order to monitor progress of the treatment plan and to gather necessary information.

**MEASUREMENT OF SUCCESS:** Mr. Latham will contact the caseworker once per month to go over treatment plan progress, with 100% compliance. Mr. Latham will allow unannounced home visits by the caseworker, with 100% compliance. Mr. Latham will sign all requested releases of information, with 100% compliance.

**OBJECTIVE #4: Mr. Latham will maintain his relationship with his son, Derek.**

**ACTION STEPS:**

## **HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY**

- A. Mr. Latham will participate in supervised visits with Derek each week, as scheduled and structured by DHS and the GAL.
- B. Mr. Latham will show up on time for his visits. Visits will be cancelled 15 minutes after start time if Mr. Latham has not arrived for the visit.
- C. The visits can be increased, decreased, altered to become unsupervised or supervised at the discretion of the caseworker and GAL as assessed to be in the best interest of the child.

**MEASUREMENT OF SUCCESS:** Mr. Latham will participate in supervised visits with his son and step son each week, as scheduled and structured by DHS and the GAL with 100% compliance. Mr. Latham will show up on time for his visits.

**OBJECTIVE #5: Mr. Latham will work to enhance his ability to parent.**

### **ACTION STEPS:**

- A. Mr. Latham will participate in parenting classes through a DHS provider.
- B. Mr. Latham will implement parenting techniques in his interactions with his child.

**MEASUREMENT OF SUCCESS:** Mr. Latham will participate in parenting classes with 100% of attendance. He will implement parenting techniques' so as to better parent his child.

**OBJECTIVE #6: Mr. Latham will maintain a sober lifestyle by complying with substance abuse and mental health treatment recommendations.**

### **ACTION STEPS:**

- A. Mr. Latham will participate in an intake as scheduled by the MHC and other treatment providers to include individual therapy and psychiatric services.
- B. Mr. Latham will abstain from alcohol and illegal drug use.
- C. Mr. Latham will participate in UA's as recommended by DHS and/or substance abuse treatment providers.
  - 1. Any missed/failure to show for a UA on the date and time scheduled will be measured as positive.
  - 2. Any failure to produce a UA will be measured as positive.
  - 3. Any flushed or altered UA will be measured as positive.
- D. Mr. Latham will not decrease or stop her monitoring or treatment modalities without the written approval of the treatment providers.
- E. Increasing visits will depend on his compliance with treatment plan.

**MEASUREMENT OF SUCCESS:** Mr. Latham will work with the MHC as scheduled and structured by the providers with 100% compliance. Mr. Latham will make progress in her treatment goals as evidenced through her improvement in her adult functioning. His treatment providers will report that she is making progress in his treatment goals. Mr. Latham will participate with UA's as recommended by DHS with 100% compliance. Mr. Latham will abstain from alcohol and illegal drug use, with 100% compliance. Mr. Latham will not decrease or stop his monitoring or treatment modalities without the written approval of the treatment providers, with 100% compliance.

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

**FOR CHILD:** Mary Ann Tillman

Permanency Goal:	Date Set:	Target Date:
Alternative Permanency Goal:		

**OBJECTIVE #1: Mary Ann Tillman's medical, physical, emotional, and developmental needs will be met by her caregivers.**

### **ACTION STEPS:**

- A. Mary Ann will attend all needed medical and dental appointments. She will have all of her immunizations and well-child check-ups in a timely manner.
- B. Mary Ann will receive the appropriate education and special services that are recommended by the school system or other professionals.
  1. Mary Ann should be evaluated for speech and developmental issues to determine her need for specialized services.
  2. If specialized services to address speech and other developmental issues are identified, Mary Ann should participate in services to address those needs.
- C. Mary Ann will attend school regularly to address her educational and emotional needs. She will have no unexcused absences and arrive on time every day.
- D. Mary Ann will not be exposed to acts of violence. If she is, she will be removed from the home again.
- E. Mary Ann will not be exposed to alcohol or illegal drugs.

**MEASUREMENT OF SUCCESS:** Mary Ann will attend all needed medical and dental appointments and she will have all of her immunizations and well child check-ups in a timely manner, with 100% compliance. Mary Ann will receive the appropriate education and special services that are recommended by the school system or other professionals, with 100% compliance. Mary Ann will attend school regularly, have no unexcused absences, and be at school on time with 100% compliance. DHS will receive no confirmed reports that Mary Ann has been exposed to acts of violence or illegal drugs, with 100% compliance.

**OBJECTIVE #2: Mary Ann will maintain the parent/child and sibling relationships.**

### **ACTION STEPS:**

- A. Mary Ann will be made available to participate in supervised visits each week with her mother and siblings, as scheduled and structured by DHS and the GAL.
- B. Once her father is located and it is determined to be in her best interest to develop a relationship with her father, Mary Ann will be made available to participate in supervised visits with her father, as scheduled and structured by DHS and the GAL.

**MEASUREMENT OF SUCCESS:** Mary Ann will be made available to participate in supervised visits each week with her mother, her father and siblings, as scheduled by DHS and the GAL, with no less than 90% compliance.

## HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY

**OBJECTIVE #3: Monitoring of the treatment plan progress will be allowed.**

**ACTION STEPS:**

- A. Mary Ann will be made available for face-to-face contact with the Department at least once per month.
- B. Mary Ann will be made available to the caseworker and GAL as requested by DHS. This is to include drop by visits.

**MEASUREMENT OF SUCCESS:** Mary Ann will be made available for monthly face-to-face contact with the caseworker at least once per month, with 100% compliance. Mary Ann will be made available to the caseworker and GAL as requested by DHS with 100% compliance. This is to include drop by home visits.

**FOR CHILD:** Derek Latham, Jr.

Permanency Goal:	Date Set:	Target Date:
Alternative Permanency Goal:		

**OBJECTIVE #1: Derek Latham's, Jr.'s medical, physical, emotional, and developmental needs will be met by his caregivers.**

**ACTION STEPS:**

- A. Derek will attend all needed medical and dental appointments. He will have all of his immunizations and well-child check-ups in a timely manner.
- B. Derek will receive the appropriate education and special services that are recommended by the school system or other professionals.
- C. Derek will attend school regularly to address his educational and emotional needs. He will have no unexcused absences and arrive on time every day.
- D. Derek will not be exposed to acts of violence. If he is, he will be removed from the home.
- E. Derek will not be exposed to alcohol or illegal drugs.

**MEASUREMENT OF SUCCESS:** Derek will attend all needed medical appointments and he will have all of his immunizations and well child check-ups in a timely manner, with 100% compliance. Derek will receive the appropriate education and special services that are recommended by the school system or other professionals, with 100% compliance. Derek will attend school regularly, have no unexcused absences, and be on time for school every day with 100% compliance. DHS will receive no confirmed reports that Derek has been exposed to acts of violence or illegal drugs, with 100% compliance.

**OBJECTIVE #2: Derek will maintain the parent/child and sibling relationships.**

**ACTION STEPS:**



## **HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY**

- A. Derek will be made available to participate in supervised visits each week with his mother and siblings, as scheduled and structured by DHS and the GAL.
- B. Derek will be made available to participate in supervised visits with his father, as scheduled and structured by DHS and the GAL.

**MEASUREMENT OF SUCCESS:** Derek will be made available to participate in supervised visits each week with his mother, as scheduled by DHS and the GAL, with no less than 90% compliance. Derek will be made available to participate in supervised visits with his father, as scheduled and structured by DHS and the GAL, with 100% compliance.

**OBJECTIVE #3: Monitoring of the treatment plan progress will be allowed.**

### **ACTION STEPS:**

- A. Derek will be made available for face-to-face contact with the Department at least once per month.
- B. Derek will be made available to the caseworker and GAL as requested by DHS. This is to include drop by home visits.

**MEASUREMENT OF SUCCESS:** Derek will be made available for monthly face-to-face contact, with the caseworker at least once per month, with 100% compliance. Derek will be made available to the caseworker and GAL as requested by DHS with 100% compliance. This is to include drop by home visits.

### **SUMMARY**

- A. **STATEMENT OF SERVICES:** Referrals were made for Ms. Tillman at intake for services at ARC, the MHC, and CMI for UA's. Ms. Tillman only completed two UA's. Supervised visits for Ms. Tillman and the children and unsupervised visits for Mr. Latham and Derek.
- B. **Summary of Test Results:** Ms. Tillman' UA result was positive for THC on 8/23/2009. The test that was ordered by the court on 10/20/09 was also positive for THC.

### **AGENCY RECOMMENDATIONS:**

- A. **CUSTODY RECOMMENDATIONS:** It is recommended that the children, Mary Ann Tillman and Derek Latham, Jr. remain in the custody of DHS.
- B. **THAT THE COURT ORDERS THE ATTACHED TREATMENT AND VISITATION PLANS.**
- C. **THAT THE COURT ORDER THAT THE PARENTS SIGN ALL NECESSARY RELEASE OF INFORMATION AUTHORIZATIONS BY AS NEEDED, SO THAT DHS, THE GAL AND THE COUNTY ATTORNEY'S OFFICE CAN MONITOR THE RESPONDENTS AND CHILDREN'S COMPLIANCE AND PROGRESS.**
- D. **THAT THE TIME FRAMES FOR ALL OBJECTIVES BE: 8/24/20---8/24/20--**

Respectfully Submitted by:

**HANDOUT 7: TREATMENT PLAN FOR THE TILLMAN FAMILY**

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Date  
Child Protection Social Caseworker

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Date  
Child Protection Supervisor

## HANDOUT 9: PERMANENCY HEARING CHECKLIST

### PERMANENCY HEARING CHECKLIST<sup>33</sup>

#### BEFORE

- ❑ Ensure caseworker's report is provided 3 working days before hearing.
- ❑ Request and review caseworker's file and visitation notes.
- ❑ Request and review reports from service providers.
- ❑ Ensure all court-ordered programs and services were provided in timely fashion.
- ❑ Review treatment plan ordered at last hearing.
- ❑ Check for efforts to place siblings together.
- ❑ Contact client to discuss possible outcomes and position on the following:
  - Department's recommendations
  - Frequency and quality of visits
  - Availability of a visitation supervisor
  - Activities and events in the child's life that parent would like to be present for
  - Appropriateness of current placement
  - Progress in services: Can client articulate what he or she has learned?
  - Any education issues with children
  - Client's contact and relationship with caseworker
- ❑ Provide client with copy of report.
- ❑ Update client's contact information.
- ❑ Contact caregiver, if appropriate, to discuss reunification, current contact with client, and willingness to continue if permanency achieved.
- ❑ Contact caseworker to discuss:
  - Visitation: Safety concerns? Progression of visits? Can visits move outside of the agency? Has the caseworker observed visits? Provision of makeup visits if visits have been missed through no fault of client. Transportation barriers to visits?
- ❑ Contact service providers to discuss:
  - Opinions on client's well-being and progress
  - Are services culturally appropriate?
  - Are services geared to the right developmental stage of the parent?
  - Are services provided in the parent's first language?
  - Can services be consolidated or discontinued?
  - How far and how often is parent being asked to travel?
  - Are any additional services needed for the parent?

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<sup>33</sup> See, Judicial Council of California/Administrative Office of the Courts, California Dependency Guide (2007), C. Robinson, "Case Assessment and Planning" in Child Welfare Law and Practice, 715-29 (Donald Duquette et al. eds., 2010), J. Cohen and M. Cortese, "Cornerstone Advocacy in the First 60 days: Achieving Safe and Lasting Reunification for Families", 28 Child Law Practice 3, 2009, and National Council of Juvenile and Family Court Judges, Improving Court Practice in Child Abuse and Neglect Cases, 1995

## HANDOUT 9: PERMANENCY HEARING CHECKLIST

- Any risk of detriment if child is returned or recommended timeliness
- Formulate position on the following:
  - Reunification and/or case closure
  - Visitation
  - Services
  - Whether to request a contested placement hearing
- If return will not occur, is placement with relative possible?
- Contact opposing counsel to discuss position and remove as much mystery from hearing as possible.
- Consider filing motions such as: change of placement, contempt for non-delivery of services, explore kinship placement, conduct ICPC, increase visitation, decrease UA monitoring, discovery, sibling reunification, change of services, and/or housing assistance,

### DURING

- Be aware of applicable law and burdens (C.R.S 19-3-702).
- Inform court of client's wishes.
- Acknowledge positives and update court on client's situation and progress in services.
- Inform court of barriers to success for treatment plan and request appropriate orders.
- Request contested hearing (if appropriate or necessary).
- Ensure court addresses the following:
  - Return home, if in child's best interests. If not today, then court must determine whether there is a substantial probability that child will be returned within six months.
  - Whether reasonable efforts were made.
  - The continued necessity for and appropriateness of placement.
  - The extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care (C.R.S. 19-3-702 (6)).
- Request visitation orders with specific times, locations, and plan for progression. If denied.
- Request discretion to caseworker and GAL to expand visitation without further court order.
- Request discretion to caseworker and GAL to return home without further court order.

### AFTER

- Consult with client to explain court orders and rulings and answer questions.
- Set deadlines and future goals for client.
- Review court orders for accuracy.

## HANDOUT 10: PERMANENCY PLANNING HYPOTHETICALS

### PERMANENCY PLANNING HYPOTHETICALS

#### INSTRUCTIONS:

Spend a five minutes reading these short fact scenarios below and 15 minutes discussing with your small groups. We will spend our last 10 minutes discussing in the large group. These clients face permanency planning issues. How will you counsel them about the permanency options in their cases?

#### HYPOTHETICALS:

**Maria:** Maria's three children live with Maria's sister and brother-in-law. Maria is a victim of domestic violence and the children were removed when Maria refused to leave her husband, Robert. Maria continues to live with Robert. She denies any ongoing abuse. The case is set for a permanency hearing in 2 weeks. The department wants to do an APR to aunt and uncle because Robert and Maria continue to live together. Robert is halfway done with his 52 week offender course, and Maria has completed her victim's therapy. They deny any new incidents of physical abuse. The children report hearing from extended family that abuse is still happening. Maria wants her children returned to her custody.

**Jennifer:** Jennifer is a teen mom who is also the subject of a dependency and neglect case. She lives with her four month old, Joshua, in a residential treatment facility for teen moms. She very much wants to leave the facility. She wants to live with her sister in Section 8 Housing. Her sister has three young children of her own. The department has not approved a goal of independent living for teen mom.

**Steve:** Steve is the biological dad of Johnny. Johnny has been living with his mom, who is addicted to methamphetamine. Steve has a criminal history of prior felony assaults and drunk driving. He claims to have been clean for 4 years, and is living in community corrections. He will be released from community corrections in 2 months, and then plans to live with his mother. The case has been going on for 12 months, and the Johnny has been living with maternal grandmother this whole time. Johnny is 10 years old, and very much wants to live with his dad. Steve wants custody of Johnny.

#### DISCUSSION QUESTIONS FOR EACH OF THE HYPOTHETICALS:

- ▶ What are the permanency options?
- ▶ How will you advocate for what the client wants? What is the best advocacy route?
- ▶ How will you counsel these clients?

## HANDOUT 11: TERMINATION HEARING CHECKLIST

### TERMINATION HEARING CHECKLIST<sup>34</sup>

#### BEFORE

- Obtain adjudication transcript/record if necessary.
- Obtain and analyze discovery.
- Request videotaping of visits, if appropriate.
- Object to unnecessary evaluations of client.
- File motion and order for court appointed expert.
- Seek referrals for experts.
- Interview experts.
- Retain expert.
- Provide expert with necessary collateral information.
- Communicate with client about expert and setting up appointments.
- Obtain court appointed expert report.
- Develop litigation strategy.
- Meet with client, discuss options.
- Identify any relatives that have not already been located, notify them of timeframes for intervention for placement.
- Interview witnesses.
- Subpoena witnesses.
- Prepare and distribute witness list.
- Conduct depositions or send out interrogatories when appropriate.
- Participate in pretrial conferences.
  - Settle when possible: if not on entire case, then on certain issues such as visitation, suspended judgment, placement with relatives.
  - Agree on stipulations when possible, reduce to writing when necessary.
- Prepare exhibits.
- Prepare and file pretrial motions.
- Prepare stipulations when possible.
- Prepare direct and cross examinations.
- Prepare closing argument.
- Prepare trial notebook.

#### DURING:

- Participate in trial – conduct examinations of witnesses and present evidence.
- Seek appropriate orders, including sibling or parental visitation, placement, or other orders if appropriate and necessary

#### AFTER:

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<sup>34</sup> See, Judicial Council of California/Administrative Office of the Courts, California Dependency Guide (2007), C. Robinson, “Case Assessment and Planning” in Child Welfare Law and Practice, 715-29 (Donald Duquette et al. eds., 2010), J. Cohen and M. Cortese, “Cornerstone Advocacy in the First 60 days: Achieving Safe and Lasting Reunification for Families”, 28 Child Law Practice 3, 2009, and National Council of Juvenile and Family Court Judges, Improving Court Practice in Child Abuse and Neglect Cases, 1995

## **HANDOUT 11: TERMINATION HEARING CHECKLIST**

- ❑ Obtain court orders and give copy to client.
- ❑ Visit and counsel client and explain court's findings and orders.
- ❑ Meet with client and discuss appeal.
- ❑ Have client sign the Notice of Appeal, or specifically authorize filing of appeal.
- ❑ File notice of appeal and designation of record within 21 days: continue appeal.
- ❑ Identify appellate counsel and make referral if necessary.
- ❑ Order transcript.
- ❑ Facilitate goodbye visit if necessary

## **HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER**

### **SAMPLE OF ADVANCED CROSS EXAMINATION OF CASEWORKER:**

Below is a sample of an advanced cross examination, one that brings out the theory of the defense, and slowly builds up an idea.

#### DECISION-MAKING AUTHORITY:

- Ms. Smith, you are a child protection worker?
- You work for the Department of Social Services(DSS)?
- As a caseworker for DSS you obviously have a supervisor?
- Your supervisor is Ms. Susan Supervisor?
- It is her job to review all of the reports you file.
- She signs the reports you file.
- But as your supervisor she is not just a rubber stamp.
- As your supervisor she substantively reviews your cases?
- And makes her own determinations about how the case should proceed?
- Now you meet about your cases.
- Discuss your cases.
- Ultimately come to a determination of whether to ask the County Attorney to file a request for termination of parental rights?
- The reports that you file do not state if you and your supervisor agree about the conclusions.
- Or disagree about your conclusions.
- The report here before the court just states what “the department’s” conclusion is.
- And the language you have used in this report is “the Department.”

#### PERSONAL CONTACT:

- Now to be clear you were the person who worked closely with Ms. Tillman?
- And you were the person who met with Mary Ann Tillman?
- And her grandmother Jennifer Tillman?
- Ms. Supervisor rarely if ever met with Ms. Tillman.
- Never met with Mary Ann Tillman.
- Never met with Jennifer Tillman except for during one staffing.

#### TERMINATION OF PARENTAL RIGHTS PERMANENT:

- Termination of parental rights is permanent.
- It is forever.
- And because of this, it is seen as a last resort.
- In fact under the law it is the mandate of DSS to reunite parents and children.
- And as such, it is your mandate to reunite children with parents.
- And to do this you must offer support to parents and children so that they succeed.
- This is at least in part, because studies have consistently shown that children have better outcomes when they are with their parents.
- Even in imperfect situations studies have shown that children do better with their parents.



## HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER

### CHANGE:

- You would agree that for people with serious issues change can be difficult?
- And often slow to come.
- This slow ability to change can be an indication of how deep the person's struggles are.
- As an experienced social worker you have seen a lot of people start to change.
- And have worked hard to help people follow through.
- But then these same people are unable to follow through.
- This can be frustrating for you.
- This can be disappointing for you.
- These experiences can lead you to feel cautious when you see someone start to change.
- You feel especially cautious because you are dealing with that person's child.
- And the disappointment of a parent's failure to follow through with change can be difficult for children.
- You are especially wary when it comes to drugs and alcohol.
- However, you would agree that some people have amazed you.
- They have succeeded.
- When you were fairly convinced they could not.
- Each case is unique.
- Each person's situation is unique.

### MS. TILLMAN'S PROGRESS:

- So let's talk about Ms. Tillman.
- Ms. Tillman clearly has had significant difficulties in her life.
- Her father died when she was 8.
- She struggled in school.
- She was in an abusive relationship with Mary Ann's father.
- She has problems with alcohol and drugs.
- This has led her to struggle with stability.
- Consistency.
- And accountability.
- Those are the areas that she has worked on in her treatment plan.
- Let's talk about those three things, but before we get there:
- Just to be clear Ms. Tillman has never physically abused Mary Ann.
- Ms. Tillman has always wanted Mary Ann to be in her life.
- She has never asked to give up Mary Ann for adoption.
- Still doesn't agree with this termination of her parental rights.
- She very strongly does not want to sever her parental responsibilities to Mary Ann.

### STABILITY:

- So let's first talk about Ms. Tillman's stability.
- As a part of her treatment plan Ms. Tillman was required to "stabilize her lifestyle and improve her adult functioning."
- This was objective #3.
- Specifically Ms. Tillman was to A) have no new law violations.

## HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER

- And B) obtain employment or apply for TANF.
- As to this objective you wrote that Ms. Tillman was UNSUCCESSFUL
- However, Ms. Tillman has had no new law violations.
- And although she has not obtained employment she has successfully applied for TANF and food stamps.
- To be clear, objective #3 did not state that she was to “HAVE GOTTEN” TANF and food stamps but to “have applied for.”
- **So, Ms. Tillman did meet Objective #3**
- The next factor you looked for in Ms. Tillman’s treatment plan as to stability was the requirement that Ms. Tillman obtain and maintain safe and stable housing.
- This was objective #4.
- For this objective Ms. Tillman was to A) “obtain and maintain affordable housing.”
- And B) allow DHS access to her home so that its appropriateness could be assessed.
- As to this objective, you wrote that Ms. Tillman was UNSUCCESSFUL.
- However, Ms. Tillman did obtain housing.
- Your issue was that she did not have the means to pay for it.
- You never determined that this housing was unsuitable.
- Or inappropriate.
- You issue with this housing is that she currently did not have the means to pay for the housing.
- To be clear as of this date, Ms. Tillman has not lost her housing.
- And as noted above in your report Ms. Tillman is currently waiting for her TANF and food stamps to arrive.
- As to the second part of Objective #4 as you wrote in your report “Ms. Tillman has communicated appropriately with this caseworker.”
- So, Ms. Tillman both currently has housing.
- Has a potential means to pay for it.
- And has communicated appropriately with you in regards to her housing.
- Finally, as to the aspect of the treatment plan concerning Ms. Tillman’s stability - Ms. Tillman was to “allow monitoring of the treatment plan progress”
- This was objective #5.
- For this objective Ms. Tillman was to A) contact the caseworker once a month.
- B) Allow unannounced visits by the caseworker.
- And C) Sign all requested releases.
- For this condition, you wrote that Ms. Tillman was ONLY Partially Successful
- However, as noted in your report Ms. Tillman has A) successfully maintained contact with you.
- B) Then the next condition has no noted problems.
- C) Finally, she has successfully signed all releases.
- So, even though you wrote **Partially Unsuccessful** as to this objective you listed nothing that Ms. Tillman did **not** successfully complete.

### CONSISTENCY:

## HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER

- The next issue you were working on with Ms. Tillman was her consistency as it related to Mary Ann
- To meet that goal, Ms. Tillman was to “maintain her relationship with her child Mary Ann.”
- This was objective #2.
- To do this she is supposed to A) Participate in supervised visits with Mary Ann each week.
- B) Show up on time for her visits.
- C) Visits will be increased or decreased or converted to unsupervised at the discretion of the case worker and take feedback given during visitations and utilize that feedback throughout future visits.
- For this objective you again wrote she was UNSUCCESSFUL.
- However, Ms. Tillman did show up for numerous visits with MaryAnn.
- Ms. Tillman did call in advance when she was going to be late or miss an appointment.
- Overall Ms. Tillman was only late or missed 5 visits.
- To be clear you did not specifically note how many of those 5 visits were missed versus the number of times she showed up but she was late.
- So when she was late she still visited with Mary Ann.
- So to be clear Ms. Tillman has only missed less than 5 meetings with Mary Ann.
- You also noted that Ms. Tillman has been unable to “effectively incorporate feedback and is resistant to such help.”
- To be clear, in your report, you did not give one example of Ms. Tillman’s inability to incorporate feedback.
- Further, in your report did you note any negative impact this may have had on her parenting.
- Or any negative impact this may have had on her relationship with Mary Ann.
- In contrast, in regards to the content of Ms. Tillman’s visits with MaryAnn you wrote and I quote “visits with Mary Ann go well when Ms. Tillman attends.”
- Finally as to increased visitations, Ms. Tillman requested that she be permitted to have increased visitations with MaryAnn.
- She requested that she be allowed to have overnight weekend visitations.
- This was a request that you never responded to.
- Never permitted her to have additional visitation.
- Even though you had the ability under this treatment plan to allow more visitation, this was never done.

### ACCOUNTABILITY:

- The final aspect of your treatment plan was designed to look at her accountability. To do this you monitored Ms. Tillman’s use of alcohol and drugs.
- Ms. Tillman was required to “maintain a sober lifestyle by complying with substance abuse and mental health treatment recommendations.”
- This is found in Objective #1.
- Specifically, Ms. Tillman was required to A) participate in an intake as schedule by the mental health center and other treatment providers to include individual therapy and psychiatric services.

## HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER

- B) She was required to abstain from alcohol and illegal drugs.
- C) Next she was required to participate in UA's as recommended by DHS.
- Finally, D) she was required to not decrease or stop her monitoring or treatment modalities without written approve of the treatment providers.
- For this objective you also wrote that Ms. Tillman was UNSUCCESSFUL.
- However, Ms. Tillman did successfully complete a psychological evaluation and parent child interactional.
- Further, Ms. Tillman did comply with some mental health (MH) treatment.
- Ms. Tillman also did attend some group therapy for her substance abuse treatment.
- So to be clear, Ms. Tillman has never stopped MH treatment.
- In your report you did not list one appointment that Ms. Tillman ever missed in relation to her mental health.
- You never listed one session of her substance abuse group that she missed.
- Nor has she ever completely stopped her substance abuse therapy.
- Your issue with her is that she did not go to treatment as often as you would like.
- This treatment is group therapy.
- You are not a psychologist?
- Psychiatrist?
- Mental health counselor?
- So you do not know if the particular treatment recommended is the best for Ms. Tillman?
- Or if going to the treatment every week is more helpful to Ms. Tillman than going every other week or every third week.
- You do not know if going at all to these treatments is helpful to Ms. Tillman.
- To be clear, in your report you did not list one appointment that Ms. Tillman ever missed in relation to her mental health treatment.
- You never listed one session of her substance abuse group that she missed.
- To be clear, Ms. Tillman has been fully compliant over the past three months with her UA's
- Most importantly – all of those UA's have been clean.
- You cannot tell us if Ms. Tillman will be clean for three more months.
- Six more months.
- Twelve more months.
- The rest of her life.
- You would agree that every month Ms. Tillman maintains sobriety is good for MaryAnn.
- And for most people the longer they go sober, the stronger they get with their sobriety.
- So even though Ms. Tillman did her mental health evaluation, has gone to mental health treatment, gone to substance abuse treatment and been clean for three months you did not write that Ms. Tillman was partially successful you wrote that she was unsuccessful.

### NOTHING WOULD CHANGE:

- Currently, Mary Ann is staying with Jennifer Tillman.
- Jennifer Tillman is Ms. Tillman's mother.
- You have asked Jennifer Tillman to adopt Mary Ann if Ms. Tillman's parental rights are terminated.

## HANDOUT 12: SAMPLE CROSS EXAMINATION OF CASEWORKER

- However, if Ms. Tillman's parental rights were NOT terminated MaryAnn would stay with Jennifer Tillman.
- Ms. Tillman would continue to visit.
- Ms. Tillman would continue to be monitored.
- She would continue to participate in treatment.
- If Ms. Tillman continued to be sober for three more months and continued to maintain her housing and continued to visit with Mary Ann you would likely agree to more visitation.
- Maybe over time she would do overnight visitation.
- If in six months she continued to be sober and continued to maintain her housing and continued to visit with Mary Ann you would likely agree to even more visitation.
- She likely could have temporary custody of Mary Ann.
- However, if Ms. Tillman does not comply - termination could be re-raised by the Department .
- However, if termination is granted today it can never be undone.
- It is permanent.

# Colorado Practice Materials Resource Checklist

Compiled by Alan Pannell  
William A. Wise Law Library, University of Colorado Law School  
Updated October 2010

## Colorado Practice Series

Vol 1-3A	Krendl, Methods of Practice (with Colorado Business Corporation Act Deskbook)
Vol 4-5	Civil Rules Annotated
Vol 5A	Colorado Handbook on Civil Litigation
Vol 6	Civil Trial Practice
Vol 7-8A	Personal Injury Practice: Torts and Insurance
Vol 9-10	Creditors' Remedies, Debtors' Relief
Vol 11-13	Civil Procedure Forms & Commentary
Vol 14-15	Criminal Practice and Procedure
Vol 16-16A	Colorado Employment Law and Practice
Vol 17	Colorado Workers' Compensation Practice and Procedure
Vol 18	Colorado Appellate Law and Practice
Vol 19-21	Colorado Family Law and Practice
Vol 22	Colorado Handbook on Evidence

## Topic-Specific Materials

### Criminal Law

#### Colorado DUI Benchbook

H. Patrick Furman et al.

#### Criminal Practice and Procedure (Colorado Practice Series)

Robert J. Dieter

### Elder Law/Estate Planning

#### Colorado Estate Planning, Will Drafting & Estate Administration Forms with Commentary

C. Jean Stewart

#### Colorado Estate Planning Handbook

David K. Johns et al.

#### Colorado Handbook of Elder Law

Susan Fox Buchanan et al.

#### Colorado Law of Wills, Trusts, and Fiduciary Administration

James R. Wade et al.

## HANDOUT 15: COLORADO PRACTICE MATERIALS

### **Colorado Probate System**

James R. Wade et al.

### **Fundamentals of Colorado Trust Practice: Counseling Clients, Drafting Trusts, and Building a Successful Practice**

Carol A. Payne

### **The Green Book: Selected Colorado Materials on Wills, Estate, Trusts & Taxes**

David K. Johns et al.

### **The Orange Book: Colorado Estate Planning Forms**

## **Family Law**

### **Colorado Domestic Relations Forms**

Robert T. Hinds & Albert M. Bonin

### **Colorado Family Law and Practice** (Colorado Practice Series)

Frank L. McGuane, Jr., Kathleen A. Hogan & Brenda L. Storey

### **Practitioner's Guide to Colorado Domestic Relations Law**

Gretchen L. Aultman

## **Landlord-Tenant Law**

### **Rights and Obligations: Colorado Landlord-Tenant Law from the Perspective of a Tenant Advocate**

Manuel Ramos & Continuing Legal Education in Colorado

## **Annual Surveys**

**Annual Survey of Colorado Law** (Colorado Lawyer)

**Annual Tenth Circuit Survey** (DU Law Review)

## **Litigation Materials**

### **Court Rules**

**Colorado Court Rules: State**

**Colorado Court Rules: Federal**

**Colorado Revised Statutes** (LexisNexis)

Court rules in last two volumes

**Colorado Revised Statutes Annotated** (West)

## **HANDOUT 15: COLORADO PRACTICE MATERIALS**

Civil procedure rules in volumes 4-6; other rules located with relevant code sections

### **Colorado Rules of Evidence Annotated**

## **Civil Procedure**

### **Civil Procedure Forms and Commentary** (Colorado Practice Series)

Debra Knapp

### **Civil Rules Annotated** (Colorado Practice Series)

Sheila K. Hyatt & Steven A. Hess

### **Discovery: A Handbook for Colorado Practitioners**

William H. Remine & Continuing Legal Education in Colorado

## **Trial Practice**

### **Civil Trial Practice** (Colorado Practice Series)

David R. DeMuro

### **Colorado Causes of Action: Elements, Defenses, Remedies, Forms**

### **Colorado Courtroom Handbook for Civil Trials**

Victoria C. Swanson & Continuing Legal Education in Colorado

### **Colorado Handbook on Civil Litigation** (Colorado Practice Series)

Stephen A. Hess

### **Colorado Litigation Forms and Analysis**

Richard W. Laugesen

### **Damages in Colorado Civil Trial Practice**

Dennis W. Brown et al.

### **On Depositions in Colorado**

### **Trial Handbook for Colorado Lawyers**

Patricia K. Kelly & J. Patrick Kelly

## **Evidence**

### **Colorado Evidence Courtroom Manual**

Arthur Best et al.

### **Colorado Evidence Handbook**

Victoria C. Swanson

### **Colorado Evidentiary Foundations**

Continuing Legal Education in Colorado et al.



## HANDOUT 15: COLORADO PRACTICE MATERIALS

### **Colorado Handbook on Evidence** (Colorado Practice Series)

Steven A. Hess & Sheila K. Hyatt

### **Colorado Rules of Evidence Annotated**

Alan H. Bucholtz

### **Colorado Rules of Evidence With Objections**

William G. Meyer et al.

### **Playing by the Rules: Winning with Evidence in Colorado Family Law Cases** (with CD-ROM)

Denise K. Mills

## **Jury Instructions/Verdicts**

### **Colorado Jury Instructions for Civil Trials**

Colorado Supreme Court Committee on Civil Jury Instructions & Continuing Legal Education in Colorado

### **Colorado Jury Instructions 4th, Civil**

Colorado Supreme Court Committee on Civil Jury Instructions

### **Colorado Jury Instructions, Criminal**

Colorado Supreme Court Committee on Criminal Jury Instructions

**Jury Verdict Reporter of Colorado:** Weekly Summaries of Colorado Jury Verdicts

## **Appellate Procedure**

### **Colorado Appellate Handbook**

Janice B. Davidson & Continuing Legal Education in Colorado

### **Colorado Appellate Law and Practice** (Colorado Practice Series)

Leonard P. Plank & Anne Whalen Gill

## **Professional Resources**

### *Books*

### **Colorado Attorney's Professional Liability Handbook**

Robin L. Beattie

### **Colorado Ethics Handbook**

Colorado Bar Association, Ethics Committee

### **Lawyer's Professional Liability in Colorado: Preventing Legal Malpractice and Disciplinary Actions**

Michael T. Mihm & Continuing Legal Education in Colorado

## HANDOUT 15: COLORADO PRACTICE MATERIALS

### **Practitioner's Guide to the Attorney-Client Privilege and the Work Product Doctrine**

Thomas E. Spahn

#### *Periodicals*

##### **Colorado Lawyer**

<http://www.cobar.org/tcl>

##### **The Docket (Denver Bar Association)**

<http://www.denbar.org/docket>

##### **Law Week Colorado**

<http://www.lawweekonline.com>

#### *Associations*

##### **Colorado Bar Association**

<http://www.cobar.org>

##### **Colorado Criminal Defense Bar**

<http://www.ccdb.org>

##### **Colorado Trial Lawyers Association**

<http://www.ctlanet.org/co>

##### **Denver Bar Association**

<http://www.denbar.org>

##### **Women's Bar Association**

<http://www.cwba.org>

## **Court Resources**

### **Colorado State Judicial Branch**

[www.courts.state.co.us](http://www.courts.state.co.us)

#### **Colorado Chief Justice Directives**

[http://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/Index.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm)

#### **Colorado Water Courts**

[www.courts.state.co.us/Courts/Water/Index.cfm](http://www.courts.state.co.us/Courts/Water/Index.cfm)

### **Colorado Supreme Court**

[www.courts.state.co.us/Courts/Supreme\\_Court/Index.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Index.cfm)

### **U.S. Courts for the Districts of Colorado**

[www.cod.uscourts.gov](http://www.cod.uscourts.gov)

### **U.S. Court of Appeals for the 10th Circuit**

[www.ca10.uscourts.gov](http://www.ca10.uscourts.gov)

## **Colorado State Government/Legal History**

### *Websites*

#### **Colorado General Assembly**

<http://www.leg.state.co.us>

#### **State of Colorado** (Includes Local Government Websites)

<http://www.colorado.gov>

#### **Code of Colorado Regulations (Colorado Administrative Code)**

<http://www.sos.state.co.us/CCR/Welcome.do>

#### **Colorado Register**

<http://www.sos.state.co.us/CCR/RegisterHome.do>

#### **Colorado Agencies**

<http://www.colorado.gov/colorado/agencies.html>

#### **Attorney General Formal Opinions**

[http://www.ago.state.co.us/ag\\_opinions.cfm](http://www.ago.state.co.us/ag_opinions.cfm)

#### **Governor's Executive Orders**

<http://www.colorado.gov/governor/executive-orders.html>

## **Research Resources**

### **Colorado Law Libraries**

#### **Colorado Supreme Court Library**

<http://cscl.colibraries.org>

#### **US Tenth Circuit Library**

<http://www.ca10.uscourts.gov/library>

#### **Colorado Legislative Council Library**

[http://www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff](http://www.state.co.us/gov_dir/leg_dir/lcsstaff)

#### **National Indian Law Library**

<http://www.narf.org/nill/catalog/catalog.htm>

#### **University of Colorado, Wise Law Library**

<http://www.colorado.edu/law/lawlib>

#### **University of Denver, Westminster Law Library**

<http://law.du.edu/library>

## HANDOUT 15: COLORADO PRACTICE MATERIALS

### Online Library Catalogs

#### Colorado Virtual Library

<http://coloradovirtuallibrary.org>

#### Prospector

<http://prospector.coalliance.org>

#### WorldCat

<http://www.worldcat.org>

### Research Guides

#### *Print*

#### Colorado Legal Resources: An Annotated Bibliography

Robert C. Richards, Jr. and Barbara Bintliff

#### *Online*

#### CoALL Legal Research Corner

<http://www.aallnet.org/chapter/coall/lrc.asp>

#### Colorado Bar Association Legal Research Links

<http://www.cobar.org/hotlinks.cfm>

#### CU Law Library Research Guides

<http://www.colorado.edu/law/lawlib/researchtools.htm>

#### DU Law Library Colorado Research Guides

<http://www.law.du.edu/library/content.cfm?pg=research>

## RESOURCE GUIDE

### **Juvenile Law: A Resource Guide for Practitioners**<sup>35</sup>

*By Colene Flynn Robinson*

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#### **Abstract:**

Juvenile law is a dynamic area that encompasses both the law and the social sciences, providing Colorado practitioners with unique challenges to staying well-informed. This article covers the main treatises and secondary sources in child welfare for juvenile law attorneys.

Juvenile law, meaning child welfare and delinquency practice, is a fast-paced, resource-dependent area of practice. This specialized area of law is changing rapidly from its child-saving, children-as-property roots, to a new paradigm of children as rights-based citizens. It requires a thorough understanding not only of legal processes and procedures, but of the rapidly evolving social sciences. For new practitioners or experienced practitioners seeking new information, this resource review is offered as a quick way to focus one's research quickly.

### **Substantive Law**

#### ***Colorado Law***

Practitioners in juvenile law need to know child welfare law, both state and federal. Juvenile law in Colorado is controlled by Title 19, the Children's Code of the Colorado Revised Statutes C.R.S. 19-1-101 et seq. The 2005 *Colorado Judicial Benchbook, Stepping Up To Juvenile Court* extensively and practically covers the law. With charts and checklists, it explains child welfare procedure and addresses the questions before the court at each hearing. Practitioners also need to be familiar with Volume 7 of the Colorado Code of Regulations, which deals with child welfare.

#### ***Federal Law***

An excellent reference book, written by the nation's top scholars and practitioners, is *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*, Ventrell and Duquette, (Bradford Publishing Co., 2005, 2<sup>nd</sup> edition expected 2010). This book is commonly referred to as the "Red Book." It takes an exhaustive look at child welfare practice in America. It covers the federal child welfare statutes, such as federal funding acts, the Child Abuse and Prevention Act, and Titles IV-B

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<sup>35</sup> Originally published at 36 *The Colorado Lawyer* 10 (Oct. 2007). Permission to reprint on file with author.

and IV-E of the Social Security Act. It also discusses constitutional law, including the development of parental rights.

For a more basic understanding of child welfare procedure and substantive issues, the *Improving Court Practice*<sup>i</sup> series is excellent. A quick, easy-to-use reference series from the National Council of Juvenile and Family Court Judges (NCJFCJ), these books cover each hearing, from the temporary shelter hearing to adoption. They identify the purpose and timing of each hearing, and they discuss how to prepare for the hearing and address questions that must be answered at each hearing. They also have easy-to-use laminated cards for each hearing. These cards, included with each book, provide a checklist of necessary parties, questions to ask, and best practices.

### **Ethics and Standards of Practice**

In addition to substantive law, practitioners must be familiar with the ethics and standards of practice of working with children and families. In part due to the complexity of the roles of the attorneys in child welfare cases, several Chief Justice Directives (CJDs) help provide guidance: CJD 04-04 governs court-appointed counsel in delinquency cases; CJD 04-05 addresses respondent parents' counsel and others; and CJD 04-06 speaks to attorneys representing children and appointments handled by the Office of the Child's Representative (OCR).

Representing children creates various potential ethical problems because attorneys must represent what is in the child's best interests, as opposed to performing client-directed representation. As lawyers, all guardians *ad litem* (GALs) are bound by the Colorado Rules of Professional Conduct. At times integrating the Children's Code with the duties of the GAL can be confusing.

For an excellent discussion of the potential problems, *see* "Ethical Issues for Guardians *ad litem* Representing Children in Dependency and Neglect Cases." This article explores the most common ethical issues confronting GALs, such as the duty of loyalty, duty of confidentiality, and conflicts of interest. In her book *Legal Ethics in Child Welfare Cases*, Jennifer Renne has a longer discussion on this topic, and also covers ethics for agency attorney and respondent parent counsel. A more academic discussion of these issues can be found in *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* by Jean Koh Peters.

Attorneys also should be familiar with the applicable standards of practice, including the American Bar Association's (ABA) *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*. The ABA also has produced *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* and *Standards of Practice for Attorneys Representing Child Welfare Agencies*.

### **Evidentiary Hearings**

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Lawyers working in juvenile law need to be prepared for contested hearings at several different points in the case. An excellent reference guide for general evidentiary matters is the *Colorado Evidence: 2005–2006 Courtroom Manual* by Best, Hardaway, Jamison, and Weissenburger. This book was specially designed for use in the courtroom, and provides fast, authoritative answers on questions likely to arise during contested evidentiary hearings.

Another must for juvenile law practitioners is Professor John Myers' book, *Myers on Evidence in Child, Domestic, and Elder Abuse Cases*. Aimed mostly at criminal prosecution of child abuse and neglect, this book covers pertinent case law and medical and psychological research. Myers discusses a range of potential issues, such as children's testimonial competence, proving physical and sexual abuse, and evidentiary objections.

### Advocacy on Collateral Issues

#### *Immigration*

Because immigration law is changing so rapidly, it can be difficult to keep up-to-date with the latest laws affecting juveniles and families. Therefore, when dealing with immigration law issues, it is best to consult with a lawyer who has immigration expertise. One publication on Special Immigrant Juvenile Status (SIJS) has consistently been the guide of choice for juvenile lawyers: *Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction*, published by the Immigrant Legal Resource Center. It covers eligibility, risks of applying, the application process, and other immigration options to consider. It contains all the necessary forms and court orders, and is indispensable in walking practitioners through a SIJS issue, be it their first or last. Practitioners should be aware that because this publication was published in 2005, some of the information it contains may be outdated.

#### *Educational Advocacy*

The first place to start when trying to understand complex educational law and its intersection with child welfare cases is the *Educational Advocacy Manual*, a publication of the Colorado Department of Human Services. Another, more general resource for understanding the issues is *Learning Curves: Education Advocacy for Children in Foster Care*. This publication focuses on the educational issues facing children in foster care, including special education, school discipline, and program needs of children.

### Conferences and Trainings

Keeping up-to-date on current research and best practices can be a daunting task for any practitioner. Several annual conferences and trainings assist juvenile law practitioners with this task.

- **Office of the Child's Representative Trainings:** The OCR typically hosts three low-cost trainings a year—two in the Front Range and one in Steamboat Springs. The OCR covers very topical issues, mostly geared toward the attorneys representing

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children in dependency and neglect or domestic relations cases. Visit <http://www.coloradochildrep.org>.

- **National Association of Counsel for Children Annual Conference:** Held each fall, this is a well-organized and well-attended national conference, with tracks in abuse and neglect, juvenile justice, family law, and policy advocacy. Recently, the National Association of Counsel for Children (NACC) has been offering a one-day training, prior to the conference, through its certification in child welfare law program. Although only certain states recognize child welfare law specialists, the list of states is growing. Even if a practitioner is not able to become certified, taking the certification course provides a comprehensive education in the field. Visit <http://www.NACCchildlaw.org>.
- **NACC Rocky Mountain Child Advocacy Training Institute:** Held every May in Denver, in conjunction with the National Institute of Trial Advocacy and the Rocky Mountain Children's Law Center, this is an intensive four-day trial advocacy course designed specifically for child advocates. Visit <http://www.NACCchildlaw.org>.
- **Colorado Bar Association Juvenile Law Section Trainings and Brown Bag Trainings:** The Juvenile Law Section sponsors several brown bag trainings in courthouses across the state throughout the year. In addition, the Colorado Bar Association (CBA) often offers an annual juvenile law training; for example, in early 2007, the CBA sponsored "Dependency and Neglect Fundamentals." All CBA programs also are available on video. Visit <http://www.cobar.org>.
- **Colorado Department of Human Services Child Welfare Conference:** Held each June in different locations throughout Colorado and sponsored by the Colorado Department of Human Services (CDHS), this large annual conference brings together local and national experts to explore cutting-edge issues in child welfare practice. CDHS also hosts smaller trainings throughout the state, and generally allows juvenile law attorneys to attend current offerings, space permitted. Relevant topics for practitioners include child maltreatment, developmental delays, and substance abuse issues. Attorneys, county employees, and foster parents (and others can sign up for courses at <http://www.cocwtraining.com>. Trainings are posted online six months in advance.
- **Colorado County Attorneys Association Conference:** Held each year in June and November, the Colorado County Attorneys Association sponsors conferences with child welfare sessions for agency attorneys. Topics can include all aspects of child abuse and neglect, state and federal laws, case law updates, trial tactics, child development, mental health, substance abuse, immigration, education, and funding streams.

### Other Resources

#### *The Colorado Lawyer Articles*

- Bellonger, "[Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act](#)," 31 *The Colorado Lawyer* 77 (Nov. 2002). Gives a general synopsis of Indian Child Welfare Act (ICWA) and the interplay of ICWA and recent additions to Colorado law.



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- Bittan, “The Nuts and Bolts of Juvenile Delinquency,” 31 *The Colorado Lawyer* 19 (Oct. 2002). Takes a detailed look at the legal processes and laws involved in juvenile delinquency cases.
- Craig, “[Juveniles in the Department of Human Services: Commitment to Change?](#)” 27 *The Colorado Lawyer* 121 (June 1998). Discusses the placement options provided by DHS and the role attorneys play in the decision-making process.
- Elstein, “[Children Exposed to Parental Substance Abuse: The Impact,](#)” 24 *The Colorado Lawyer* 29 (Feb. 2005). Presents a concise overview of several common substances used by parents and the mental and physical effects that this substance abuse has on children, both mentally and physically.
- Furman *et al.*, “The Role of the Guardian *ad Litem* in Juvenile Delinquency Cases,” 27 *The Colorado Lawyer* 53 (Feb. 1998). Discusses the role of GALs within the framework of a criminal juvenile delinquency case.
- King, “[Colorado Juvenile Court History: The First Hundred Years,](#)” 32 *The Colorado Lawyer* 63 (April 2003). Presents a detailed overview of the history and development of the juvenile court system.
- Rappaport, “[Children as Witnesses,](#)” 31 *The Colorado Lawyer* 15 (Oct. 2002). Offers thorough analysis of the steps necessary to determine whether a child should take the stand.
- Schoen, “[Kids and Court,](#)” 33 *The Colorado Lawyer* 31 (Jan. 2004). Looks at the basic tools available for lawyers to help eliminate re-victimization of children in the court process.
- Ventrell, “[Child Maltreatment and the Role of Colorado Lawyers,](#)” 31 *The Colorado Lawyer* 79 (Oct. 2002). Provides an overview of the history of society’s response to child maltreatment and the role lawyers play in that response.

### *Periodicals*

- ***ABA Child Law Practice.*** Published by the ABA Center for Children and the Law. The *Child Law Practice Series* presents articles on current issues in child welfare law, including issues facing foster youth, adoptive parents, and attorney practices in the child welfare system.
- ***Children and Youth Services Review.*** Published by Elsevier Science. This journal provides interdisciplinary scholarly analysis of child welfare practice and policies, including foster care practices, abuse and neglect cases, adoption, and much more. It is available online at <http://www.childwelfare.com/index.htm>.
- ***The Children’s Rights Journal.*** Co-edited by the ABA Center on Children and the Law and the Loyola University Chicago School of Law. This journal presents articles that focus on the how the law affects children and children’s rights within the legal system. It offers articles for both practicing attorneys, as well as professionals working in the child rights and welfare field.
- ***Children’s Voice* and *Child Welfare.*** Published by the Child Welfare League of America. *Children’s Voice* covers a variety of topics relating to children, including articles on special education, children affected by hurricane Katrina, and families who choose to adopt. *Child Welfare* is designed as a tool for child welfare professionals

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and offers practice-oriented articles, as well as articles on current trends and research in the field of child welfare.

- ***The Guardian***. Published by the National Association of Counsel for Children. *The Guardian* provides a comprehensive review of legal practice strategies, research, policies, and training opportunities in the child welfare field, as well as an invaluable update of recent case law.
- ***Journal of Juvenile Law and Policy***. Published by the University of California-Davis School of Law. The *Journal of Juvenile Law and Policy* presents articles in the areas of juvenile, family, and education law. Beyond the academic articles and topics covered, this journal also presents a special section on children and adults in the child welfare system presented through personal narratives, artwork, and poetry.
- ***Journal of Public Child Welfare***. Published by Haworth Press. This new scholarly journal debuted in the spring of 2007. It covers a wide range of scholarly topics in the child welfare field, including current research, policy analysis, and program reviews. The journal focuses on providing information for practicing attorney, judges, social workers, and other professionals working in the child welfare system.
- Three publications focusing on juvenile and family law are available from the NCJFCJ. The ***Juvenile and Family Law Digest*** provides up-to-date case summaries and decisions in juvenile and family law. The ***Juvenile and Family Court Journal*** presents scholarly articles on research and policy developments. ***Juvenile and Family Justice Today*** presents current news and events in the juvenile and family law field.
- ***Juvenile Justice Bulletin***. Published by the Office of Juvenile Justice and Delinquency Prevention. This publication reviews major research and development in the juvenile justice field and presents up-to-date information on conferences and trainings available for attorneys.

### Websites

- **ABA Center on Children and the Law**, <http://www.abanet.org/child>. Legal resources are available in all areas of child welfare law and are available on this website. The Web page offers online resources, as well as access to more information on current projects in child welfare law.
- **ABA National Child Welfare Resource Center on Legal and Judicial Issues**, <http://www.abanet.org/child/rcjji/home.html>. This Web page focuses primarily on child abuse and neglect issues. Online resources include articles, training, and federal legislation summaries.
- **Child Welfare Information Gateway**, <http://www.childwelfare.gov>. With a focus on child abuse and neglect, this site offers information on prevention, response to abuse and neglect, and support for families. Statistics, as well as a state statute searches, are available.
- **Child Welfare League of America (CWLA)**, <http://www.cwla.org>. A comprehensive site, CWLA provides advocacy resources, as well as information on special initiatives, current programs, current research and data, and consultation and training.

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- **Children’s Defense Fund (CDF)**, <http://www.childrendefense.org>. This site offers an in-depth overview of all CDF’s major projects. In addition, practitioners can access several online publications and national and state level data on child welfare.
- **Indian Child Welfare Law Center**, <http://www.icwlc.org>. This site offers a wealth of information on ICWA and child welfare issues affecting Native American children and families.
- **Juvenile Law Center (JLC)**, <http://www.jlc.org>. The JLC site offers information on child welfare and juvenile justice issues. The site contains links to current litigation, publications, media resources, and more.
- **Juvenile Law Net**, <http://www.juvenilelaw.net>. This site is specifically for Colorado attorneys practicing in child welfare law. Information is available on the GAL program, respondent parents, appeals, truancy, mental health defense, contempt defense, and more.
- **National Association of Counsel for Children (NACC)**, <http://www.naccchildlaw.org>. This site provides information about NACC training and certification programs, national juvenile and family law conferences, and comprehensive resource access for attorneys.
- **National Council of Juvenile and Family Court Judges**, <http://www.ncjfcj.org>. This comprehensive site contains information about child abuse and neglect, juvenile delinquency, family violence, domestic relations, substance abuse, and more.
- **Office of the Child’s Representative**, <http://www.coloradochildrep.org>. This site contains information about current legislation, the CASA (Court Appointed Special Advocates) program, and GAL programs, as well as access to online resources covering a variety of child welfare issues.
- **Pew Commission on Children in Foster Care**, <http://pewfostercare.org>. This site features data, DVDs, publications, and other data for parents, children, judges, and lawyers concerning the foster care system and the courts.

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## Bibliography

ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (ABA 2007) available online at <http://www.abanet.org/child/clp/ParentStds.pdf>.

ABA Standards of Practice for Attorneys Representing Child Welfare Agencies (ABA 2004) available online at <http://www.abanet.org/child/agency-standards.pdf>.

Attorney Directory of Forensic Psychiatrists, <http://www.forensicpsychonline.com/online.html>

Bailie, K. "The Other Neglected Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers who Represent Them," 66 *FORDHAM L.REV.* 2285 (1998).

Barish, N., Juvenile Law Resource Center, Admissibility of Parenting Capacity Evaluations (2009).

Best *et al.*, *Colorado Evidence, 2005–2006 Courtroom Manual* (Matthew Bender & Co., Inc., 2005).

Budd, K.S., Felix, E.D., Sweet, S.C., Saul, A., & Carleton, R. A., *Evaluating Parents in Child Protection Decisions: An Innovative Court-Based Clinic Model*, *PROFESSIONAL PSYCHOLOGY: RESEARCH AND PRACTICE*, 666-75 (Vol. 37 2006).

Budd, K.S., et al, *Legal Use of Mental Health Evaluations in Child Protection Proceedings*, *FAMILY COURT REVIEW*, 629-40 (Vol. 42 2004).

Calogero, E. K. "Reasonable Efforts: They Aren't Just for Funding Anymore." *THE MICHIGAN CHILD WELFARE LAW JOURNAL*, 30-42 (Spring 2009).

*Child abuse and neglect, in PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS* (G. B. Melton, et al. eds., 3<sup>rd</sup> Ed., The Guilford Press 2007).

Cohen, J., & Cortese, M., "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families", *CHILD LAW PRACTICE*, 28:3, 37-44 (2009).

*Colorado Judicial Benchbook, Stepping Up To Juvenile Court* (Colorado Department of Human Services (CDHS), available online at <http://www.cobenchbook.com>

Committee on Professional Practice and Standards, *Guidelines for Psychological Evaluations in Child Protection Matters*, *AMERICAN PSYCHOLOGIST*, 586 – 93, 1999.

Condie, L.O. *PARENTING EVALUATIONS FOR THE COURT: CARE AND PROTECTION MATTERS* (Kluwer Academic/Plenum 2003).

- Condie, L. O. & Condie, D., "Termination of Parental Rights," *in* Forensic Psychology: Emerging topics and expanding roles 294-33 (A. M. Goldstein ed., John Wiley & Sons, Inc. 2003).
- Debebe, G. "Cross Cultural Competence and Power-Based Rules: A Native American Case Study." INTERNATIONAL JOURNAL OF INTERCULTURAL RELATIONS 32:5, 399-414 (2008).
- Duquette, D., & Haralambie, A., eds, Child Welfare Law and Practice (Bradford Publishing, 2010, 2<sup>nd</sup> ed.)
- Educational Advocacy Manual*, available from Arthur Atwell, Director, Workforce Development Services, CDHS, Office of Performance Improvement, 3550 W. Oxford Ave. B-309, Denver, CO 80236; (303) 866-7172; (303) 866-7177 (fax).
- Erickson, S.K., et al, *A Critical Examination of the Suitability and Limitations of Psychological Tests in Family Court*, FAMILY COURT REVIEW, 154-74 (Vol 45, Issue 2, 2007), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2007.00136.x/full>
- Haight, W., et al "Understanding and Supporting Parent-Child Relationships During Foster Care Visits: Attachment Theory and Research", *Social Work* 48 (2), 2003.
- Hanley, J.H. "Beyond the Tip of the Iceberg: Five Stages Toward Cultural Competence" available at <http://www.cyc-net.org/reference/refs-culturalcompetence.html>.
- Haynes, J.P., *Parenting Assessment in Abuse, Neglect, and Permanent Wardship Cases*, in PRINCIPLES AND PRACTICE OF CHILD AND ADOLESCENT FORENSIC MENTAL HEALTH (American Psychiatric Publishing 2010).
- Hughes, T., *The neglect of children and culture: Responding to child maltreatment with cultural competence and a review of Child abuse and culture: Working with diverse families*, FAMILY COURT REVIEW, 501-10 (Vol. 55 2006).
- Implicit Association Test, <https://implicit.harvard.edu/implicit/demo/>
- JUDICIAL COUNCIL OF CALIFORNIA/ADMINISTRATIVE OFFICE OF THE COURTS, CALIFORNIA DEPENDENCY GUIDE (2007)
- Kinoshita and Brady, "Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction," (Immigrant Legal Resource Center, Jan. 2005), available at <http://www.ilrc.org>.
- Kuehne, H et al., "Child Protection Evaluations: The Forensic Stepchild", FAMILY AND CONCILIATION COURTS REVIEW, 38:3, 368-391 (2000).

## HANDOUT 17: BIBLIOGRAPHY

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- Leathers, S., "Parental Visiting and Family Reunification: Could Inclusive Practice Make a Difference?" *Child Welfare* 81:4, 595-616 (2002).
- McNaught, K., *Learning Curves: Education Advocacy for Children in Foster Care* (ABA, 2004).
- Myers, J., Myers on Evidence in Child, Domestic, and Elder Abuse Cases (Aspen Publishers, 2005).
- Montoya, M. & Cruz, C.Z., *Narrative Braids: Performing Racial Literacy*, 33 AM. IND. L. REV. 863 (2010).
- NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, ADOPTION AND PERMANENCY GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (2000)
- NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, KEY PRINCIPLES FOR PERMANENCY PLANNING FOR CHILDREN (1999).
- NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE (2005)
- NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (1995)
- Otto, R.K. & Edens, J. F., *Parenting capacity, in Evaluating competencies: Forensic assessments and instruments*, 229-308, (T. Grisso ed., Kluwer Academic/Plenum Publishers, 2<sup>nd</sup> ed. 2003).
- Peters, J. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (Matthew Bender & Co., Inc., 2001).
- Pope, K, et at, THE MMPI, MMPI-2, AND MMPI-A IN COURT: A PRACTICAL GUIDE FOR EXPERT WITNESSES AND ATTORNEYS (3rd ed. American Psychological Association 2006).
- Pozner, L. & Dodd, R. Cross-Examination Skills for Law Students (2009).
- Renne, J., "Ethical Issues for Guardians *ad Litem* Representing Children in Dependency and Neglect Cases" 31 *The Colorado Lawyer* 43 (Oct. 2002).
- Renne, J., *Legal Ethics in Child Welfare Cases* (American Bar Association (ABA), 2004).
- Rauber, D. "Working with Parent Partners to Achieve Better Case Outcomes for Families," CHILD LAW PRACTICE, 28:11 (2010).

STATE COURT ADMINISTRATIVE OFFICE, CHILD WELFARE SERVICES DIVISION, PARENTS' ATTORNEY PROTOCOL (2008), *available at* <http://courts.michigan.gov/scao/services/cws/cws.html>.

“Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases” (NACC revised ed.) (ABA, 1999), *available online at* <http://www.naccchildlaw.org/documents/abastandardsnaccrevised.doc>.

Thornton, E., “Tools for Evaluating Parent Attorney Performance”, *CHILD LAW PRACTICE*, 29:6 (2010).

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Court Performance Measures in Abuse and Neglect Cases*. 2008.