



The mission of the Respondent Parents' Counsel Task Force is to improve the well-being of Colorado's children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.

RESPONDENT PARENTS' COUNSEL TASK FORCE

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COLORADO'S COURT IMPROVEMENT PROGRAM

FINAL REPORT TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT

SEPTEMBER 2007

**RESPONDENT PARENTS’ COUNSEL TASK FORCE
FINAL REPORT TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT
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RESPONDENT PARENTS' COUNSEL TASK FORCE FINAL REPORT TO THE COLORADO SUPREME COURT: EXECUTIVE SUMMARY

“The mission of the Respondent Parents’ Counsel Task Force is to improve the well-being of Colorado’s children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.”

Rose, a mother of two young children, became the respondent mother in a dependency and neglect case in one of the Denver metro area counties. When the case was first filed, the department considered her history of drug use, mental health issues, and involvement with the department in at least two other states, and it filed a motion for no appropriate treatment plan. This motion is a drastic decision in a dependency case because, if granted, it sets the case on the immediate path to termination of parental rights, relieving the department of social services of any responsibility to attempt to treat a respondent parent and reunify the family. Rose was already engaged in treatment through a probation order and appeared to be doing well in her treatment program, and Rose’s children, who were both over four years of age, knew their mother and had a relationship with her. Rose, with the assistance of her court-appointed respondent parents’ counsel (RPC), decided to set the case for trial and contest the motion for no appropriate treatment plan.

Rose’s RPC obtained an independent expert, who assessed Rose, her history, and the current situation. This expert recommended that Rose be given a chance to participate in treatment and work towards reunification with her children. Rose’s RPC used this evaluation to successfully advocate for Rose’s participation in a drug court program that allowed Rose to admit to the circumstances that put her children at risk and begin to focus on treatment and visitation with her children. Rose is now at one of the highest levels of the drug court program, and she has successfully completed her probation program and engaged in mental health treatment, family therapy, and visitation with her children. With the intensive family therapy work during her visits, her relationships and interactions with her children have become stellar and she receives nothing but praise every time she appears in court.

But for Rose’s RPC setting the matter for a full evidentiary trial and obtaining an expert psychologist to assist in determining her amenability to treatment, Rose likely would not have experienced the opportunity to participate in the services and treatment at which she has been so successful, and her children would have lost their opportunity to have a relationship with their mother.¹

Introduction and Background

Respondent Parents’ Counsel (RPC) provide legal representation to parents in dependency and neglect proceedings. While some of these parents elect to hire a lawyer to represent them, many cannot afford to do so. Colorado law recognizes the critical link between legal representation and the protection of due process rights for parents and families by requiring that indigent parents have a right to a state-paid attorney throughout the entire pendency of a dependency and neglect case.

RPC play a critical role in dependency and neglect proceedings by protecting parents’ fundamental and constitutional rights, instituting necessary checks on state involvement in families, and providing balanced information to the courts that promotes effective decision making on behalf of children and

¹ To protect the confidentiality of the proceedings, the names in this story have been changed, and details regarding the judicial district and RPC have been omitted.

families. RPC also further the interests of children and families by working to involve parents in meaningful treatment plans and visitation with their children.

National dependency court improvement efforts have identified improving quality and compensation of parents' counsel as integral to court reform efforts. In 2004, the Pew Commission recommended that "parents and children must have a direct voice in court, effective representation and timely input by those who care about them."² Prior to the Pew Commission, the National Council for Juvenile and Family Court Judges in its *Resource Guidelines* identified representation of parents as critical to effective judicial decision making in dependency proceedings, stating that "[e]ach party must be competently and diligently represented in order for juvenile and family courts to function effectively."³ In recognition of the importance of clarifying RPC responsibilities and the role of courts and administrative offices managing RPC, the American Bar Association promulgated *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*.⁴

Consistent with national recommendations, Colorado's court improvement efforts have also identified representation of parents as an area in need of improvement. Colorado's federally-funded Court Improvement Program (CIP) identified representation of parents as an area in need of improvement in its initial assessment in 1996.⁵ The CIP reiterated its concerns with representation of parents in its 2001 discussion paper to the Colorado Supreme Court Commission on Families in the Courts, its 2002 Reassessment of Child Abuse and Neglect Cases in the Colorado Courts and its 2005 and 2006 annual reports on its court improvement efforts to the Administration for Children and Families.⁶ The Chief Justice of the Colorado Supreme Court has set forth improvement of representation of parents as a component of Colorado's Pew Plan.⁷

The RPC Task Force

In October 2005, Chief Justice Mullarkey convened the RPC Task Force to assess the current state of legal representation for respondent parents in dependency and neglect proceedings. Justice Mullarkey requested that the Task Force study training, compensation, standards of representation and models of representation to make recommendations to the Supreme Court and members of the General Assembly.

Since October 2005, the Task Force has met on a quarterly basis, commissioned a statewide needs assessment, examined the administration and delivery of RPC services in Colorado and other states, and reviewed relevant literature and studies regarding the representation of parents and other parties in dependency and neglect proceedings. In addition to studying the issues impacting RPC performance, the Task Force has taken a number of steps to assist RPC: delivered a three-day National Institute for Trial Advocacy training and a RPC conference, drafted guidelines for RPC practice, established a RPC list serve, published an article in the *Colorado Lawyer*, and provided a motions bank to RPC. These measures have certainly assisted RPC; however, permanent structural changes to oversight, compensation, and access to resources would greatly enhance RPC's performance.

² PEW COMMISSION ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE, AND WELL-BEING FOR CHILDREN IN FOSTER CARE at 41 (2004) <<http://pewfostercare.org/research/docs/FinalReport.pdf>>.

³ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (1995) at 22.

⁴ See AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES. See also Mimi Laver, *Promoting Quality Parent Representation through Standards of Practice*, 26 ABA CHILD LAW PRACTICE 1, 1 (2007).

⁵ Laurie Shera, CHILD ABUSE AND NEGLECT CASES IN THE COLORADO STATE COURTS: FINAL REPORT (1996) at 46.

⁶ These reports are available at <<http://www.courts.state.co.us/supct/committees/courtimprovecomm.htm>>.

⁷ Colorado's Pew Plan is available at <<http://www.courts.state.co.us/supct/committees/courtimprovecomm.htm>>.

Recommendations of RPC Task Force

Based on the Task Force members' experience and expertise, its review of the Needs Assessment and literature concerning RPC, and the information gathered from other states and stakeholders in dependency proceedings throughout Colorado, the Task Force makes the following recommendations to improve the system of representation for parents in Colorado:

- Centralize oversight, administration, and support of RPC in an independent office similar to the Office of Alternate Defense Counsel or the Office of the Child's Representative.
- Promulgate the Task Force's proposed Practice Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases through a Chief Justice Directive applicable to all attorneys representing parents in dependency and neglect proceedings and make compliance with the guidelines a term of the contract for state-appointed RPC.
- Provide relevant, accessible, and role-specific training for all RPC, as well as a mentoring program for new RPC.
- Establish a compensation structure and rate that achieve parity among parties in dependency and neglect proceedings and enable thorough and adequate preparation of cases by RPC. The Task Force recommends a conversion to hourly compensation for all RPC as a significant first step, and it also recommends the piloting of staff office models in select areas.
- Establish uniform access to experts, investigators, and other forms of representation support.
- Consider rules, policies, and procedures that provide RPC with access to information and facilities commensurate with other attorneys in dependency and neglect cases.

The Task Force makes these recommendations in order to provide effective representation to parents in dependency proceedings, support the attorneys doing this work, provide better information to the courts deciding the difficult issues in dependency and neglect proceedings, and serve the children and families that come before the Colorado Courts.

Conclusion

The Task Force proposes its recommendations as critical to providing due process and equal protection for families faced with an extreme type of state intervention, in which the parent-child relationship may be severed. The Task Force is cognizant that implementation of some of its recommendations may have some fiscal impact on the State and may call upon the Judicial Branch/ General Assembly to dedicate a larger share of its budget to RPC services. However, considerations of due process, parity, and appropriate outcomes in dependency cases warrant such an investment. The Task Force is heartened by Colorado's legislative efforts to support the attorneys who represent the best interests of children in dependency and neglect proceedings and ongoing recognition of the need to improve compensation for court-appointed counsel. Other states have also prioritized representation for parents, and the findings in Washington illustrate the financial savings that can occur through the improvement of representation of parents in dependency and neglect proceedings. The Task Force believes that by following other states' examples and its own leadership in the representation of other parties in dependency proceedings, Colorado can continue to improve the system for children and families by focusing on the important role of parents and their counsel in these proceedings.

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**RESPONDENT PARENTS' COUNSEL TASK FORCE
FINAL REPORT TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT
SEPTEMBER 2007**

In Fiscal Year 2006, Colorado courts heard 4,136 dependency cases.¹ In those cases, courts made 5,464 appointments of state-paid counsel to represent indigent parents.² Additionally, numerous privately-paid attorneys entered appearances on behalf of parents. These attorneys, referred to in this report as Respondent Parents' Counsel (RPC), play a critical role in protecting the legal rights of parents, preserving family relationships, and providing accurate and balanced information to courts. In Colorado, parents who meet financial eligibility guidelines are entitled to a state-paid RPC,³ and the majority of parents who are represented by counsel are represented by state-paid RPC. For example, in Fiscal Year 2006, 79.6% of the dependency cases required the appointment of a state-paid attorney to represent at least one of the parents in the proceedings.⁴

In October 2005, Chief Justice Mullarkey convened the RPC Task Force to assess the current state of legal representation for respondent parents in dependency and neglect proceedings. Justice Mullarkey requested that the Task Force study training, compensation, standards of practice, and models of representation to make recommendations to the Supreme Court and members of the General Assembly.⁵ Having commissioned a statewide needs assessment, examined the administration and delivery of RPC services in Colorado and in other states, reviewed the relevant literature and studies regarding the representation of parties in dependency and neglect proceedings and discussed findings and issues in regular meetings over the last two years, the Task Force respectfully submits this report and recommendations to improve the state of parents' representation in Colorado. The Task Force makes these recommendations in order to support the attorneys doing this work, to provide better information to the courts deciding the difficult issues in dependency and neglect proceedings, and to serve the children and families that come before the Colorado Courts.

Since its initial meeting in October 2005, the Task Force has taken a number of steps to assist RPC: delivered training, drafted guidelines for practice, established a list-serve, provided a forms bank and initiated a full time staff person dedicated to RPC issues. These measures have certainly assisted RPC. However, the Task Force believes that

¹ See COLORADO JUDICIAL BRANCH FISCAL YEAR 2006 ANNUAL STATISTICAL REPORT, *Table 19: District Court Filings by Type* <<http://www.courts.state.co.us/panda/statrep/ar2006/arfiles/table19.pdf>>. The number 4,136 represents the sum of regular dependency and neglect filings and Expedited Placement filings, in which at least one child is six years of age or under.

² This information is based on an analysis of Judicial E-Clipse system attorney appointment data by the Financial Services Division of the State Court Administrator's Office (analysis performed on August 3, 2007).

³ COLO. REV. STAT. § 19-3-202(1) (2007).

⁴ This information is based upon an analysis of Judicial E-Clipse system attorney appointed data, *supra* note 2.

⁵ Sample Appointment Letter from Mary Mullarkey, Chief Justice of the Colorado Supreme Court (September 5, 2005) [hereinafter "Appointment Letter"] (attached to this report as Exhibit A).

structural changes in the compensation and administration of RPC are necessary to improve representation of parents and the system as a whole. The Task Force respectfully requests that the Chief Justice consider the following recommendations which will be discussed in detail in this report:

- Centralize the oversight, administration, and support of RPC in an independent office similar to the Office of Alternate Defense Counsel (OADC) or the Office of the Child’s Representative (OCR). (Recommendation A1).
- Implement pilot staff model and social work support programs to efficiently deliver RPC services. (Recommendations A2, D3, E4).
- Promulgate Practice Guidelines for RPC through a Chief Justice Directive applicable to all attorneys representing parents in dependency and neglect proceedings and make compliance with guidelines a term of the contract for state-paid RPC. (Recommendations B1, B2).
- Provide relevant, accessible, and role-specific training for all RPC, as well as a mentoring program for new attorneys. (Recommendations C1, C2, C3, C4).
- Establish a compensation structure and rate that achieve parity among parties in dependency and neglect proceedings and enable thorough and adequate preparation of cases. (Recommendations D1, D2, D3, D4).
- Improve access to experts, investigators, and other forms of representation support. (Recommendations E1, E2, E3, E4).
- Consider rules, policies and procedures that provide RPC access to information and facilities commensurate with other attorneys in dependency and neglect cases. (Recommendations F1, F2).

This report constitutes the Task Force’s final report to the Chief Justice. Section I discusses the development and activities of the RPC Task Force. Section II provides background information on the right to counsel in dependency and neglect proceedings and the role of counsel in those proceedings. Section III describes national and state efforts to improve representation of parties in dependency and neglect proceedings. Section IV explains the Task Force’s recommendations for supporting effective representation of parents in dependency and neglect proceedings.

I. The Respondent Parents’ Counsel Task Force

The Respondent Parents’ Counsel (RPC) Task Force is an arm of Colorado’s federally-funded Court Improvement Program. The thirty-three Task Force members are representative of all facets of dependency and neglect proceedings (RPC, county attorneys, GALs, family court facilitators, and judicial officers), as well as Colorado’s legislature, the OCR, and law schools. Early on, the Task Force established five working groups: needs assessment; structural outcomes; guidelines; training; and advocacy for resources. The Task Force’s meetings and activities have focused on the Task Force’s mission “to improve the well being of Colorado’s children and families who are involved

in dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.”⁶

To date, the Task Force has met on a quarterly basis and accomplished the following: drafting of guidelines for RPC in Colorado; sponsorship of a reduced-rate three-day National Institute of Trial Advocacy (NITA) Training for RPC in January 2007; sponsorship of a one-day statewide RPC Conference in June 2007; establishment of an email list serve for RPC throughout Colorado; and the publication of an article regarding the Task Force’s activities in the March 2006 edition of the *Colorado Lawyer*. Notably, twenty-four RPC attended the January 2007 NITA training and over seventy RPC attended the June 2007 training.

To further inform its recommendations to the Supreme Court, the Task Force commissioned the National Center for State Courts, the National Association of Counsel for Children, and the National Council for Juvenile and Family Court Judges to perform a needs assessment in Colorado. This assessment consisted of statewide RPC and stakeholder surveys as well as an in-depth analysis of court proceedings, case files, interviews, and focus groups in three jurisdictions: the Second Judicial District (Denver), the Fourth Judicial District (El Paso and Teller Counties) and the Nineteenth Judicial District (Weld County). From this report came the identification of barriers to effective RPC performance in Colorado and a broad spectrum of recommendations for reform. The full text of the report, *State of Colorado Judicial Department Colorado Court Improvement Program Respondent Parents’ Counsel Task Force Statewide Needs Assessment* (hereinafter “Needs Assessment”), is available on the RPC Task Force’s web site.⁷ A copy of the Executive Summary of the Needs Assessment is attached to this report.⁸

Additionally, in January, 2007, the position of Family Representation Coordinator was created at the Office of the State Court Administrator to further the work of the Task Force and spearhead implementation of the suggestions of both the Task Force and the Needs Assessment. The Family Representation Coordinator is an attorney licensed to practice law in Colorado, and she has experience working with the dependency and neglect systems in both Colorado and Illinois. In order to further assess the state of affairs regarding RPC throughout Colorado, the Family Representation Coordinator has traveled to many of Colorado’s jurisdictions to discuss RPC issues with judicial officials, RPC, and other stakeholders.⁹

⁶ See Respondent Parents’ Counsel Task Force website at <<http://www.courts.state.co.us/supct/committees/courtimprovementdocs/rptf.htm>>.

⁷ NATIONAL CENTER FOR STATE COURTS, NATIONAL COUNCIL FOR JUVENILE AND FAMILY COURT JUDGES, AND NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, STATE OF COLORADO JUDICIAL DEPARTMENT COLORADO COURT IMPROVEMENT PROGRAM RESPONDENT PARENTS’ COUNSEL TASK FORCE STATEWIDE NEEDS ASSESSMENT (March 2007) <<http://www.courts.state.co.us/supct/committees/courtimprovementdocs/rptf.htm>> [hereinafter “Needs Assessment”].

⁸ See Exhibit B.

⁹ To date, the Family Representation Coordinator has visited fifteen of Colorado’s twenty-two judicial districts, including the following districts: 2nd, 3rd, 4th, 6th, 8th, 9th, 10th, 12th, 13th, 16th, 17th, 19th, 20th, 21st,

The Task Force members' experience and expertise, review of the Needs Assessment, information regarding other states' administration of RPC and local practice throughout Colorado, consideration of national and state studies regarding RPC, as well as the premise that RPC should be given the resources and autonomy to advocate for their clients as effectively as any other private or state-paid attorney, form the basis of the recommendations contained in this Report.

II. The Right to Counsel for Parents in Dependency and Neglect Proceedings and the Role of RPC

In Colorado, parents involved in dependency and neglect proceedings have a right to counsel. Case law has compared these cases to death penalty cases in the family law context.¹⁰ "These cases bring the most personal, emotional and private aspects of people's lives into the judicial process and the decisions reached have profound and continuing effects on the families involved."¹¹ RPC play a critical role in dependency and neglect proceedings by protecting parents' fundamental and constitutional rights, instituting necessary checks on state involvement in families, and providing balanced information to the court that allows it to make decisions that benefit children.¹² RPC also further the interests of children and families by working to involve parents in meaningful treatment plans and visitation with their children. Colorado law recognizes the critical link between legal representation, the protection of due process rights for parents, and good outcomes for families and children by providing that indigent parents have a right to a state-paid attorney throughout the entire course of a dependency and neglect case.¹³

and 22nd. The Family Representation Coordinator will continue to schedule visits to the remaining seven judicial districts, and she and other members of the Task Force have already discussed RPC issues with some of the judicial officers and RPCs in many of these districts.

¹⁰ See, e.g., *In re F.M.*, 163 P.3d 844, 851 (Wyo. 2007) ("Termination of parental rights is the family law equivalent of the death penalty in a criminal case."); *In re Sean B.*, 868 N.E.2d 280, 284 (Ohio Ct. App. 2007) ("Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.'" (quoting *In re Smith*, 601 N.E.2d 45, 54 (Ohio Ct. App. 1991)).

¹¹ COMMISSION ON FAMILIES IN THE COLORADO COURTS, FINAL REPORT at 5 (August 2002) <<http://www.courts.state.co.us/supct/committees/commfamiiies.htm>> (hereinafter "Commission on Families Report").

¹² See Needs assessment, *supra* note 7, at 4 ("High quality representation of all parties in Dependency proceedings is necessary to produce good outcomes for children and families.") (citing UNIFORM REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND CUSTODY PROCEEDINGS ACT (2006) <http://www.law.upenn.edu/bill/ulc/RARCCDA/2006annualmeeting_approvedtext.htm>). A recent study by Joseph J. Doyle, Jr. of the MIT School of Management, indicates that children on the margin of foster care placement experience better life outcomes if they remain in their homes instead of being placed in foster care. See Wendy Koch, *Study: Troubled Homes Better than Foster Care*, U.S.A. TODAY, July 2, 2007; *MIT News: Kids Gain More From Family than Foster Care* (visited on August 27, 2007) <<http://web.mit.edu/newsoffice/2007/sloan-fostercare-study-0703.html>>.

¹³ COLO. REV. STAT. § 19-3-202(1) (2007). At least 39 states, including Colorado, require the appointment of counsel in proceedings to terminate parental rights. See Needs Assessment, *supra* note 7, at 6 (citing NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE, Technical Assistance Bulletin, March 1998, Vol. II, No. 2 at 21.).

In Colorado, RPC are primarily appointed at the initial hearing in a dependency case, the emergency or shelter care hearing. RPC remain on the case throughout its entire pendency and under the current appellate rules are required to file a notice of appeal if a client wishes to appeal a final judgment in the case.¹⁴ Throughout a case, RPC are expected to participate, at a minimum, in the following hearings and court events: emergency shelter care/ temporary custody hearings; pretrial conferences; adjudicatory hearings or trials; dispositional hearings; permanency planning hearings; review hearings; and termination of parental rights trials. Additionally, in some cases, RPC represent parents in contempt proceedings, in which parents face a potential jail sentence, and at permanent custody hearings, which immediately precede the termination of some dependency and neglect cases. Participation at these hearings ranges from brief status conferences to multi-day jury and court trials, and each hearing requires preparation in the form of assessment of case strategy, review of discovery, and communication with clients, other parties, and witnesses. Contested hearings and trials also require extensive preparation of legal argument and direct and cross examinations of multiple witnesses, many of whom are endorsed as expert witnesses. In addition to scheduled court dates, RPC should stay in regular contact and communication with clients and attend, as the necessity of a case dictates, staffings with county departments of social services, schools, and other entities serving their client's family.

RPC are attorneys, and they are bound by the same ethical principles as any private or state-paid attorney in Colorado. They must provide competent representation, which “requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”¹⁵ They must “act with reasonable diligence and promptness,” and take care to not neglect a matter.¹⁶ They must abide by their client's decision whether to settle a matter or take it to contested hearing or a trial.¹⁷ They must keep their client “reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”¹⁸ They must not represent a client if their representation “may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.”¹⁹ These, as well as all other Colorado Rules of Professional Conduct, define RPC's role and obligations as attorneys.²⁰

Representing parents is challenging on a number of levels. First, effective representation of parents requires knowledge of the Colorado Children's Code, the Colorado Department of Human Services Manual, Volume 7 (also codified at 12 COLO. CODE

¹⁴ C.A.R. 3.4(d).

¹⁵ Colo.RPC 1.1.

¹⁶ Colo.RPC 1.3.

¹⁷ Colo.RPC 1.2.

¹⁸ Colo.RPC 1.4.

¹⁹ Colo.RPC 1.7.

²⁰ The AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (attached to this Report as Exhibit C) [hereinafter “ABA Standards”], the Task Force's proposed *Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases* (attached to this Report as Exhibit D), and the Colorado Bar Association Ethics Committee's *Ethics Opinion 114* provide additional information about expectations of RPC.

REG. 2509-1), the Colorado Rules of Evidence, Rules of Civil Procedure, Rules of Juvenile Procedure, a multitude of other state and federal statutes and regulations, and federal and state case law in the area of child welfare and parents' rights.²¹ The role of RPC also requires familiarity with the mental health, substance abuse, and other social work-related issues that permeate dependency and neglect proceedings. Additionally, RPC must be prepared to deal with emotionally difficult factual scenarios and family dynamics, and they—as do all parties in the system—risk burn out and secondary trauma. Furthermore, the facts in dependency cases evolve throughout the progression of the proceedings, and RPC must be diligent and vigilant with regard to the development of facts and the ongoing status of a case.²² Finally, representing indigent clients can often create practical challenges in client communication because maintaining consistent contact with highly mobile clients who may not have stable addresses, phone service, or transportation can be extremely time-consuming.

The Task Force has devoted time and discussion to the development of a realistic view of the role of RPC and the challenges they face. While it is the experience of some Task Force members that dependency and neglect law is not always viewed by all members of the legal community as “real law” or complex litigation, the Task Force’s analysis of the legal and multidisciplinary aspects of representing parents reveals that representing parents or any party in dependency and neglect proceedings involves considerable expertise and skill. This understanding informs the recommendations in this report.

²¹ The ABA Standards require parents’ attorneys to be familiar with the following federal statutes and regulations:

Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357; Child Abuse Prevention Treatment Act (CAPTA), P.L. 108-36; Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963; the ICWA regulations, 25 C.F.R., Part 23, and the ICWA Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979); Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671 (a)(18) (1998), 42 U.S.C. § 1996b (1998); Interstate Compact on Placement of Children (ICPC); Foster Care Independence Act of 1999 (FCIA), P.L. 106-169; Individuals with Disabilities Education Act (IDEA), P.L. 91-230; Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g; Health Insurance Portability and Accountability Act of 1996 (HIPPA), P.L., 104-192 § 264, 42 U.S.C. §1320d-2; Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2; immigration laws relating to child welfare and child custody; state laws and rules of evidence; state laws and rules of civil procedure; state laws and rules of criminal procedure; state laws concerning privilege and confidentiality, public benefits, education, and disabilities; state laws and rules of professional responsibility or other relevant ethics standards; state laws regarding domestic violence; state domestic relations laws.

Basic Obligation 2, ABA Standards, *supra* note 20.

²² Unlike in criminal and many other civil cases, the facts that develop during the pendency of a dependency case are directly relevant to the court’s determination of ultimate decisions in the case, including whether to return children home to parents and whether to terminate parental rights, requiring a unique legal finesse in consultation of clients and case management.

III. National and State Efforts Regarding Representation of Parents in Dependency and Neglect Proceedings

The right to counsel means the right to effective assistance of counsel.²³ National and state court and system improvement efforts recognize that the appointment of an attorney alone does not guarantee effective assistance of counsel. In order to effectively represent parents or any party in a case, attorneys must have access to adequate compensation, resources, and support.²⁴ An attorney should have the autonomy and adequate resources to pursue the necessary communication with clients, litigation of motions, consultation with experts, and case preparation and management. The ethical standards of competence, reasonable diligence and promptness, and conflict-free representation apply to attorneys who represent indigent parents as they do to all attorneys.²⁵ Whether parents receive effective assistance of counsel in dependency and neglect proceedings should not turn on their financial status. The high stakes and constitutional rights implicated in dependency cases exist for *all* parents, not just those who can afford to hire an attorney.

National dependency court improvement efforts have identified improving quality and compensation of parents' counsel as integral efforts to court reform. In 2004, the Pew Commission recommended that "parents and children must have a direct voice in court, effective representation and timely input of those who care about them."²⁶ The National Council for Juvenile and Family Court Judges had earlier identified representation of parents as critical to effective judicial decision making in dependency proceedings, stating that "[e]ach party must be competently and diligently represented in order for juvenile and family courts to function effectively."²⁷ In recognition of the importance of clarifying RPC responsibilities and the role of courts and administrative offices managing RPC, the American Bar Association in 2006 promulgated standards of practice for RPC.²⁸

Chief Justice Mullarkey of the Colorado Supreme Court has identified the representation of parents as a priority in Colorado and has set forth the activities of the Task Force and a focus on representation of parents as a component of Colorado's Pew Plan.²⁹ This echoes and furthers a longstanding concern of Colorado's Court Improvement Program (CIP) with the quality of representation for parents. In its 1996 Program Assessment, the CIP

²³ See *People in the Interest of A.J.*, 143 P.3d 114 (Colo. App. 2006); *People in the Interest of T.D.*, 140 P.3d 205, 217-218 (Colo. App. 2006); *People in the Interest of V.M.R.*, 768 P.2d 1268, 1270 (Colo. App. 1989).

²⁴ See Needs Assessment, *supra* note 7, at 5.

²⁵ See Colo.RPC. 1.1, 1.2, 1.3, 1.4, 1.7.

²⁶ PEW COMMISSION ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE, AND WELL-BEING FOR CHILDREN IN FOSTER CARE at 41 (2004)

<<http://pewfostercare.org/research/docs/FinalReport.pdf>> [hereinafter "Pew Report"].

²⁷ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (1995) at 22.

²⁸ See ABA Standards, *Supra* note 20. See also Mimi Laver, *Promoting Quality Parent Representation Through Standards of Practice*, 26 ABA CHILD LAW PRACTICE 1, 1 (2007).

²⁹ Colorado's Pew Plan is available at

<<http://www.courts.state.co.us/supct/committees/courtimprovecomm.htm>>.

noted that parents' representation was in need of additional resources and training.³⁰ In the CIP's 2001 discussion paper to the Colorado Supreme Court Commission on Families in the Courts, it set forth the development of standards, adequate funding for, and appropriate valuing of attorneys assigned to family cases as one of its nineteen recommendations, noting that "[j]ust as competent, committed and qualified judges are expected to handle family related cases, attorneys should also demonstrate these qualities."³¹ Again in September 2002, the CIP identified "significant concerns" regarding respondent parents' counsel, noting that RPC perform their work "with a minimum of resources, including time and compensation," the same concerns that existed regarding their performance in 1996 persisted, and "[c]onsiderable time, effort, money and energy must be dedicated to remedying this situation."³² The CIP's 2005, 2006, and 2007 annual reports to the Administration for Children and Families have continued to identify efforts geared towards improving the quality of representation of respondent parents in its plan for court improvement.³³

Central to the CIC's concerns with the representation of respondent parents is the recognition that judicial decisions can only be as good as the information provided to judicial officers, and that the system benefits when all attorneys in dependency and neglect proceedings have resources that support thorough investigation of cases, consultation with clients, and advocacy both in and out of court.³⁴ Additionally, the Colorado Commission on Families in the Courts identified compensation and training of attorneys in dependency proceedings as areas for reform, noting that attorneys in dependency proceedings should be compensated on par with Alternate Defense Counsel attorneys and public defenders and that they must have access to ongoing, high-quality training.³⁵

Not surprisingly, Colorado is not alone in its efforts. Similar examples of efforts geared towards improving representation of parents can be found throughout the country. The State of Washington has demonstrated improvements in child and family outcomes through the provision of centralized oversight, competitive compensation and access to resources and investigators.³⁶ In response to the judgment in a lawsuit declaring its rates

³⁰ Laurie Shera, CHILD ABUSE AND NEGLECT CASES IN THE COLORADO STATE COURTS: FINAL REPORT (1996) at 46.

³¹ COLORADO COURT IMPROVEMENT COMMITTEE, COLORADO COURTS' RECOMMENDATIONS FOR FAMILY CASES: AN ANALYSIS OF AND RECOMMENDATIONS FOR CASES INVOLVING FAMILIES at 38

³² Daniel P. Gallagher, CHILD ABUSE AND NEGLECT CASES IN THE COLORADO COURTS 1996—2000: A REASSESSMENT (September 2002) at 35-38 (available at <<http://www.courts.state.co.us/supct/committees/courtimprovecomm.htm>>).

³³ These reports are available at <<http://www.courts.state.co.us/supct/committees/courtimprovecomm.htm>>.

³⁴ See Chris Melonakis, *In My Opinion—Respecting Parent and Child Representation in the Legal Profession*, JUVENILE AND FAMILY COURT JOURNAL, Spring 2006, at 39-40 ("It is clear, however, that to help ensure children's safety in child abuse and neglect cases, all parties must have adequate representation. . . . When parents are not adequately represented, judges do not receive the information necessary to make adequately informed decisions regarding children's best interests.")

³⁵ Commission on Families Report, *supra* note 11, at 12 (Recommendations 53 and 54).

³⁶ See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, TECHNICAL ASSISTANCE BRIEF: IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION (August 2003) (describing Washington program and detailing preliminary findings, including decreased time spent by children in foster care from 290.6 to 253.6 days on average, a decrease in

of compensation for RPC and other court-appointed counsel unconstitutional,³⁷ New York has embarked on an innovative agency contracting approach to providing representation to parents in dependency proceedings and the Center for Family Representation, its Manhattan contractor, has received acclaim for its work.³⁸ Connecticut recently created an independent oversight office for parents' (and children's) attorneys and transitioned to hourly pay as a key element of improving representation.³⁹ Pennsylvania has employed staff models of representation, with a RPC, social worker, and paralegal appointed to every case.⁴⁰ North Dakota has restructured its indigent defense system, which includes RPC, after the Spangenberg Foundation reported significant flaws in its administration and compensation of court appointed counsel.⁴¹ Montana recently pursued a rate increase for parents' attorneys,⁴² and California is in the process of centralizing its administration of parents' counsel and providing supports in the form of social workers and investigators.⁴³ A national organization intended to support parent representation is in its infancy.⁴⁴

The creation of the RPC Task Force and the decision to facilitate an in-depth examination of the needs of RPC is consistent with the Chief Justice's commitment to improving the court system for families and is a significant next step in addressing the issues faced by families who interact with the Colorado court system.

termination of parental rights from 41.3 percent of filings to 22.9 percent of filings, and an increase in reunification rates from 36.8 percent of filings to 56.4 percent of filings) (attached as Exhibit E); NORTHWEST INSTITUTE FOR CHILDREN AND FAMILIES DEPENDENCY AND TERMINATION PARENTS' REPRESENTATION PROGRAM EVALUATION REPORT 2005 at 13, 20-21, and 25-26 (discussing the reduced rates of continuances and compiling positive comments from judicial officers and other stakeholders in dependency cases, including but not limited to the following examples: "[w]e are now able to be more proactive in our representation"; "parents are now an equal player"; "now true underlying issues can be addressed, and energy is not being misplaced.").

³⁷ *Nicholson v. Williams*, 203 F.Supp.2d 153, 253-60 (E.D.N.Y. 2002) (entering a preliminary injunction that state—paid panel attorneys for respondent parents be paid an hourly rate of \$90.00).

³⁸ See Brennan Center for Justice, *Legal Services Elert: New York City Changing Provision of Legal Services to Parents in Family Court Cases: Advocates Praise Move* (April 16, 2007) <<http://www.brennancenter.org/elert.asp?key=351&subkey=48567>> (visited August 27, 2007); website of Center for Family Representation <<http://www.cfrny.org/>>.

³⁹ Telephone Interview with Carolyn Signorelli, Chief Child Protection Attorney, Commission on Child Protection (April 23, 2007).

⁴⁰ Presentation by Mimi Laver, Director of Legal Education, American Bar Association, to the Task Force (October 21, 2005).

⁴¹ The Spangenberg Group, *Recent News: North Dakota Commission Up and Running* (Visited August 28, 2007) <<http://www.spangenberggroup.com/news/NDakotaUpandRunning.html>>.

⁴² See Needs Assessment, *supra* note 7, Appendix A: NCSC National Parent Counsel Information Compendium: July 2006 at 4.

⁴³ Telephone Interview with Leah Wilson, Supervising Court Services Analyst, Center for Families, Children and the Courts, Judicial Council of California Administrative Office of the Courts (May 7, 2005).

⁴⁴ This group has been meeting for approximately one year, and it anticipates funding for a position within the ABA to further its efforts to create a formal national group.

IV. Recommendations of the RPC Task Force

The Needs Assessment presents both a challenge and an opportunity for the RPC Task Force and court administration in Colorado. In their Concluding Remarks and Summary of the Recommendations, the project team asserts:

Based on the data received, it is the conclusion of the project team that the practice of law representing parents in Colorado dependency cases is typically adequate but rarely proficient. It is our further assessment that the cause of sub proficient practice is not unwillingness of counsel to provide proficient service but rather the existence of practice, administration and court systems which discourage optimal practice.⁴⁵

The project team takes care to state that this assertion is not intended to indict the attorneys who work in the system or the personnel who administer the system, but rather “a call to system workers and policy makers to reform an imperfect system which will promote proficient practice.”⁴⁶

Based on the Task Force members’ experience and expertise, a review of the Needs Assessment and other relevant literature concerning RPC, and information gathered from other states and stakeholders in dependency proceedings throughout Colorado, the Task Force makes recommendations in the following six areas: structural models of administration; guidelines and standards; training; compensation; access to resources; and implementation of rules and policies that provide access to information and facilities commensurate with other attorneys in dependency and neglect cases. Each area of recommended reform is discussed in turn, beginning with a synopsis of the Task Force’s recommendations in the area and followed by a discussion of the rationale for the recommendations, the alternatives considered, and suggested implementation strategies.

Central to the Task Force’s recommendations are the principles that the State must support attorneys in the fulfillment of their ethical responsibilities as lawyers and that the State must work towards parity for RPC and their clients. Although the recommendations are discussed in turn, the Task Force views each of its recommendations as an integral component of comprehensive reform. In the Task Force’s view, addressing only one or two areas identified as in need of reform will fail to achieve the necessary improvements for RPC, the clients they represent, and the families of their clients.

⁴⁵ Needs Assessment, *supra* note 7, at 75.

⁴⁶ *Id.*

A. Structural Models of Administration of RPC

Task Force Recommendations

Task Force Recommendation A1: Create an independent office to centralize the recruitment, selection, oversight, payment, training and representation support of RPC. This office can be similar to the Office of Alternate Defense Counsel (OADC) or the Office of the Child’s Representative (OCR).

Task Force Recommendation A2: Pilot staff office models in select jurisdictions and assess the effectiveness of these models in providing quality representation to parents.

Discussion/ Analysis

In her appointment letter to the individual members of the Task Force, the Chief Justice requested that the Task Force consider various models of representation.⁴⁷ Models of representation and administration of RPC impact the quality of services provided by RPC by establishing the locus of responsibility for the recruitment, selection, oversight, and support of RPC. The Needs Assessment concludes that the current administration discourages optimal practice.⁴⁸ Therefore, based on the Needs Assessment, its review of other states’ practices of administering RPC, and its knowledge of attorney oversight models within Colorado, the Task Force identified the following three alternatives for the administration of RPC:

- A centralized model of oversight of administration of RPC through the Office of the State Court Administrator.
- Staff office models of representation, similar to the Colorado Office of the Public Defender or the El Paso County Office of the *Guardian ad Litem*.
- A centralized model of administration of RPC through an independent state agency similar to the Office of the Child’s Representative or the Office of Alternate Defense Counsel.

The Needs Assessment contains several recommendations that relate to the structural model of oversight and administration of RPC: recruitment of RPC (Recommendation 6, Implementation Strategies 6-A through 6-C); establishment of consistent and continuous access of experts, investigators, and reimbursement of court costs (Recommendation 8, Implementation Strategies 8-A through 8-C); the creation of centralized expert and resource banks for RPC (Implementation Strategies 8-C, 13-B); centralized oversight and systematic reviews and audits of RPC compliance with contract provisions (Recommendation 9, Implementation Strategy 9-A); employment of a formal complaint process separate and independent from the trial courts’ oversight of RPC

⁴⁷ See Appointment Letter, *supra* note 5.

⁴⁸ See Needs Assessment, *supra* note 7, at 75.

(Implementation Strategies 9-B, 11-C); and consistent application of the financial eligibility guidelines (Implementation Strategy 10-A).⁴⁹ The training, practice standards, case preparation, caseload, and workload recommendations in the Needs Assessment, discussed in greater detail in Subsections B through E of this report, also relate to the structural oversight model for RPC.⁵⁰

Both the *ABA Standards for Attorneys Representing Parents* and the Children’s Law Office Project of the National Association of Counsel for Children emphasize the importance of administrative support for RPC. The ABA Standards call on administration to support RPC in the following ways: setting a reasonable caseload; advocating for reasonable salaries; providing training and educational opportunities; engaging in meaningful evaluation of attorneys; creating a brief and forms bank; and working with stakeholders to improve child welfare practice.⁵¹ Similarly, the National Association of Counsel for Children has identified providing uniform supervision, meaningful training opportunities, sufficient salaries, and opportunities for professional development among its thirty-eight guidelines for effective support and management of attorneys who represent children and/or parents in dependency proceedings.⁵²

Fulfillment of these goals elevates the practice of dependency law as well as the status and quality of the attorneys who practice in this field. In Colorado, the Office of the Public Defender, Office of Alternate Defense Counsel, and the Office of the Child’s Representative demonstrate the improvement of legal practice and development of expertise that occurs through training, institution and enforcement of standards, legislative advocacy for statutory rights and competitive salaries, litigation support, and opportunities for networking with other attorneys. Nationally, states such as California, Connecticut, Massachusetts, and Washington have utilized centralized oversight, training, and support in their efforts to improve representation of parents in the dependency and neglect system.⁵³ By instituting centralized oversight, training, and support, Colorado would also put itself in a position to improve representation of parents.

Colorado’s Current Decentralized System of Oversight and Support for RPC

The Task Force’s review of the literature in Colorado has revealed that virtually every report concerning respondent parents’ counsel has concluded that, objectively, RPC’s performance is less than optimal and at times inadequate.⁵⁴ These difficulties stem from a lack of appropriate compensation, meaningful training, and supervision at all levels. Subjectively, RPC themselves have uniformly reported a feeling of isolation and inadequate assistance in their work. The Task Force attributes these problems to

⁴⁹ See *id.* at 75-85 (summarizing recommendations and implementation strategies).

⁵⁰ See *id.*

⁵¹ See ABA Standards, *supra* note 20, Obligations of Attorney Managers 1, 3, 5, 6, 7, and 11.

⁵² NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, CHILD WELFARE LAW OFFICE GUIDEBOOK: BEST PRACTICE GUIDELINES FOR ORGANIZATIONAL LEGAL REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY CASES (2006) at 5-8 (Guidelines A-4, A-6, A-8, and A-10) [hereinafter “NACC Blue Book”].

⁵³ See *supra* notes 36-43 and accompanying text; *infra* notes 63, 83, and 86, and accompanying text.

⁵⁴ See discussion of National and State Efforts Regarding Representation of Parents, *supra* Part III.

Colorado's current system of decentralized oversight and support for RPC, and identifies the following problems with the current system.

First, the current degree of judicial involvement in the selection and oversight of RPC undermines the autonomy and independence of RPC. An attorney's duty of loyalty is to his or her client,⁵⁵ and the concern with involving judicial officers in the selection of attorneys is that the involvement may interfere—either overtly or covertly—with an attorney's willingness and ability to take cases to necessary hearings and trials for fear of unduly burdening a docket and upsetting the judicial officer responsible for making determinations about that attorney's livelihood. Standards for criminal defense lawyers have recognized this conflict,⁵⁶ and the reform efforts in California, Connecticut, North Dakota, and Washington have been premised in part on the need to remove judicial officers from the selection and oversight of attorneys. Similarly, the creation of the OCR in Colorado reflects recognition of the need to remove judicial officers from the selection of attorneys, and the OADC in Colorado also preserves attorney autonomy by determining, independently from judicial officers, which attorneys are eligible for criminal defense appointments.

Given the reforms attained by the OCR and county attorneys' independence from judicial officers, the involvement of judicial officers in the selection of RPC not only interferes with RPC autonomy. It also creates disparity in proceedings by making RPC the only party in the courtroom whose payment on a case is completely dependent on the judicial officer and who faces potential chilling effects in pursuing litigation.

The second problem with Colorado's currently decentralized administration of RPC is the wide variation in accountability for RPC that exists throughout the State. Both the Needs Assessment and the jurisdictional visits by the Family Representation Coordinator indicate wide variability in local procedures for selecting RPC and receiving and investigating complaints concerning RPC.⁵⁷ Focus group participants interviewed in the Needs Assessment commented on the lack of oversight and accountability for RPC, stating that the only perceived accountability is the contract renewal process and payment processing.⁵⁸ Even in districts that do formalize a complaint process, the Needs Assessment identified a concern regarding the potential reluctance of parents to complain to the presiding judge about an attorney in a pending case.⁵⁹ Stakeholders commented

⁵⁵ Colo.RPC 1.7 cmt.

⁵⁶ See AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE SECTION STANDARDS, (3rd ed. 1992) Standard 5-1.3 <<http://www.abanet.org/crimjust/standards/providingdefense.pdf>>.

⁵⁷ Needs Assessment, *supra* note 7, at 48. While judicial officers and court personnel in some districts take an active role in selecting attorneys qualified to serve as RPC and investigating and resolving complaints concerning RPC, many districts have not established any formal process for oversight and investigation of complaints concerning RPC.

⁵⁸ Needs Assessment, *supra* note 7, at 48. As will be discussed *infra* Part IV.D, the current flat fee payment structure provides little built-in accountability for RPC.

⁵⁹ Needs Assessment, *supra* note 7, at 48. (quoting one judicial officer's comment that "parents are often reluctant to complain to a judicial officer because of the circumstances, the court setting and their abilities").

that with the lack of an ADC or OCR structure, it is unclear how much oversight the SCAO does or is able to exercise.⁶⁰

Similar to the concerns with lack of continuity and consistency in the oversight of RPC, individual districts vary in the amount of representation support they provide to RPC.⁶¹ Some judicial districts support RPC and other dependency attorneys by providing local trainings and collaborative team meetings. While these opportunities are valuable, they do not serve the needs addressed by the individualized and role-specific support provided by the OCR and county attorney offices. Due to individual judicial officers' involvement in presiding over cases in their district, RPC-focused support within districts would raise many concerns with conflicts and *ex parte* communications.⁶² Moreover, because GALs submit their requests for experts directly to the OCR and county attorneys rely on their county department budgets for experts, RPC remain the one attorney in the case for whom the presiding judicial officer must approve expert fees. As will be discussed in greater detail in Part IV.E, the involvement of individual judicial officers and districts in the expert appointment decision leads to wide variability in access to experts.

The current decentralized administration of RPC also impedes the development of uniform and strategic recruiting and training efforts, minimizes the likelihood of establishing statewide networks of RPC, and interferes with attempts to systematically identify and address systemic problems in representation or in the handling of dependency cases. For these reasons, the Task Force recommends that the current system of oversight and administration be converted to a centralized system.

Alternative 1: Centralization of Oversight and Support of RPC within the Office of the State Court Administrator

The first alternative explored by the Task Force, centralizing the oversight and support of RPC within the SCAO, does have the potential of alleviating the lack of consistency and oversight that result from the current decentralized system. It also potentially removes some of the obvious conflicts presented by individual judicial officers' involvement in selecting and supporting RPC. However, centralization of oversight and administration of RPC within the SCAO will not remove all of the concerns with conflicts that exist in the current system. The provision of training, motions banks, expert banks, appellate and trial consultation, and other supports, while critical to the systemic success of RPC, appears problematic when it comes from the judicial department itself. The concern is that judicial department involvement in supporting one party in a dependency proceeding may call into question the fairness with regard to other parties. For example, posting a motions bank or expert bank for RPC on the judicial department's website may be viewed as an *ex parte* communication or as improperly supporting one party in litigation.

⁶⁰ *Id.*

⁶¹ Given the comprehensive and interdisciplinary nature of RPC work, see discussion *supra* Part II, the Task Force has elected to use the term "representation support" in lieu of "litigation support." Representation support includes not only support in preparing and strategizing litigation, but also case management, client consultation, and analysis of the multidisciplinary aspects of a case.

⁶² *Colorado Code of Judicial Conduct*, Canon 3(A)(4).

Also of concern, the provision of litigation support by the judicial department could be construed as becoming involved in the litigation itself, potentially interfering with the appellate process. The involvement of judicial department employees in providing individualized litigation support to RPC further exacerbates the potential conflict and disruption of the appellate process.

Additionally, while judicial officers presiding over cases certainly may be helpful in identifying some training needs of RPC, the contents of training, resource libraries, and list serves should be set and monitored by attorneys and not by judicial department staff. Public Defender, GAL, and family law training topics are ultimately determined independent of the judiciary. RPC training should be developed with the same independence. Hosting trainings and other forms of litigation support within the judicial department may inhibit candid and open discussion about the issues attorneys face in their practice. One attorney commented to the Family Representation Coordinator that he was reluctant to participate on the list serve created by the Task Force within the judicial department for fear that judicial officers were also able to read the comments that were made regarding pending cases.

Finally, as evidenced by the OADC and OCR, an important component in elevating the area of practice is engaging in systemic and legislative advocacy on behalf of RPC and their clients. Because of potential conflicts and constraints on the judicial department's ability to advocate with the legislature or other systems for just one party in a case, this critical advocacy will not be achieved if RPC oversight is housed within the SCAO.

Alternative 2: Staff Office Model

The Task Force also considered the possibility of a staff office model of oversight and administration of RPC. Conceptually, this office would be similar to the Office of the State Public Defender. Other states have also achieved staff office model structures through establishing staff office models such as the GAL Office in El Paso County or contracting with Legal Services or other nonprofit entities.⁶³ Benefits of a staff office model are efficiencies in cost (savings on malpractice and health insurance, rent, computer systems, etc.) and the existence of readily available support through other attorneys and professional staff within the office. A recent study from Harvard has indicated the potential benefits of a staff office model in terms of quality.⁶⁴ Critical to the

⁶³ Examples of such states include Massachusetts, which has a number of regional staff offices, and New York, which recently sent out a request for proposals and ultimately contracted with five nonprofit organizations or other entities to serve as the staff office for 50 percent of RPC representation in each of the five boroughs of New York City. Interview with Mike Dsida, Children and Family Law Program, Committee for Public Counsel Services (May 8, 2007); Brennan Center for Justice, *Legal Services Elert: New York City Changing Provision of Legal Services to Parents in Family Court Cases: Advocates Praise Move* (April 16, 2007) < <http://www.brennancenter.org/elert.asp?key=351&subkey=48567> > (visited August 27, 2007).

⁶⁴ See Adam Liptak, *Public Defenders Get Better Marks on Salary*, NEW YORK TIMES, July 14, 2007.

success of a staff office model are competitive salaries, adequate support staff and strict compliance with reasonable caseload limits.⁶⁵

The Task Force has considered potential implementation of a staff office model on a statewide level. However, the small caseloads in some of the rural areas and the constant need for conflict counsel present considerable logistical obstacles that would be difficult to overcome on a statewide basis. Start up costs could also serve as an impediment to a statewide office. The potential benefits of a staff office model does lead the Task Force to recommend piloting a staff office model in a select urban area, as well as a somewhat more remote urban area that borders difficult-to-serve rural jurisdictions. This would enable the evaluation of staff office models in Colorado and also help deliver staff office services to rural areas that have few dependency filings.⁶⁶ The Task Force does recognize that a staff office model would constitute significant change for both the attorneys and courts within a jurisdiction, and that community support for such a change is critical. The Task Force finds instructive Washington's example of requesting that counties/ districts request to serve as the pilot site for such programs.

Alternative 3: Centralization of Oversight and Support for RPC within an Independent State Agency

Because of the impracticality of a statewide office and the problems with inconsistency and conflicts identified with oversight and administration of RPC within the judicial department, the Task Force has determined that the creation of an independent office similar to the OCR or OADC would be the best model for administering and supporting RPC. The majority of Task Force members were in favor of creating a new office, while a smaller but significant number of Task Force members favored moving the administration of RPC to the OADC. Regardless of whether the administration of RPC takes place in a new independent state agency or the OADC, the removal of the administration of RPC from the judicial department resolves the conflict issues, achieves uniformity in oversight, selection, and support of RPC, promotes autonomy in RPC's representation of their clients, and serves to elevate the status and practice of this area of the law. Moreover, a centralized and independent model of oversight and support has effectively been relied on for conflict appointments in criminal cases (OADC) and GAL appointments in dependency cases (OCR). Hence, this model of representation is not a new concept in Colorado, and its effectiveness has already been demonstrated and adopted.

⁶⁵ See, e.g., ABA Standards, *supra* note 20, Obligations of Attorney Managers 1-10; NACC Blue Book, *supra* note 52, at 54-56.

⁶⁶ At the RPC Conference in June 2007, Heidi Hendricks, Director of Programs at Lutheran Family Services, described the use of a "circuit rider" model in Texas to address the needs of rural jurisdictions. This model involves the commitment of a designated juvenile judicial officer and support staff to travel and preside over cases throughout a rural section of the state, allowing for specialization in juvenile law in a geographic area that may not otherwise support such specialization. Several members of the Task Force expressed an interest in further exploration of such a model and inclusion of RPCs as a member of a circuit rider team. While this could be accomplished through a designated attorney within a staff office model, the conversion to hourly pay has also supported the OCR in finding similarly dedicated GALs willing to travel throughout regions in rural areas of the state, such as in the 15th and 16th Judicial Districts.

Given the similarities between the demands of serving as a GAL and as a RPC and the unique and multidisciplinary aspects of dependency law, a centralized oversight model for RPC should be modeled after the OCR. All attorneys eligible to serve as RPC should be selected through that agency. The central office should not only select and recruit attorneys; it should also establish and implement a formal complaint and standardized investigation process. A board that serves to maintain the independence of the office and guarantee the fairness and integrity of contracting, oversight, and policy decisions made by the office is also a significant component of the model. Additionally, attorney and training staff should be employed to meet the unique training and representation support needs of RPC who contract with the office. The office should be adequately staffed to fulfill the standards set forth for administrative offices by the American Bar Association and the National Association of Counsel for Children. It should also experience the flexibility to oversee the development of recommended pilot projects.⁶⁷

While an independent office may initially require more funding than the current decentralized system of overseeing and supporting RPC, the potential benefits to the parents and the families served, system integrity, and the quality of decisions made by judicial officers are significant. Additionally, as judicial department oversight has been abandoned for most other court-appointed attorneys in Colorado, transforming the system of oversight and support for RPC is integral to achieving parity in the quality of representation for parents. In making this recommendation, the Task Force also recognizes the demands placed on individual districts and judicial officers by the current system and the lack of comfort expressed by some judicial officers in their role of selecting and overseeing court-appointed counsel.

One potentially cost-saving measure for centralizing oversight in an independent office explored by the Task Force is the movement of the oversight away from the judicial department into the OADC. This structure may potentially achieve cost savings in the form of shared lease space, computer programs, and support staff. Further, the missions of representing criminal defendants and respondent parents are compatible in that both involve defending indigent people against state action involving fundamental liberties. Another advantage of this model is the opportunity for shared training in litigation and trial skills, as well as the ability to expand the pool of highly experienced trial attorneys available to second chair and mentor new RPC or other RPC who are lacking experience in trial skills.⁶⁸

However, anecdotal information provided by some states that combine criminal defense with RPC work warns of the risk of undervaluing the work of RPC as compared to criminal defense attorneys. Additionally, while basic trial and courtroom skills are relevant to both areas of the law, the bodies of law governing criminal and dependency law are distinct, and the case management aspect of representing parents in a dependency

⁶⁷ See discussion, *infra* Parts IV.A (staff office models), IV.C (mentoring program); IV.D (Washington Model), IV.E (use of social workers).

⁶⁸ The Needs Assessment identified trial skills as area in need of improvement. See Needs Assessment, *supra* note 7, at 69-71.

case is different than the traditional criminal defense model of case management.⁶⁹ The Task Force is concerned with the risk that unique needs of RPC and nuances in representing parents may be overlooked or ignored in a traditional criminal defense structure and that RPC's needs may not always receive equal consideration to those of criminal defense attorneys. The current director of ADC has experience and expertise representing parents, and the Task Force does not have concerns regarding her administration of the program. However, the Task Force does have concerns about the future status of RPC within such a program. Additionally, given the Task Force recommendation to pilot staff office models and the ADC's responsibility for administering *conflict* counsel, the ADC may not be particularly well-suited to pilot a staff office model. If the State does decide to pursue centralizing RPC administration within the OADC, the Task Force recommends significant restructuring of the OADC as follows: creating a more inclusive name for the agency that reflects the broader mission of also overseeing RPC; adding members to the Commission of the OADC to make it truly reflective of the new and expanded focus of the agency; and adding staff with experience and expertise in dependency law and representation of parents.

Summary

In summary, the Task Force recommends an independent central oversight model with exploration of staff office models in select areas. If a completely independent office is not feasible, the Task Force recommends exploration of moving the administration of RPC to the OADC. Central to Task Force's recommendations is the identified need for centralized support and oversight, and independence from the judiciary. For this reason, Task Force does not recommend continuation of the status quo or centralization of RPC within the Office of the State Court Administrator.

B. Guidelines and Standards for RPC

Task Force Recommendations

Task Force Recommendation B1: Promulgate a Chief Justice Directive setting forth best practice guidelines applicable to all attorneys serving in the capacity of RPC.

Task Force Recommendation B2: Include compliance with the Chief Justice Directive/ best practice guidelines as a term of the contract used with state-paid RPC.

Discussion/ Analysis

Standards or Guidelines serve to inform attorneys and other stakeholders about expectations, facilitate consistent oversight of RPC, and elevate the practice of law. Standards also serve as a useful training tool for new and geographically isolated attorneys.⁷⁰ Finally, standards help other parties and stakeholders in the system

⁶⁹ See discussion *supra* Part II.

⁷⁰ Needs Assessment, *supra* note 7, at 27.

understand the role of RPC and may serve in certain instances to support RPC in certain actions they are taking as a lawyer for a parent.⁷¹ They may also give lawyers support from the legal and political world. For example, the American Bar Association has now formally adopted *Standards for Attorneys Representing Children*, *Standards for Attorneys Representing Agencies*, and *Standards for Attorneys Representing Parents* in an attempt to more clearly define the role of the respective lawyers and thereby support them in performing their job.⁷²

To date, Colorado has not set forth any specific standards regarding RPC. In the Needs Assessment, RPC identified the following sources of standards influencing their practice: the RPC contract; the Court's case management orders and memoranda of agreement between courts, RPC, GALs and DHS caseworkers; the judicial officers who preside over dependency cases; and the Colorado Rules of Professional Conduct.⁷³ The Needs Assessment recommends the creation of "mandatory standards of practice creating a practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable."⁷⁴ The Needs Assessment recommends that the Colorado standards be consistent with existing national practice standards, including the ABA *Standards for Attorneys Representing Parents*.⁷⁵ Colorado is advised to outline best practice standards in the term of the contract and to make efforts to publicize the standards and to train all stakeholders in dependency and neglect proceedings on the standards.⁷⁶

In order to ensure quality representation for all litigants, the Task Force developed practice guidelines for respondent parents' counsel in dependency and neglect cases. These practice guidelines are based in part on the ABA *Standards for Attorneys Representing Parents*. The nine practice guidelines were developed through a collaborative process that involved Colorado judges and magistrates, RPC, city and county attorneys, and GALs. The comments set forth with each guideline explain and illustrate the meaning and purpose of the guideline and are intended as a guide to its interpretation. A copy of these draft guidelines is attached to this report as Exhibit D.

The guidelines were sent out to Colorado's legal community for extensive comment, and over 125 comments were received, considered, and incorporated into the final product. The Colorado Bar Association's Ethics Advisory Committee was particularly vocal in expressing its concern about the establishment of separate practice guidelines for respondent's counsel. In particular, the Committee was concerned that it is already difficult to find attorneys willing to represent parents for below-market wages, and that special guidelines would make these attorneys more susceptible to malpractice lawsuits and ethics complaints. Some members of the committee also discouraged against the creation of standards for any attorneys that go beyond the Rules of Professional Conduct.

⁷¹ See Laver, *supra* note 28, at 1 (2007).

⁷² See *id.* See ABA Standards, *supra* note 20.

⁷³ See Needs Assessment, *supra* note 7, at 27.

⁷⁴ *Id.* at 77

⁷⁵ *Id.*

⁷⁶ See *id.* at 76-77 (Implementation Strategies 1-B and 3-B).

Other members supported the proposed guidelines with two suggested revisions that are addressed in the attached version.

To address the concerns, the preface to the guidelines provides that they do not automatically give rise to a cause of action nor create a presumption that a legal duty has been breached or that a professional ethical violation has occurred. Further, they are intended to be read as being consistent with the Colorado Rules of Professional Conduct, and the Guidelines Working Group of the Task Force amended specific provisions previously identified as potentially contradicting or confusing attorney obligations under the Rules of Professional Conduct. The Task Force also considered the existing example of the OADC and OCR, whose attorneys are required to follow, respectively, the *ABA Standards for Attorneys Representing Criminal Defendants* and Chief Justice Directive 04-06.

It is the view of the Task Force that all attorneys who appear as RPC, not just those who are paid by the state, should strive for conformity with the guidelines in their representation of parents. For this reason, the Task Force recommends that the guidelines be promulgated through a Chief Justice Directive applicable to all attorneys who appear as RPC. Additionally, given the value of guidelines in standardizing and objectifying the oversight of RPC who contract with the State, the Task Force recommends that conformance with the guidelines be included as a term of the contract for state-paid RPC.

The Task Force is cognizant that the Needs Assessment recommends the evolution of guidelines into standards of practice in the future.⁷⁷ However, the Task Force is also aware of the current systemic issues that interfere with optimal RPC performance, and it shares the concerns expressed by the Colorado Bar Association's Ethics Committee regarding the difficulties finding lawyers to take RPC appointments at below market value rates. The Task Force is extremely reluctant to impose an unfunded and unsupported mandate on already challenged state-paid RPC. For this reason, the Task Force recommends that the Guidelines remain in their current aspirational/advisory format at least until full implementation of the other recommendations contained within this report. The Task Force also believes that an affidavit of compliance similar to the one used by the OCR for monitoring compliance with Chief Justice Directive 04-06 is neither practical nor advisable for RPC. Given the advisory nature of the guidelines, an affidavit of compliance does not make sense at this point. Additionally, the unique concerns involving the representation of children that justify the affidavit of compliance for Chief Justice Directive 04-06 do not necessarily exist for parents, who are adults in the overwhelming majority of dependency proceedings.

The Task Force agrees with the authors of the Needs Assessment that if guidelines are adopted in any form, there must be education among RPC and all stakeholders in dependency cases regarding the intended use and impact of the Guidelines. This educational function can be performed by staff of the independent office recommended in Part IV.A.

⁷⁷ See *id.* at 77 (Implementation Strategy 3-B).

C. Training Needs of RPC

Task Force Recommendations

Task Force Recommendation C1: Provide relevant trainings to new and experienced RPC through the establishment of a basic curriculum for new RPC and advanced curricula and seminars for more experienced RPC.

Task Force Recommendation C2: Ensure accessibility of training for RPC through scholarships, distance learning opportunities, local trainings, and strategic rotation of statewide training locations.

Task Force Recommendation C3: Support RPC participation in National Institute of Trial Advocacy Skills Training.

Task Force Recommendation C4: Develop a mentoring system for new RPC.

Discussion/ Analysis

Training for RPC supports specialization in dependency law, greater uniformity of the quality of practice, and elevation of the practice of law. Given the numerous problems that plague the child welfare system and, more specifically, the particular difficulties that indigent parents face in this system, lawyers for parents have an admittedly difficult role to play. In order to most effectively represent families' interests, it is essential that RPC be provided meaningful, interdisciplinary training opportunities.⁷⁸

The RPC contract currently requires “at least 10 hours of continuing legal education pertaining to child and family matters per legal education period.” Until this fiscal year, the contract did not require training before accepting an appointment. Over the years, there has been little to no RPC-specific training in Colorado. RPC interviewed during the Needs Assessment noted various dependency law training opportunities in Colorado, but few hands-on, “nuts and bolts” trainings or trainings specific to their role as parents’ counsel.⁷⁹

As would be predicted from the lack of available training, a significant number of RPC surveyed in the Needs Assessment indicated that they lack training. Of 43 RPC surveyed via an on-line questionnaire, 39 percent reported that they had not received any training before being appointed; the second most selected response indicated having received one to five hours of training.⁸⁰

⁷⁸ Kathleen A. Bailie, Note, *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 at 2325 (1998).

⁷⁹ Needs Assessment, *supra* note 7, at 23.

⁸⁰ *See id.* at 25.

In 2007, the Task Force provided two trainings for RPC: a reduced-rate three-day NITA training and a one-day RPC Conference. Both trainings were well attended, further indicating the need for RPC-specific training.

The project team in the Needs Assessment notes that “training should not only focus on the legal aspects of dependency law, procedure, litigation skills, trial advocacy and alternative dispute resolution, but it should also focus on the psychosocial dynamics of child maltreatment and development, physical and mental health, substance abuse, permanency, family dynamics and available services for parents in the community.”⁸¹ In addition to those areas, RPC interviewed in the Needs Assessment and in the Family Representation Coordinator’s jurisdictional visits identified the following areas of training: statutory details governing dependency and neglect cases; case management; case law updates; use of expert witnesses; and visitation, treatment plans and other similar issues that regularly arise in dependency cases. Notably, RPC in both the Needs Assessment and jurisdictional visits identified litigation skills as an area of training that would be extremely helpful.⁸²

For newer attorneys and attorneys wishing to revisit the basics, the Task Force suggests a curriculum similar to the training adopted for new attorneys in Massachusetts. Massachusetts requires that before attorneys accept an appointment, they undergo a week-long training, three days of which are substantive and delivered through a case-focused, role-oriented approach and two days of which are a trial skills, NITA-style training.⁸³ Given the fiscal year contracting cycle, integrating this basic training into the week of the CDHS Child Welfare Conference and State Judicial Family Issues Conference (late May, early June), would be an appropriate time to provide the training with minimal disruption to the docket and adequate time to prepare for initial appointments. California has also developed innovative distance learning tools for basic training of RPC, including a work book, video game, videotaped game show on child development, and juvenile-court focused video on substance abuse that should be considered as an alternative or additional package to live training for new attorneys.⁸⁴

Alternatively, more experienced RPC expressed a desire for a meaningful, advanced curriculum to help further advance their knowledge and skills in dependency law and related areas. As dependency law is always developing on both the national and state fronts, as well as in related mental health, substance abuse, and psycho-social subject areas, a more advanced curriculum focusing on developments in these areas will meet the training needs of more experienced RPC. Opportunities to continue to hone and practice trial skills can also be supported through sponsoring National Institute of Trial Advocacy Trainings and providing a select number of scholarships to attend the annual Rocky Mountain Child Advocacy Training program co-sponsored by the National Association

⁸¹ *See id.*

⁸² *See id.* at 24.

⁸³ Interview with Mike Dsida, *supra* note 63.

⁸⁴ Copies of the video game and videos are on file at the Office of the State Court Administrator.

of Counsel for Children and the National Institute for Trial Advocacy in Denver each May.⁸⁵

Given the low rates of compensation for RPC and the demands of the juvenile court docket, finding the time and money to attend remote and lengthy trainings is difficult for many RPC. Hence, lodging and mileage scholarships for state-sponsored training and tuition scholarships for select national and trial skills training should be made available to support RPC's attendance. Additionally, regional and local brown bag trainings should be explored, and statewide trainings should be scheduled to coincide with existing judicial trainings, such as the September annual judicial conference and the May/ June Family Issues Conference.

In the Needs Assessment, RPC also expressed a concern about the lack of support during their first year of practice.⁸⁶ To address this concern, the Task Force recommends the development of a mentoring program. Massachusetts also provides an example of a successful mentoring program for new RPC. In Massachusetts, new attorneys are placed on provisional contract status for approximately eighteen months and assigned a mentor to oversee and assist them. Mentors in Massachusetts are paid for the time they spend mentoring, and the expectations involving their supervision and support of new attorneys are conveyed through a mentor training program.⁸⁷ While appropriations do not currently exist for a mentoring program in Colorado, Court Improvement Funds could provide seed money for such a program or assist with a pilot program. Developing good habits, appropriate expertise, and relevant skills early on in practice may be well worth the investment of funds, and the selection of formal and trained mentors can also serve to elevate the practice in this area of the law by demonstrating respect for and further cultivating attorneys' expertise and skill in this field.

D. Compensation

Task Force Recommendations

Task Force Recommendation D1: Abandon the flat fee structure for payment of RPC.

Task Force Recommendation D2: Convert to an hourly payment structure equitable to Alternate Defense Counsel and the Office of the Child's Representative in the majority of the judicial districts.

Task Force Recommendation D3: Pilot staff office models and the State of Washington's "salary payment" structure in select jurisdictions.

⁸⁵ Providing scholarships to this training is recommended in the Needs Assessment, *supra* note 7, at 85 (Implementation Strategy 15).

⁸⁶ *See id.* at 23.

⁸⁷ Interview with Mike Dsida, *supra* note 63.

Task Force Recommendation D4: Continue to work towards an appropriate rate of compensation for RPC and all court-appointed attorneys, and pursue periodic cost of living increases to the rate for RPC and other court-appointed attorneys.

Discussion/ Analysis

Integral to any reform package for RPC are significant improvements to the structure and amount of compensation for RPC. The Needs Assessment contains recommendations in the following areas that the Task Force has identified as inextricably connected to compensation for RPC: caseload and workload (Recommendation 4); recruitment (Recommendation 6); case preparation (Recommendation 12); and client and party communication (Recommendation 14).⁸⁸ The Needs Assessment also specifically sets forth recommendations with regard to compensation, noting that “[t]he amount of compensation is not seen as proportionate to the work that is required of RPC in dependency and neglect cases,” that it “may cause RPC to accept more appointments than ideal,” and that it “discourages attorneys from entering, specializing and remaining in the practice of representing parents.”⁸⁹ National and state court improvement efforts have identified improving compensation of parents’ counsel as integral to court reform.⁹⁰

Compensation is linked to due process because it directly impacts RPC’s ability to provide effective and thorough representation. Additionally, compensation impacts parity in dependency and neglect proceedings by setting parameters for the amount of time that attorneys may dedicate to a given case or case type. When one party experiences greater constraints on time than other parties in the courtroom, the fairness of the proceedings is called into question. Studies both nationally and in Colorado have identified the need to compensate RPC commensurate with counsel for other parties in dependency proceedings and other public sector counsel.⁹¹

Currently, two models of compensation for RPC exist in Colorado: the flat fee/contract model and the hourly payment model. Under the flat fee model, RPC are compensated at a rate of \$905 for two years’ work on a case and an additional \$1,010 if a motion to terminate parental rights is filed. The hourly model compensates RPC at a rate of \$60 per

⁸⁸ See Needs Assessment, *supra* note 7, at 75-85.

⁸⁹ *Id.* at 35.

⁹⁰ See, e.g., Pew Report, *supra* note 26, at 40, Nicholson, 203 F.Supp.2d at 253-60 (holding that inadequate pay for RPC results in inadequate representation and ordering fees to be increased from \$40.00 per hour to \$90.00 per hour).

⁹¹ See Needs Assessment, *supra* note 7, at 34 (“Attorneys should receive compensation at least competitive with agency and public defender counsel wages.”); Commission on Families Report, *supra* note 11, at 26 (stating as Recommendation 53 that “[c]ompensation for public sector attorneys who represent children should be raised to the level of other public attorneys such as public defenders and alternate defense counsel”); Baile, *supra* note 78, at 2310 (“The most striking thing about the practice of law in the [child protective] area is the gross inequality of representation. This is the only area of law in which the party most in need of effective assistance of counsel is least likely to obtain it.”) (quoting testimony from Martin Guggenheim, Professor at New York University School of Law, Before the Assembly Standing Committee on Children and Family Preservation: Preventive Services, Adoption and Foster Care (Dec. 1, 1993)).

hour.⁹² While virtually all of the metropolitan districts have adopted the flat fee model, most of the rural districts employ the hourly model of compensation.⁹³ Some of the districts that employ the hourly model have been unable to find attorneys who will take the flat fee contract.⁹⁴

In addition to its being highlighted as an issue in the Needs Assessment, many RPC and judicial officers identified the current compensation of RPC as a problem during the Family Representation Coordinator's visits throughout Colorado. Judicial officers expressed concerns about its impact on the quality of work performed by RPC, the fairness of paying RPC less than other attorneys in flat fee jurisdictions, and their inability to find qualified attorneys willing to accept appointments at the state rate. RPC expressed concerns about their ability to manage all aspects of each case under the current compensation scheme and the difficulty covering office overhead at the state rate. The Task Force has determined that both the structure and amount of compensation undermine parity and the ability to provide effective assistance of counsel for RPC.

The Structure of Compensation

The Task Force identified the following alternatives as compensation models for RPC:

- The current flat fee payment system.
- Hourly payment.
- A significantly enhanced flat fee payment system, with reasonable and enforceable caseload limits and tracking of time spent on cases. (The "Washington Model").
- Staff office/ salary model.

The Flat Fee Payment System

With regard to the flat fee structure of compensation used in the majority of districts and all of the major metropolitan areas in Colorado, the Task Force identifies the following issues:

⁹² These rates reflect an approximate five percent increase for both hourly and flat fee rates, approved by the Joint Budget Committee for Fiscal Year 2008. While a rate increase was also obtained for Fiscal Year 2007, that increase was the second increase provided to court-appointed counsel in fifteen years, and the rates are still not at the level requested by the Judicial Department in its Fiscal Year 2007 Budget Request. *See* COLORADO JUDICIAL BRANCH—2007 BUDGET REQUEST at 49-5 (requesting a \$71 hourly rate for court-appointed counsel and a commensurate increase in the flat rate for contract attorneys).

⁹³ From the Family Representation Coordinator's jurisdictional visits and review of the flat fee contract lists for Fiscal Year 2007, it appears that the 1st, 2nd, 4th, 10th, 17th and 19th Judicial Districts currently employ the contract model for representation. Districts that employ hourly system include the 3rd, 6th, 7th, 9th, 13th, 14th, 16th, and 22nd.

⁹⁴ This has been reported to the Family Representation Coordinator to be the case in the 7th, 13th, and 14th Judicial Districts.

- The flat fee undermines parity in dependency and neglect proceedings. In order for the system to be fair to parents, RPC’s compensation must place them on a level playing field as compared to other attorneys within proceedings. The perception among RPC and other stakeholders is that RPC are paid at a rate lower than other counsel for other parties in dependency proceedings. The current flat rates of \$900 and \$1010, when divided by the \$60 hourly rate paid to GALs, reflect payment for fifteen and seventeen hours of work.⁹⁵ While compensation for fifteen hours may not have been the original intention of the flat rate,⁹⁶ the reality of the current structure of compensation is that if RPC spend more than fifteen hours on a case, they are paid less than GALs. Although an official workload study has not been completed to assess exactly how much time is spent per case, the indications are that representing a party in a dependency proceeding requires more than fifteen hours over the course of two years. Many judicial officers have expressed that their expectations of a RPC’s in-court time alone consumes more than fifteen hours during that time period. As discussed above, adequate representation of parents involves much more than simply appearing in court. While the flat rate may have been based on the assumption of an average amount of time a case requires, the flat rate puts RPC at a disadvantage as compared to GALs and county attorneys because it undermines their autonomy to assess the amount of time an individual case requires.⁹⁷ Notably, the Needs Assessment found that counsel for RPC are perceived by stakeholders to be the “weakest, least informed, and/or least active member” of the parties appearing in court on these cases.⁹⁸ The Task Force believes that the attorneys who do engage in regular communication with their clients, contested court hearings, and extensive preparation are most likely doing so at a financial loss under the flat fee contract.
- A meaningful workload study has not been performed to assess the appropriateness of the amount of the flat rate. Since the creation of the flat rate, dependency law has become more complex and demanding. The Adoption and Safe Families Act and Expedited Permanency Planning in Colorado have resulted in greater demands on attorneys in the form of additional time in court, more regular communication with clients, and frontloading of litigation.⁹⁹ Additionally, court improvements in dependency and neglect cases through the work of Colorado’s Court Improvement

⁹⁵ In reality, as hourly-paid GALs are also compensated for travel time, mileage and paralegal time, the flat rate translates to less than fifteen hours per case.

⁹⁶ The Task Force has been unable to track down original study that led to flat rate. However, conversations with Judicial Department staff indicate that the initial flat rate was calculated in the late 1980s and that it was further implemented as a result of the 1993 legislative audit of contract counsel. At the time that the flat rate was calculated, a different hourly rate existed, and within the hourly rate existed differential rates for in-court time and out-of-court time. Changes in both the flat rate and hourly rate over the years and the abandonment of differential billing for in-court and out-of-court time suggest that the original calculation of the flat rate may not have resulted from an assumption that cases on average required fifteen hours of work.

⁹⁷ The Task Force recognizes that a flat or low rate does not change ethical responsibilities of an attorney; however, the Task Force is cognizant of the financial realities of running a business and their interplay with an attorney’s assessment of his or her ability to dedicate time to a particular task/case.

⁹⁸ Needs Assessment, *supra* note 7, at 70.

⁹⁹ *See*; Adoption and Safe Families Act, Pub. L. No. 105-89 § 305, 111 Stat. at 2130-31; COLO. REV. STAT. 19-1-306 (2007). *See also* Needs Assessment, *supra* note 7, at 30 (“recent ASFA legislation [has] increase[ed] the frequency of the court review process.”).

Program, creation of model courts, implementation of the Commission on Families recommendations, Chief Justice Directive 04-06 governing GALs, Formal Ethics Opinion 114, and the ABA standards for attorneys for all parties in dependency cases have created an improved court culture in dependency law that is more demanding for counsel who appear in these proceedings. Since the implementation of these changes in the law and court improvement efforts, the State has not engaged in a meaningful workload study to determine whether the flat rate continues to reflect the amount of time that should be spent on a case.

- The flat rate sets up an incentive to increase the number of appointments rather than dedicate time to existing cases. As noted by the project team, “A flat fee may encourage the RPC to do less work in order to break even.”¹⁰⁰ The flat rate structure encourages RPC to be appointed in as many cases as possible, as the fact of their appointment, not the quantity or quality of time spent on each case, determines their income. Attorneys who work cases, spend time with clients, file motions, and attend staffings do so at a loss. While stakeholders in some districts shared the perception that the flat fee was designed to curb abuses in hourly billing and unnecessary setting of contested hearings, the Task Force believes that the potential for abuse is no more likely for RPC than for any hourly-paid private attorney, particularly given the modest rate of hourly reimbursement provided to RPC. Moreover, the dedication of time to adequate preparation and investigation in a case may save the State money in the long term.¹⁰¹
- The flat rate sends the wrong message that all cases take the same amount of time and should be handled in the same manner. Families, cases, and needs are unique, and while some cases can involve simple negotiation and resolve fairly quickly, others are extremely time consuming and require extensive litigation, legal research, and communication with clients and other parties. The flat fee fails to account for the varying demands and unique needs of individual cases.
- The payment of additional money at the end of the case is inconsistent with best practice and not necessarily correlated to the amount of time required on a case. National organizations dedicated to systems improvement in child welfare cases have embraced the concept of frontloading of services and court reviews in such cases.¹⁰² Families and children are viewed as better served when all parties work to advocate for appropriate services in and upfront resolution of a case.¹⁰³ Colorado’s emphasis on increased payment at the end of a proceeding when a motion to terminate is filed runs counter to this philosophy. Stakeholders surveyed in the needs assessment expressed concerns that the current payment structure discourages necessary work at

¹⁰⁰ Needs Assessment, *supra* note 7, at 36

¹⁰¹ See Washington data, *supra* note 36.

¹⁰² See discussion *supra* Part III.

¹⁰³ Moreover, specific determinations within the case, including the adjudication and findings regarding the appropriateness of treatment plans and reasonable efforts by departments of social services are inextricably linked to the ultimate termination decision, and these factors can be waived if not litigated upfront in a proceeding. See, e.g., *In re DP*, 160 P.3d 351 (Colo. App. 2007) (finding that arguments regarding appropriateness of treatment plans and reasonableness of department’s reunification efforts had been waived by RPC because RPC did not make them until trial on termination of parental rights).

the initial stages of a dependency proceeding and is contrary to the best practices philosophy of frontloading litigation in a case.¹⁰⁴

- The flat rate does not provide accountability on the part of attorneys or the State. While the RPC Contract does require attorneys to track the work they do on cases, this tracking is rarely, if ever, reported or audited. Consequently, the State is unable to assess whether it is receiving the services it is paying for by its contract attorneys and whether its expenditure of taxpayer dollars is justified.
- The flat rate has a negative impact on the ability of the State to recruit and retain RPC. Because of its negative implication on caseload and the ability to dedicate time to cases, attorneys may be reluctant to enter into a contract requiring them to take cases at the flat rate. This is exemplified in the Thirteenth Judicial District, where all but one of the RPC have declined to take RPC appointments at the flat rate because of the limitations it places on their ability to effectively work their cases. As an example of the positive impact that hourly has on recruitment ability, the OCR has been able to recruit and retain skilled and experienced attorneys to leave other public sector and private practices to practice as GALs now that it is paying attorneys at an hourly rate.

For these reasons, the Task Force recommends abandoning the current flat fee payment system.

Hourly Payment/ Fee for Service

Both the ADC and the OCR have abandoned the flat fee payment system and replaced it with hourly compensation (fee for service) on a statewide basis. Because of the problems identified with the flat fee payment structure, the Task Force recommends that the State take the same steps for RPC. The Task Force recognizes that this transformation may increase the budget for parents' representation over time, but concerns of parity and due process warrant such an investment. An increased investment in representation of parents also has the potential long term savings in terms of shorter lengths of stay in care, lower rates of reentry into care and fewer children in long term foster care. While these predictions are difficult to quantify at this point, the state of knowledge regarding the positive impact of thorough advocacy on cases and the results in Washington highlight the potential cost savings that can occur when attorneys are empowered to serve as a check on the system in borderline or problematic cases, and to get parents on track with treatment plans and reunification efforts in appropriate cases.¹⁰⁵ Regardless of the ultimate savings, the nature of the rights at stake in these cases requires that RPC be fairly and adequately compensated to fully perform their responsibilities in representing parents.

Fifty-seven percent of attorneys surveyed in the Needs Assessment did support a conversion to hourly compensation, and, although votes were not tallied, comments made to the Family Representation Coordinator during jurisdictional visits indicate that the

¹⁰⁴ Needs assessment, *supra* note 7, at 35.

¹⁰⁵ See Washington data, *supra* note 36.

majority of RPC do favor hourly pay. Additionally, at the Task Force's June 2007 training, RPC expressed that the suggested case management, preparation, and litigation strategies were not realistic under the flat fee payment system. Considerations of parity, quality, and accountability support hourly pay as the presumptive model throughout the State.

Notably, many RPC during jurisdictional visits expressed difficulties in the processing of hourly billing, which may account for some of the reluctance to a conversion to hourly billing. Specifically, RPC in some districts cited delays in the processing of payments, confusion over billing policies, inability to pay an office assistant to perform billing functions, and the extra data entry work for hourly pay required by the new computerized billing system as impediments to implementation of hourly billing in their practice. The processing and approval of payments through a centralized office (versus the current district level review of bills) should alleviate some of the variability in the processing of bills, and the Task Force also recommends exploration of OCR's billing policies as a way to support RPC in the conversion to hourly payment.

The Washington Model

Because of the national attention and positive results achieved for families in the State of Washington with its reforms in the payment and oversight of RPC, the Task Force has dedicated time to learning about its program. Washington provides an example of a state that has achieved significant reform through the implementation of a competitive flat fee payment system. In Washington, attorneys are paid \$100,000 to \$120,000 over the course of a year to focus exclusively on representing parents and to accept no more than 80 appointments at a time.¹⁰⁶ In contrast, RPC in Colorado would be paid approximately \$73,100 to pick up that number of appointments in one year.¹⁰⁷ While Washington's flat rate contract does require attorneys to cover their own overhead and paralegal/ support staff costs, the state provides a quarter-time social worker for each RPC. Monitoring of attorney time spent on cases is achieved by requiring attorneys to submit hourly time slips for each case on a monthly basis. Success has been documented with this model,¹⁰⁸ and the Washington legislature continues to expand the program each year. Several members of the Task Force have expressed an interest in this model because of the promising results it has demonstrated and because it achieves some of the efficiencies and the ability to exclusively focus on representation of parents that would exist in an office model. Given the multidisciplinary legal practices of many RPC in Colorado, this may not be a model that is feasible on a statewide basis. However, the Task Force supports piloting it in a district in which its implementation would be feasible for attorneys. El Paso County attorneys have expressed an interest in this model, and that

¹⁰⁶ Appointments upon the filing of an initial petition and the filing of a petition to terminate parental rights count as separate appointments under this formula. Interview with Patrick Dowd and Amelia Watson, Washington Office of the Public Defense (August 15, 2007).

¹⁰⁷ This is a rough calculation based on 70 initial appointments and 10 termination of parental rights appointments over the course of one year.

¹⁰⁸ See Washington data, *supra* note 36.

county may serve as an appropriate pilot site for the program, given the attorneys' interest and their already near-exclusive focus on representing parents.

Staff Offices

The establishment of staff offices also presents as an alternative form of compensation for RPC in that RPC who would work at such an office would be salaried. Staff office models have the potential to achieve efficiencies in costs and strengthen the quality of representation through immediate supervision and support. For the reasons discussed in Part IV.A, the Task Force did not view the statewide implementation of a staff office model as currently feasible. However, the Task Force is supportive of the implementation of a staff office model in selected pilot sites. If a staff office model is piloted, it is important to make salaries and benefits comparable to local public defender, county attorney, and district attorney salaries.

The Amount of Compensation

Regardless of the model of compensation, continued efforts to improve the amount of compensation remains an ongoing aspect of reform. Overhead (malpractice costs, receptionist, office space, telephone, internet, etc.) easily consumes 50% or more of the current hourly rate; thus, most attorneys are grossing, at most, \$30 per hour, pre-tax. Some RPC contacted during the Family Representation Coordinator's jurisdictional visits indicate that they accept RPC appointments knowing that doing so will result in a financial loss to their office. The interests at stake, the complexity of this area of the law, and the need to recruit and retain talented and committed attorneys who have developed the litigation skills, complex and interdisciplinary subject knowledge, and aptitude for working with extremely distraught and potentially difficult clients mandate that the State continue to pursue increases in compensation for both the flat fee, if retained, and the hourly rate. Once the payment for RPC is brought to par with comparative market rates, it remains important to pursue periodic cost of living increases to reflect inflation and its impact on overhead costs.

E. Access to Resources

Task Force Recommendations

Task Force Recommendation E1: Achieve uniformity in access to experts, investigators, court costs, and other forms of representation support for RPC in a manner that will promote proficient representation of respondent parents, provision of accurate information to the court, and protection of the interests of families.

Task Force Recommendation E2: Remove judicial involvement in decisions regarding access to experts, investigators, court costs, and other forms of representation support.

Task Force Recommendation E3: Centralize litigation and representation support for RPC through motions and expert banks, resource libraries, list serves, and staff support.

Task Force Recommendation E4: Explore the use of social workers as representation support through the piloting of a social work program similar to the program in Washington in select districts.

Discussion/ Analysis

The Needs Assessment states that “RPC should have and utilize resources necessary for effective advocacy, including office research and preparation tools and case and expert consultation services” and concludes that RPC “appear to have the minimum resources necessary for adequate representation.”¹⁰⁹ The Needs Assessment identifies issues with RPC’s ability to access independent evaluations, expert witnesses, service of process fees, and other resources.¹¹⁰ RPC and other stakeholders noted difficulties with obtaining expert witnesses and/or consultants at any stage of a case other than termination of parental rights proceedings, significant delays in reimbursement for discovery costs, and lack of funds for witness fees and service of subpoena costs.¹¹¹ Judicial officers and RPC in the districts visited by the Family Representation Coordinator echoed these concerns.

Experts are important to RPC and to their clients. An independent assessment of allegations against a parent, assessment of a client’s need for services, and the appropriateness of a treatment plan are sometimes required. The majority of experts and consultants whose opinions are relied on in dependency and neglect cases are employed or compensated by county departments of social services, and their testimony and assessments risk being tainted by department financial restraints, policy concerns, or philosophies.¹¹² These deficiencies cannot always be remedied through cross-examination alone. Examples of cases in which experts may be necessary include: assessing the appropriate level and type of treatment for a parent; evaluating the attachment between a parent and a child; or testifying regarding the cause of injury in an alleged non-accidental injury adjudicatory trial. Access to experts is linked to both parity and fairness in proceedings and RPC’s ability to provide effective representation.

Data indicates that availability of experts can result in improved outcomes for families. Stakeholders in Washington and those that have studied the program there regard increasing access to experts for RPC as a key component of the reform that has led to improved outcomes.¹¹³ As with compensation, although the initial payment for an expert may cost more upfront, such payment may save the state money in the long run.

¹⁰⁹ Needs Assessment, *supra* note 7, at 44, 45.

¹¹⁰ *Id.* at 44.

¹¹¹ *Id.*

¹¹² See Washington data, *supra* note 36; Justice Bobbe Bridge and Joanne Moore, *Implementing Equal Justice for Parents in Washington: A Dual Approach*, JUVENILE AND FAMILY COURT JOURNAL, Fall 2002.

¹¹³ *See id.*

In Colorado, both the process for appointing experts and the ultimate ability to obtain funding for an expert is different for RPC than for other attorneys. Unlike county attorneys or GALs, RPC are required to submit a request for an expert to the court presiding over a pending case. Additionally, it appears that in many districts payment for experts is routinely denied until a motion for termination of parental rights has been filed.

Presenting the request for an expert to a judicial officer presiding over a case is problematic for a number of reasons. First, RPC must disclose their defense. In general, defense counsel consider the decision to hire an independent evaluation and the choice of which expert to hire as work product, and they do not share that information with other attorneys or the court. While some districts may allow RPC to file the request for an expert *ex parte*, this practice does not obviate the second problem of involving the ultimate fact-finder in the decision whether to allow the development of evidence and a defense. Moreover, a perceived conflict appears to exist in some districts regarding the management of district funds and the approval of experts for parents. Comments from judicial officers in some districts indicate a perceived restriction on judicial district's budget and a concern that their district will run out of limited mandated costs if too many experts are approved. Some judicial officers have expressed to the Family Representation Coordinator that they would rather not be involved in the decision whether to appoint an expert.

Also problematic is the timing of appointment of experts to assist RPC. CJD 04-05 *requires* judicial officers to order reimbursement of experts and investigators when necessary.¹¹⁴ Earlier information obtained from the Needs Assessment and jurisdictional visits indicates that many judicial officers believe that they may not appoint an expert until after a petition to termination has been filed.¹¹⁵ However, earlier assistance of experts may lead to resolution of some cases prior to filing a motion to terminate parental rights and recent case law reiterates the intricate connection between termination of parental rights and other phases of a dependency proceeding.¹¹⁶ Additionally, lack of uniformity of the appointment in experts is problematic in that a parent should be able to receive the same level of representation regardless of where s/he resides or where a case is filed.

The current compensation scheme for experts also raises concerns. Many RPC have difficulty finding an expert who will accept the State's hourly rate, and some RPC have expressed that even if an expert will accept the hourly rate, the billing caps impede an expert's ability to complete an evaluation and make himself or herself available for testimony. This appears to be particularly true in rural areas, where resources in the community are minimal and an out-of-town expert with significant travel needs may be the only option.

¹¹⁴ See COLORADO SUPREME COURT CHIEF JUSTICE DIRECTIVE 04-05 § (IV)(A)(1) ("The court shall authorize such appointments or payments as the judge or magistrate deems necessary . . .").

¹¹⁵ Indigent parents are entitled under COLO. REV. STAT. § 19-3-607 (2007) to the appointment of one expert at state expense after the filing of a motion to terminate parental rights.

¹¹⁶ See discussion of *In re DP*, 160 P.3d 351, *supra* note 103 and accompanying text.

In addition to the issues with access to experts, RPC in both the Needs Assessment and jurisdictional visits indicated problems identifying and finding appropriate experts. Some RPC have also noted that finding an expert independent of their county departments of social services is difficult, and many RPC have indicated that an expert bank would be an extremely useful tool.¹¹⁷ The Needs Assessment also noted that RPC file few, if any, motions in cases and that the motions that they file are largely pro forma.¹¹⁸ From its examination of other states' models and the ABA Standards, the Task Force has determined that a centralized expert bank and motions bank will assist RPC in accessing the full range of available advocacy tools for their representation of their clients.

Centralizing the approval process for payment for experts, investigators, and court costs similar to the OCR or ADC has the advantages of removing the conflicts discussed above, establishing consistency throughout the state, and creating efficiencies. As a recommendation of the Needs Assessment is to develop a centralized expert bank,¹¹⁹ having one central person responsible for approving expert requests helps familiarize that person with available experts in various communities and throughout the state. A centralized person responsible for approving expert costs who is not the judicial officer presiding over the case also allows the flexibility of engaging in more dialogue and brainstorming regarding cost-efficient alternatives. Additionally, centralization of expert payment will allow better centralized tracking of these expenditures. Finally, removing the payment approval decision from the judicial officer presiding over a case removes one more disparity between RPC and the other counsel who appear in dependency cases. This system is compatible with the Task Force's recommendation to create an independent office for oversight and administration of RPC.

The availability of social workers to RPC presents as a potentially helpful and cost-effective practice. Such a model has been implemented in Washington, where attorneys receive a quarter time social worker as part of the contract.¹²⁰ Social workers can help to identify alternative resources in a community, increase understanding of the family dynamics in a case, become familiar with best practices in treatment, and consult with difficult or challenged clients. Social workers may be cost-effective in that they may reduce the need for experts in certain types of cases. Social workers have been used with success in Washington, New York, and California.¹²¹

F. Parity in Access to Information and Court Facilities

Task Force Recommendations

Task Force Recommendation F1: Implement rules and policies that promote the provision of consistent and adequate discovery to RPC.

¹¹⁷ The Needs Assessment also recommends the development of an expert bank. See Needs Assessment, *supra* note 7 at 46, 80 (Implementation Strategy 8-C).

¹¹⁸ See Needs Assessment, *supra* note 7, Appendix D: Case File Data Report, at 3.

¹¹⁹ Needs Assessment, *supra* note 7, at 116.

¹²⁰ See Needs Assessment Appendix A, *supra* note 42, at 8..

¹²¹ See discussion *supra* Part III.

Task Force Recommendation F2: Provide RPC with the same access to the court house, court facilities and court records that is provided to county attorneys and GALs.

Discussion/ Analysis

In both the Needs Assessment and in the Family Representation Coordinator's jurisdictional visits, issues with access to discovery were identified as an issue for RPC.¹²² While the Rules of Civil Procedure do apply to juvenile proceedings,¹²³ the rules for discovery specifically require a court order making them applicable to a specific juvenile proceeding.¹²⁴ RPC have reported wide variability in the districts regarding their ability to get courts to order discovery. As case preparation, including review of agency records, is a critical component of representation of parents and a component of due process is having the access to information being used in a proceeding, The reported inability of RPC to obtain discovery is troubling. Even in jurisdictions in which RPC do not experience problems obtaining court orders for discovery, the costs of copying discovery can be prohibitively expensive. Variability exists among the districts as to whether the districts will reimburse for discovery costs, and RPC have indicated that in certain cases, they have consumed almost their entire flat fee in discovery costs. The Task Force recommends that reimbursement for discovery be uniformly applied throughout the state.

In some jurisdictions, RPC also expressed concern about not having access to court passes as did GALs. This appears to be particularly problematic in larger judicial districts such as Denver, where the line for security can take quite some time. While this may appear to be a minor problem in some respects, half-hour to 45-minute waits to enter the courthouse can easily add up to a significant percentage of the time compensated for under the flat fee contract. Moreover, differential access to the courthouse by various counsel in the same cases sends a message to clients and RPC about the respective value of their role and undermines parity in proceedings. For this reason, the Task Force recommends that RPC be provided with the same access passes to the courthouses as independently contracting GALs.

Access to computerized information would also assist RPC in their practice as attorneys. As with discovery, the ability to obtain information about other cases involving clients and their children is an important aspect of case management. For example, when clients inform RPC regarding an existing parenting time order, restraining order, or protection order, it is important for RPC to investigate and verify the existence and contents of those orders. Tracking this information down without access to computerized information has been reported to be difficult for RPC, and, because county attorneys in many districts do have access to most computerized court records, RPC have also expressed concerns with lack of parity in access to the same information. Additionally, RPC have expressed

¹²² Needs Assessment, *supra* note 7, at 144.

¹²³ C.R.C.P. 1(a).

¹²⁴ C.R.C.P. (26(a)).

concern with the implementation of Colorado's Strengthening Abuse and Neglect Act Grant, which provides real-time exchange of data between the departments of social services and the courts in Colorado. If such information is not also shared with RPC, it will undermine due process and RPC's ability to effectively manage their cases. The Task Force is aware of committees currently exploring technology and access to court computer systems, and it recommends that the needs of RPC and due process concerns continue to be considered and addressed in these committees.

V. Conclusion

The Task Force proposes its recommendations as critical to providing due process and equal protection for families faced with an extreme type of state intervention, in which the parent-child relationship may be severed. The Task Force is cognizant that implementation of some of its recommendations may have some fiscal impact on the State and may call upon the Judicial Branch/ General Assembly to dedicate a larger share of its budget to RPC services. However, considerations of due process, parity, and appropriate outcomes in dependency cases warrant such an investment. The Task Force is heartened by Colorado's legislative efforts to support the attorneys who represent the best interests of children in dependency and neglect proceedings and ongoing recognition of the need to improve compensation for court-appointed counsel. Other states have also prioritized representation for parents, and the findings in Washington illustrate the financial savings that can occur through the improvement of representation of parents in dependency and neglect proceedings.¹²⁵ The Task Force believes that by following other states' examples and its own leadership in the representation of other parties in dependency proceedings, Colorado can continue to improve the system for children and families by focusing on the important role of parents and their counsel in these proceedings.

¹²⁵ See Washington data, *supra* note 36.

Exhibit A

September 5, 2005

Dear

The interest of parents in the care, custody, and control of their children is fundamental. Representing the parents faced with severance of the parent-child relationship is difficult work, but the importance of the role is undeniable. On behalf of the Colorado Supreme Court I invite you to participate in the Respondent Parents' Counsel Task Force, a body to study the issues facing respondent parents' counsel and to make recommendations to the Supreme Court and the Legislature.

This is an effort sponsored by the Court Improvement Committee, with the assistance of the Standing Committee on Family Issues. Based upon the significant work done jointly by these committees in the last few years, we expect the work of the Task Force to have an equally strong impact on court culture and practice. In the last few years, these committees have made significant contributions to children's representation, expedited child welfare appeals and simplified divorce procedures, among other improvements.

As described in greater detail in the attached memo, this Task Force will focus on three main areas: training, compensation and standards of representation. A small group of professionals with unique knowledge and expertise is being asked to develop and assist in the delivery of training programs, to look at various models of representation and to make recommendations to the Supreme Court and selected members of the General Assembly. The work of the task force is expected to be intense but short, culminating in the completion of a report to the Supreme Court on or before the 2007 Legislative Session. Including the quarterly meetings, we expect this effort to require an average of three to four hours of your time per month until the sunset of the task force.

We require your individual perspective and experience to assist us in this endeavor. Please join us in the kick-off of this effort on **Friday, October 21, 2005** at our Denver West facility in Golden to hear from state and national experts concerning the issues facing respondent parents' counsel and to decide what Colorado can do to support these attorneys. An agenda is attached.

Thank you for your willingness to participate. We value your insights, experience and perspective as we wrestle with the important issues concerning the representation of families in the courts.

Sincerely,
MJM

Exhibit B



STATE OF COLORADO JUDICIAL DEPARTMENT

COLORADO COURT IMPROVEMENT PROGRAM
RESPONDENT PARENTS' COUNSEL TASK FORCE
STATEWIDE NEEDS ASSESSMENT: EXECUTIVE SUMMARY

MARCH 2007

SUBMITTED BY
NATIONAL CENTER FOR STATE COURTS
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IN PARTNERSHIP WITH
THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES



AND
THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



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THE STATE OF COLORADO JUDICIAL DEPARTMENT,
THE NATIONAL CENTER FOR STATE COURTS,
THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES,
THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

This document has been prepared under an agreement (fully executed on June 9, 2006) between the State of Colorado Judicial Department and the National Center for State Courts. The points of view and opinions offered in this *Statewide Needs Assessment Report* are those of the project consultants and researchers and do not necessarily represent the official policies or position of the State of Colorado Judicial Department, the National Center for State Courts, the National Council of Juvenile and Family Court Judges, or the National Association of Counsel for Children.

Online legal research provided by LexisNexis.





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The National Center for State Courts, the National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children RPC Statewide Needs Assessment Project Team would like to thank the many organizations and individuals to whom we owe a debt of gratitude.

First and foremost, we must acknowledge the efforts of the Respondent Parents' Counsel Task Force and, especially, the members of the Statewide Needs Assessment Sub Committee: Judge Karen Metzger, Magistrate Dinsmore Tuttle, Melinda Taylor, and Stanlee West-Watt. Thank you for your guidance, wisdom, and feedback during the needs assessment process.

To the many dependency and neglect professionals with whom we spoke, and/or completed the stakeholder survey, thank you for your participation. The list of professionals includes: judges and magistrates; family court facilitators; county attorneys; guardians *ad litem*; DHS social workers and supervisors; service providers; and court appointed special advocates. Many thanks to the respondent parents' counsel with whom we spoke, observed, and completed the RPC survey. Thank you for your time and candor. We enjoyed your company and the opportunity to engage you on the very important issues surrounding the work that you do on behalf of parents.

NCSC, NCJFCJ, and NACC would also like to express our sincere appreciation to the individuals in the project sites who assisted with the logistics of file review and court observation, and the scheduling of interviews and focus groups: Denver County-Barbara Bosley, Family Court Facilitator; El Paso County-Judge Theresa Cisneros and Jim Hustad, Family Court Facilitator; Teller County-Judge Tom Kennedy; and Weld County- Judge Robert Lowenbach; Danna Nelson, Court Clerk; and Christy Dodd, Executive Director, *A Kid's Place*. Without your generous assistance, the multiple data collection activities in each of your sites would not have flowed as well. Thank you for your patience, hospitality, and graciousness.

Finally, the NCSC, NCJFCJ, and NACC project team is especially indebted to Sheri Danz, Alicia Davis and Bill DeLisio of the Family Issues Unit of the State Court Administrator's Office. Thank you, Sheri, Alicia, and Bill for your assistance at all levels on this needs assessment project. We enjoyed working with you and hope our paths cross again in the future.

INTRODUCTION

Respondent Parents' Counsel play a critical role in achieving good outcomes for children involved in dependency and neglect proceedings by protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate. In recognition of the need for quality representation of parents, efforts are underway locally and nationally to enhance and optimize respondent parent counsel (RPC) practice and thereby improve outcomes for children and families.¹ Colorado is involved in these efforts. The Respondent Parents' Counsel Task Force Statewide Needs Assessment is intended to inform Colorado's efforts to promote quality representation for parents in dependency and neglect proceedings.

COLORADO RESPONDENT PARENTS' COUNSEL TASK FORCE AND OBJECTIVES OF NEEDS ASSESSMENT

In 2005, the Colorado Supreme Court created the *Respondent Parents' Counsel Task Force*, a group of child welfare professionals and academics, to review the issues facing respondent parents' counsel and to make recommendations to the Supreme Court and the Colorado Legislature. The mission of the Respondent Parents' Counsel Task Force is

...to improve the well-being of Colorado's children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.²

An imperative objective identified by the Task Force is the need to pursue additional and equitable funding for respondent parents' counsel (RPC) compensation. The Task Force has articulated four main performance areas: (1) Advocacy for RPC Resources; (2) Specific Training for RPC; (3) Researching and Defining Structural Outcomes; and (4) Guidelines and Practice Standards, which will ultimately inform and enhance the likelihood for the successful achievement of improved compensation.

In furtherance of these performance areas, the Task Force determined that a needs assessment will assist in defining the greatest needs for attorneys and the objectives for the structural outcomes, as well as providing baseline data for any efforts of reform. The secondary purpose of the needs assessment is to identify the impediments to effective representation of families. This includes a specific examination of training, compensation, caseload, resources, service delivery and court and attorney practices and comparison of current RPC practice to widely accepted models of practice.

In 2006, the state of Colorado Judicial Department, through its State Court Administrator's Office (SCAO) contracted with the National Center for State Courts (NCSC), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the National Association of Counsel for Children (NACC), to review and

¹ This includes the promulgation of national standards for attorneys representing parent in child welfare proceedings. See ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006) (NACC Endorsed 2006). In 2004, the Pew Commission on Children in Foster Care published findings and recommendations that called on states to promote children's interests by ensuring that both children and their parents have a direct voice in court and effective representation, The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care* (2004). The National Council of Juvenile and Family Court Judges recommends that all parties have competent representation at every critical state of the proceedings. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, 1995).

² Respondent Parents' Counsel Task Force, *Action Plan*, Sponsored by the Colorado Court Improvement Program in Collaboration with the Supreme Court Standing Committee on Family Issues, Updated April 2006.

analyze current RPC practices across the state of Colorado and to identify the impediments to effective representation of families in child dependency and neglect cases.

METHODOLOGY

The NCSC/NCJFCJ/NACC project team examined the issues facing respondent parents' counsel using multiple data sources and both qualitative and quantitative methods. The methodological model adopted for this needs assessment included selection of specific project sites for intensive data collection, as well as a web-based survey designed to capture a statewide perspective from RPC and other stakeholders.

Selection of project sites was made after consultation with the Respondent Parents' Counsel Task Force. Sites were also selected to represent a variety of racial, economic, educational and population characteristics, as well as differing caseloads. The three project sites included: the Second Judicial District (Denver County); the Fourth Judicial District (El Paso and Teller County); and the Nineteenth Judicial District (Weld County). Specifically, the following data sources informed this needs assessment study:

- Statewide and online (web-based) survey of dependency and neglect system stakeholders [118 responses] and RPCs [44 responses]
- Semi-structured in-person interviews and focus groups with system stakeholders [96 participants] and respondent parents' counsel [15 participants] in project sites
- Analysis of court records [404 court files]
- Structured observation of dependency and neglect case hearing practice [151 hearings]
- Analysis of management information systems (MIS) data where available

SUMMARY OF FINDINGS

From the data collection and analysis, several themes emerged. Of particular significance are the findings concerning barriers to effective RPC performance.

BARRIERS TO EFFECTIVE RPC PERFORMANCE

Stakeholders and RPCs cited a number of challenges or impediments to effective representation of respondent parents:

- *High caseloads: Many participants believe that RPC caseloads are generally too high and that the number of cases that attorneys accept prevents them from meeting with clients outside of court and working the cases in a proactive manner.*
- *Compensation: Many faulted the compensation system which, in their view, requires attorneys to accept a large number of appointments in order to sustain a practice in this area. Others believed the compensation system, both the amount of pay and the flat-fee structure, discouraged attorneys from entering and staying in this area of practice.*
- *Lack of support services and resources: There are insufficient resources for RPC to conduct an independent investigation to competently challenge the child welfare agency's position, including the ability to procure expert witness services. RPCs do not have ready access to the support services and other resources that could help them manage their caseloads and deliver a higher level of representation.*
- *Training: Another significant area of concern was the lack of practical and RPC role-specific training and education. Of particular concern was the need for training on litigation skills.*

- *Lack of services: Although a lack of services for clients was not described as a major impediment to effective representation, not all participants were satisfied with the number and range of services available in their jurisdiction, especially in the area of mental health.*
- *Discovery issues: RPC noted that treatment plans, status reports, court orders, and other documents are not always prepared and distributed in a timely manner. This in turn limits the time they have to review these materials with their client and to respond.*

In addition to findings regarding barriers to effective performance, findings were made regarding RPC performance and the administration of RPC services.

- *Roles and Responsibilities—Duties of counsel flow from role and role dictates tasks. Colorado RPC practice does not indicate a significant problem regarding counsels' understanding of their role.*
- *Written Standards of Practice—Currently, only the Agreement for Services articulates specific requirements for RPC practice. Like many other states across the country that have promulgated or are developing standards for RPC practice, Colorado is in the process of vetting a draft set of guidelines for review and commentary. The draft guidelines are expected to be finalized in April 2007.*
- *Caseload and Workload—While stakeholders believe that more RPC are needed to provide quality representation, RPC report that having to take on other cases makes it difficult to focus on the complex RPC practice. RPC report that they would prefer to have higher level caseloads consisting entirely or primarily of enough RPC appointments to be able to practice as an RPC full time. There is some divergence as to which direction RPC practice should go—more attorneys to meet the demand, or a slight increase in attorneys but have those attorneys focused primarily on RPC practice.*
- *Recruitment—The current recruitment process appears limited in breadth and reach. The focus group and survey data suggest that the court should take more active efforts in the recruitment process. Additionally, the process for the recruitment of RPCs must be widened in order to increase the likelihood for highly-qualified and diverse candidates.*
- *Turnover—RPC claim a low turnover rate, while stakeholders have the impression that RPC turn over more frequently. Overall, it appears that it is typical for one RPC to represent a parent throughout the duration of the case statewide, contrary to the perception of the stakeholders. Yet, of the sites studied, Denver County appears to be the location most afflicted by RPC turnover, and may require active steps to increase the rate at which parents are represented by one counsel for the duration of the case.*
- *Contracting and Oversight—By necessity, there are some local efforts to provide oversight of RPC performance; the strongest of which is the RPC contract renewal process. Avenues to provide parents the opportunity to make complaints or file grievances with the trial court are not often utilized because of fear, lack of awareness of a complaint process, or limited abilities. There is little to no oversight of RPC practice, training, and Agreement compliance at the state level. Performance provisions of the Agreement are not systematically reviewed or audited.*
- *Appointment—Participants in the stakeholder focus group strongly believe that appointing parents' counsel early in the case contributes to timeliness and due process. The data also suggest that there is timely appointment of counsel and that counsel are being appointed early on in cases. Ensuring timely*

appointment of counsel on a statewide basis will not only ensure the rights of the parents are upheld at each stage of the case process; it will also facilitate timely adjudication of cases.

- *Continuances—From the collective data sources, it appears that the Colorado dependency and neglect court system does make efforts to avoid continuances. Overall, it appears that continuances are relatively infrequent. Yet when they do occur, they are more than likely to be requested by the RPC.*
- *Professionalism—Project researchers consistently found that Colorado RPC comport themselves professionally.*
- *Preparation—Colorado RPC preparation is generally adequate, given limited time and resources. However, it is notable that stakeholders perceive RPC to only “sometimes” discuss issues with their clients prior to court proceedings, and this perception appears to be confirmed by RPC’s reports that they meet with the majority of clients just before hearings.*
- *Client Advocacy—An analysis of the data revealed a complex scenario. While, stakeholder surveys reported that RPCs are very active, the data from the case file review suggests only few written motions are filed. As case files only contain written motions, it seems that RPC are making oral motions in court or decisions within a “team,” as opposed to traditional written motions. There is room for improvement, as RPCs can and should, in some circumstances, file more motions to expedite the case by alerting the court to issues as soon as they arise (for example, filing written visitation motions and motions to return the child).*
- *Communication with Client—The primary, and often repeated, complaint about RPC voiced across project sites is that they do not appear to meet with clients outside of court hearings. RPCs reported that they did meet with clients outside of court, but noted that some clients did not keep appointments or attempted to contact them at odd hours.*
- *Skills—Court observers found that RPC take their function seriously and work hard for their clients. Deficiencies were noted primarily in the area of trial skills. Stakeholders, who observe RPC performance more frequently and under typical circumstances, are critical of the skill level of RPC practicing in the Colorado dependency and neglect courts. RPC themselves actively requested training in the area of trial skills.*

SUMMARY OF RECOMMENDATIONS

The NCSC/NCJFCJ/NACC project team made fifteen global recommendations addressing attorney performance and systemic change. These recommendations are based on measured deficiencies in current practice and systems.

- *RPC Role Clarity and Definition—Attorneys retaining contracts must make clear that the RPC is the attorney for the parent(s), bound by the traditional rules of attorney-client competence, loyalty, and confidentiality, for example. This is true regardless of the source or adequacy of attorney compensation. The duty to the parent client must be communicated to and understood by the client, court, and all parties.*
- *Training—Respondent Parents’ Counsel should have the opportunity for and be required to receive training in dependency practice prior to eligibility for cases and throughout the course of taking cases, in dependency law and procedure, trial advocacy, alternative dispute resolution, child maltreatment and*

development, physical and mental health, substance abuse, permanency, family dynamics, and available services for parents in the community.

- *Standards of Practice*—Standards of practice (and guidelines to a far lesser degree) define and encourage proficient practices among professionals. The dependency court system should adopt mandatory standards of practice creating a practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable. Such standards should be consistent with existing national dependency practice standards and guidelines including the 2006 ABA Standards for Representation of Respondent Parents.
- *Caseload and Workload*—Attorneys should have reasonable and appropriate caseloads which allow enough case focus for the development of expertise, which in turn promotes proficiency.
- *Compensation*—Attorneys must be compensated adequately for cases that allow for lower caseloads. Attorneys should receive compensation at least competitive with agency and public defender counsel wages. Appropriate and competitive compensation must become a component of RPC representation.
- *Recruitment*—Proficient representation requires recruitment of competent counsel. The dependency court system should develop and follow a recruitment system which targets recruiting and hiring practice focused on hiring highly qualified candidates.
- *Turnover*—Respondents' representation suffers from lack of continuity of counsel. The system should track counsel case continuity and turnover and communicate with the RPC bar to understand and promote success and address failures.
- *Resources*—Counsel should have and utilize resources necessary for effective advocacy including office research and preparation tools and case and expert consultation services throughout all stages of dependency and neglect cases.
- *Contracting and Oversight*—The RPC contract should be clear and concise. It should thoroughly outline the role and responsibility of counsel as well as direct counsel to appropriate authority for best practices. Additionally, quality attorney oversight is essential to proficient practice. New attorneys should be mentored by experienced highly proficient practitioners. Staffed RPC offices with full-time dependency counsel including managers and supervisors should be explored where feasible. In other instances, a centralized authority should conduct oversight.
- *Appointment, Appearances, and Continuance*—Counsel for parents should be appointed and must appear at the earliest possible opportunity. The administrative judge of each court should be required to develop, in collaboration with other judges, and with magistrates, prosecuting attorneys, agency attorneys, and the local bar, a written continuance policy designed to minimize unneeded continuances.
- *Professionalism and Protocol*—Attorneys should act and be treated as professionals. This includes professional dress and demeanor before the court, client, and community. Formality in the dependency court should be encouraged by the court and followed by counsel.
- *Case Preparation*—Proficient practice requires extensive preparation. Attorneys should take and be given the time to prepare their cases. Such preparation includes case analysis, preparation of case legal theory and persuasive theme, active participation in every stage of the proceeding, thorough investigation including full interviews with witnesses, and obtaining and reviewing of all relevant pleadings and documents including agency records.
- *Knowledge and Utilization of Community Services and Utilization of Tools*—Attorneys should have knowledge of and advocate for services available and appropriate for their clients and their clients' children. Attorneys should know and utilize legal resources and remedies available to their clients, including discovery, motions, objections, trial briefs, writs, and appeals. They should also have

a full understanding of dependency law and procedure, trial advocacy, child maltreatment and development, medicine, mental health, and family dynamics.

- *Client and Party Communication*—Successful representation is contingent upon a meaningful relationship with the client. Such a relationship cannot be built with casual and infrequent client contact. Attorneys should meet with clients meaningfully in advance of proceedings and throughout the case, counsel clients as to legal options given the universe of likely outcomes, and represent the client's directives and interests. Attorneys should have and take the time to prepare clients for proceedings and to communicate with opposing counsel.
- *Courtroom/Trial Skills*—The traditional art of trial advocacy including, direct and cross exam, opening statements, closing arguments, objections, and evidentiary foundations is critical to the dependency court process. Attorneys should acquire and use these skills.

CONCLUDING REMARKS

Protecting parental rights and serving the family interest as directed by the parent client is the charge and duty of the respondent parent attorney. In order for such legal service to be delivered, however, we must have an administrative and court system that promotes high quality RPC practice, populated by proficient legal counsel. This study assessed that system and counsel performance within it.

Based on the data received, it is the conclusion of the project team that the practice of law representing parents in Colorado dependency cases is typically adequate but rarely proficient. It is our further assessment that the cause of sub proficient practice is not unwillingness of counsel to provide proficient service but rather the existence of practice, administration, and court systems which discourage optimal practice.

This assessment is not an indictment of the attorneys who work in the system. It is our general assessment that RPCs do well given limited resources and opportunity. Nonetheless, we believe counsel can and should improve performance. Likewise, this is not an indictment of system personnel who administer the system. It is a call to system workers and policy makers to reform an imperfect system which will promote proficient practice.

Improvement of RPC practice and representation of parents will require the collaboration and coordination of multiple branches of government, agencies, and people. The needs assessment sets forth implementation strategies to further each of the recommendations. Several of the strategies focus on the responsibilities of the Colorado Judicial Department, such as requiring RPC to obtain training in relevant law prior to accepting appointments, creating expert banks for RPC, and calendaring dockets to facilitate communication with clients. Other strategies will require the support of the broader legal and child welfare community, as well as the legislative branch. Examples of such strategies include clarifying policies to allow for the appointment of experts and investigators early on upfront in cases; increasing compensation for RPC and implementing hourly pay; promulgating and enforcing standards for RPC; promoting specialization in this area of the law; and exploring models for oversight of RPC. These efforts will likely promote quality representation for parents and good outcomes for Colorado families and children.

Exhibit C

American Bar Association

Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

SUMMARY: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Basic Obligations: The parent's attorney shall:

General:

- 1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**
- 2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**
- 3. Understand and protect the parent's rights to information and decision making while the child is in foster care.**
- 4. Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction.**
- 5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.**
- 6. Cooperate and communicate regularly with other professionals in the case.**

Relationship with the Client:

- 7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.**
- 8. Act in accordance with the duty of loyalty owed to the client.**
- 9. Adhere to all laws and ethical obligations concerning confidentiality.**
- 10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.**
- 11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the**

pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.

12. Work with the client to develop a case timeline and tickler system.
13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.
15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.
18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

Investigation:

19. Conduct a thorough and independent investigation at every stage of the proceeding.
20. Interview the client well before each hearing, in time to use client information for the case investigation.

Informal Discovery:

21. Review the child welfare agency case file.
22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

Formal Discovery:

23. When needed, use formal discovery methods to obtain information.

Court Preparation:

24. **Develop a case theory and strategy to follow at hearings and negotiations.**
25. **Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.**
26. **Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.**
27. **Aggressively advocate for regular visitation in a family-friendly setting.**
28. **With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**
29. **Thoroughly prepare the client to testify at the hearing.**
30. **Identify, locate and prepare all witnesses.**
31. **Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.**

Hearings:

32. **Attend and prepare for all hearings, including pretrial conferences.**
33. **Prepare and make all appropriate motions and evidentiary objections.**
34. **Present and cross-examine witnesses, prepare and present exhibits.**
35. **In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.**
36. **Request closed proceedings (or a cleared courtroom) in appropriate cases.**
37. **Request the opportunity to make opening and closing arguments.**
38. **Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.**

Post Hearings/Appeals:

39. **Review court orders to ensure accuracy and clarity and review with client.**
40. **Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.**
41. **Consider and discuss the possibility of appeal with the client.**

42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.

43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

44. Communicate the results of the appeal and its implications to the client.

Obligations of Attorney Managers:

Attorney Managers are urged to:

- 1. Clarify attorney roles and expectations.**
- 2. Determine and set reasonable caseloads for attorneys.**
- 3. Advocate for competitive salaries for staff attorneys.**
- 4. Develop a system for the continuity of representation.**
- 5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.**
- 6. Establish a regular supervision schedule.**
- 7. Create a brief and forms bank.**
- 8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.**
- 9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.**
- 10. Develop and implement an attorney evaluation process.**
- 11. Work actively with other stakeholders to improve the child welfare system, including court procedures.**

Role of the Court

The Court is urged to:

- 1. Recognize the importance of the parent attorney's role.**
- 2. Establish uniform standards of representation for parents' attorneys.**

- 3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.**
- 4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.**
- 5. Ensure parents' attorneys receive fair compensation.**
- 6. Ensure timely payment of fees and costs for attorneys.**
- 7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.**
- 8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.**
- 9. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.**
- 10. Provide contact information between clients and attorneys.**
- 11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.**

Basic Obligations: The parent's attorney shall:

General¹

- 1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**

Action: The parent's attorney must participate in all required training and mentoring before accepting an appointment.

Commentary: As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A parent's fundamental liberty interest in the care and custody of his or her child is at stake, and the attorney must be adequately trained to protect this interest. Because the stakes are so high, the standards drafting committee recommends all parents' attorneys receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Training should directly relate to the attorney's child welfare practice.² This is further detailed in Attorney Managers Standard 5 below. In addition, the parent's attorney should actively participate in ongoing training opportunities. Even if the attorney's jurisdiction does not require training or mentoring, the attorney should seek it. Each state should make comprehensive training available to parents' attorneys throughout the state. Training may include relevant online or video training.

- 2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**

Action: Parents' attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they need to be trained on them. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney must be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357
Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)
State Indian Child Welfare Act laws

Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998).

Interstate Compact on Placement of Children (ICPC)

Foster Care Independence Act of 1999 (FCIA), P.L. 106-169

Individuals with Disabilities Education Act (IDEA), P.L. 91-230

Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g

Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part)

Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2

Immigration laws relating to child welfare and child custody

State laws and rules of evidence

State laws and rules of civil procedure

State laws and rules of criminal procedure

State laws concerning privilege and confidentiality, public benefits, education, and disabilities

State laws and rules of professional responsibility or other relevant ethics standards

State laws regarding domestic violence

State domestic relations laws

Commentary: Although the burden of proof is on the child welfare agency, in practice the parent and the parent's attorney generally must demonstrate that the parent can adequately care for the child. The parent's attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child's individual service issues. To perform these functions, the parent's attorney must know enough about all relevant laws to vigorously advocate for the parent's interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent's rights throughout court proceedings.

3. Understand and protect the parent's rights to information and decision making while the child is in foster care.

Action: The parent's attorney must explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in foster care. The parent's attorney should seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services. If necessary, the parent's attorney should intervene with the child welfare agency, provider agencies, medical providers and the school to ensure the parent

has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

4. Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.³

Action: The parent's attorney should not request continuances unless there is an emergency or it benefits the client's case. If continuances are necessary, the parent's attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. The attorney must notify all counsel of the request. The parent's attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased or other requests by the parent may be granted. If a hearing is continued and the case is delayed, the parent may lose momentum in addressing the issues that led to the child's removal or the parent may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act (ASFA) timelines continue to run despite continuances.

6. Cooperate and communicate regularly with other professionals in the case.⁴

Action: The parent's attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent's attorney should communicate with the caseworker, foster parents and service providers to learn about the client's progress and their views of the case, as appropriate. The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders and administrative determinations do not conflict with the client's goals in the abuse and neglect case.

Commentary: The parent's attorney must have all relevant information to try a case effectively. This requires open and ongoing communication with the other attorneys and service providers working with the client and family. Rules of professional ethics govern contact with represented and unrepresented parties. In some states, for instance, attorneys may not speak with child welfare caseworkers without the permission of agency counsel. The parent's attorney must be aware of local rules on this issue and seek permission to speak with represented parties when that would further the client's interests.

Relationship with the Client⁵

7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.⁶

Action: Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case

goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: Since many clients distrust the child welfare system, the parent's attorney must take care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment. The attorney should clearly explain the legal issues as well as expectations of the court and the agency, and potential consequences of the client failing to meet those expectations. The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.

8. Act in accordance with the duty of loyalty owed to the client.

Action: Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

Commentary: Often attorneys practicing in abuse and neglect court are a close knit group who work and sometimes socialize together. Maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. The attorney, however, should be vigilant against allowing the attorney's own interests in relationships with others in the system to interfere with the attorney's primary responsibility to the client. The attorneys should not give the impression to the client that relationships with other attorneys are more important than the representation the attorney is providing the client. The client must feel that the attorney believes in him or her and is actively advocating on the client's behalf.

9. Adhere to all laws and ethical obligations concerning confidentiality.⁷

Action: Attorneys representing parents must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

Commentary: Confidential information contained in a parent's substance abuse treatment records, domestic violence treatment records, mental health records and medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which

the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.⁸

Action: The parent's attorney should ensure the parent understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. For example, it may involve telephone contact, email or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

Commentary: Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent's attorney, from the beginning of the case, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information for the case and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney's attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client's relationship with the agency or provider is not working effectively. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client.

11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.⁹

Action: The parent's attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the parent can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client as well.

The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.

The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

Commentary: The parent's attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings, and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

12. Work with the client to develop a case timeline and tickler system.

Action: At the beginning of a case, the parent's attorney and client should develop timelines that reflect projected deadlines and important dates and a tickler/calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The attorney and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way. The attorney should provide the client with a timeline/calendar, outlining known and prospective court dates, service appointments, deadlines and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (e.g., the 15 of 22 month point that would necessitate a termination of parental rights (TPR), if exceptions do not apply).

Commentary: Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps parents stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.¹⁰

Action: The parent's attorney should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

Commentary: The parent's attorney should ensure the client is informed about what is happening in the case. Part of doing so is providing the client with written documents and reports relevant to the case. If the client has this information, the client will be better able to assist the attorney with the case and fulfill his or her parental obligations. The attorney must be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.¹¹

Action: The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for conflicts of interests. In situations involving allegations of domestic violence the attorney should never represent both parents.

Commentary: In most cases, attorneys should avoid representing both parents in an abuse or neglect case. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests in the current case.

In analyzing whether a conflict of interest exists, the attorney must consider "whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised."¹²

15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.

Action: The parent's attorney should learn about and understand the client's background, determine how that has an impact on the client's case, and always show the parent respect. The attorney must understand how cultural and socioeconomic differences impact interaction with clients, and must interpret the client's words and actions accordingly.

Commentary: The child welfare system is comprised of a diverse group of people, including the clients and professionals involved. Each person comes to this system with his or her own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The parent's attorney must be vigilant against imposing the attorney's values onto the clients, and should, instead, work with the parents within the context of their culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's advocate must strive to explain these expectations to the clients in a sensitive way. The parent's attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.¹³

Action: Upon accepting an appointment, the parent's attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate regularly with the client, and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact the attorney, and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client's current whereabouts.

The parent's attorney should attempt to locate and communicate with missing parents to formulate what positions the attorney should take at hearings, and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If, after diligent steps, the attorney is unable to communicate with the client, the attorney should assess whether the client's interests are better served by advocating for the client's last clearly articulated position, or declining to participate in further court proceedings, and should act accordingly. After a prolonged period without contact with the client, the attorney should consider withdrawing from representation.

Commentary:

Diligent Steps to Locate: To represent a client adequately, the attorney must know what the client wishes. It is, therefore, important for parents' attorneys to take diligent steps to locate missing clients. Diligent steps can include speaking with the client's family, the caseworker, the foster care provider and other service providers. It should include contacting the State Department of Corrections, Social Security Administration, and

Child Support Office, and sending letters by regular and certified mail to the client's last known address. The attorney should also visit the client's last known address and asking anyone who lives there for information about the client's whereabouts. Additionally, the attorney should leave business cards with contact information with anyone who might have contact with the client as long as this does not compromise confidentiality.

Unsuccessful Efforts to Locate: If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases the client's interests may be better served by the attorney declining to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence.

17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.

Action:

Adoption and Safe Families Act (ASFA) Issues: The parent's attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals. If this is the case, the attorney must be prepared to argue against such a motion, if the client opposes it. Even if no motion is made to waive the reasonable efforts requirement, in some jurisdictions the agency may not have the same obligations to assist parents who are incarcerated. Attorneys should counsel the client as to any effects incarceration has on the agency's obligations and know the jurisdiction's statutory and case law concerning incarceration as a basis for TPR. The attorney should help the client identify potential kinship placements, relatives who can provide care for the child while the parent is incarcerated. States vary in whether and how they weigh factors such as the reason for incarceration, length of incarceration and the child's age at the time of incarceration when considering TPR. Attorneys must understand the implications of ASFA for an incarcerated parent who has difficulty visiting and planning for the child.

Services: Obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult. The parent's attorney may need to advocate for reasonable efforts to be made for the client, and assist the parent and the agency caseworker in accessing services. The attorney must assist the client with these services. Without services, it is unlikely the parent will be reunified with the child upon discharge from prison.

If the attorney practices in a jurisdiction that has a specialized unit for parents and children, and especially when the client is incarcerated for an offense that is unrelated to the child, the attorney should advocate for such a placement. The attorney must learn about available resources, contact the placements and attempt to get the support of the agency and child's attorney.

Communication: The parent's attorney should counsel the client on the importance of maintaining regular contact with the child while incarcerated. The attorney should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

If the client cannot meet the attorney before court hearings, the attorney must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve that issue.

The parent's attorney should also communicate with the parent's criminal defense attorney. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

Appearance in Court: The client's appearance in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison. If the client wants to be present in court, the attorney should work with the court to obtain a writ of habeas corpus/bring-down order/order to produce or other documentation necessary for the client to be transported from the prison. The attorney should explain to any client hesitant to appear, that the case will proceed without the parent's presence and raise any potential consequences of that choice. If the client does not want to be present, or if having the client present is not possible, the attorney should be educated about what means are available to have the client participate, such as by telephone or video conference. The attorney should make the necessary arrangements for the client. Note that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

Action: Attorneys representing parents must be able to determine whether a client's mental status (including mental illness and mental retardation) interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental

health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney because if the client does not have that capacity, the attorney may have to ask that a guardian ad litem be appointed to the client. Since this action may have an adverse effect on the client's legal claims, the attorney should ask for a GAL only when absolutely necessary.

Commentary: Many parents charged with abuse and neglect have serious or long-standing mental health challenges. However, not all of those conditions or diagnoses preclude the client from participating in the defense. Whether the client can assist counsel is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent. While the attorney is not expected to be a mental health expert, the attorney should be familiar with mental health conditions and should review such records carefully. The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the client seems unable to assist the attorney in case preparation, the attorney should seek an assessment of the client's capacity from a mental health expert. If the expert and attorney conclude that the client is not capable of assisting in the case, the attorney should inform the client that the attorney will seek appointment of a guardian ad litem from the court. The attorney should be careful to explain that the attorney will still represent the client in the child protective case. The attorney must explain to the client that appointment of a GAL will limit the client's decision-making power. The GAL will stand in the client's shoes for that purpose.

Investigation¹⁴

19. Conduct a thorough and independent investigation at every stage of the proceeding.

Action: The parent's attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The parent's attorney can not rely solely on what the agency caseworker reports about the parent. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

Commentary: In some jurisdictions, parents' attorneys work with social workers or investigators who can meet with clients and assist in investigating the underlying issues that arise as cases proceed. The drafting committee recommends such a model of representation. However, if the attorney is not working with such a team, the attorney is still responsible for gaining all pertinent case information.

20. Interview the client well before each hearing, in time to use client information for the case investigation.¹⁵

Action: The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

Commentary: Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

Informal Discovery¹⁶

21. Review the child welfare agency case file.

Action: The parent's attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have, and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because information is continually being added by the agency.

Commentary: While an independent investigation is essential, it is also important that the parent's attorney understands what information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared, and important reports and information about both the child and parent that will be necessary for the parent's attorney to understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the parent's attorney will walk into court at a disadvantage.

22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

Action: As part of the discovery phase, the parent's attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan and the client's strengths as a parent. The attorney should not limit the scope as information about past or present criminal, protection from abuse, private custody or

administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- social service records
- court records
- medical records
- school records
- evaluations of all types

The attorney should be sure to obtain reports and records from service providers.

Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

Commentary: In preparing the client's case, the attorney must try to learn as much about the parent and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and progress the parent is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with counsel. The attorney may be able to intercede and assist the client with service providers, agency caseworkers and others.

Formal Discovery¹⁷

23. When needed, use formal discovery methods to obtain information.

Action: The parent's attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The parent's attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

Court Preparation¹⁸

24. Develop a case theory and strategy to follow at hearings and negotiations.

Action: Once the parent's attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

25. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.

Action: The attorney must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.

When a case presents a complicated or new legal issue, the parent's attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law, and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well. If it would advance the client's case, the parent's attorney should present an unsolicited memorandum of law to the court.

Commentary: Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations. When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.

Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level

26. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

Action: The parent’s attorney must advocate for the client both in and out of court. The parent’s attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

The attorney should actively engage in case planning, including attending major case meetings, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case. A major case meeting is one in which the attorney or client believes the attorney will be needed to provide advice or one in which a major decision on legal steps, such as a change in the child’s permanency goal, will be made. The attorney should be available to accompany the client to important meetings with service providers as needed.

The services in which the client is involved must be tailored to the client’s needs, and not merely hurdles over which the client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Whenever possible, the parent’s attorney should engage or involve a social worker as part of the parent’s “team” to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

When necessary, the parent’s attorney should seek court orders to force the child welfare agency to provide services or visitation to the client. The attorney may need to ask the court to enforce previously entered orders that the agency did not comply with in a reasonable period. The attorney should consider whether the child’s representative (lawyer, GAL or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child’s representative’s assistance and work together in making requests to the agency and the court.

Commentary: For a parent to succeed in a child welfare case the parent must receive and cooperate with social services. It is therefore necessary that the parent’s attorney does whatever possible to obtain appropriate services for the client, and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention or treatment

- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can attend services

27. Aggressively advocate for regular visitation in a family-friendly setting.

Action: The parent’s attorney should advocate for an effective visiting plan and counsel the parent on the importance of regular contact with the child. Preservation of parent-child bonds through regular visitation is essential to any reunification effort. Courts and child welfare agencies may need to be pushed to develop visiting plans that best fit the needs of the individual family. Factors to consider in visiting plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching – having someone at the visit who could model effective parenting skills

Commentary: Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the parent’s attorney seek a visitation order that will allow the best possible visitation. Effort should be made to have visits be unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy or other community members are recruited to supervise visits rather than caseworkers. Attorneys should advocate for visits to occur in the most family-friendly locations possible, such as in the family’s home, parks, libraries, restaurants, places of worship or other community venues.

28. With the client’s permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.

Action: The parent’s attorney should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the client’s goals. Parents’ attorneys should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the client’s position. When authorized to do so by the client, the parent’s attorney should share information about services in which the parent is engaged and provide copies of favorable reports from service providers. This information may impact settlement discussions. The attorney must communicate all settlement offers to the client and discuss their advantages and disadvantages. It is the client’s decision whether to settle. The attorney must be willing to try the case and not compromise solely to avoid the hearing. The attorney should use mediation resources when available.

Commentary: Negotiation and mediation often result in a detailed agreement among parties about actions the participants must take. Generally, when agreements have been thoroughly discussed and negotiated, all parties, including the parents, feel as if they had a say in the decision and are, therefore, more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated settlements generally happen more quickly than full hearings and therefore move a case along swiftly. The attorney should discuss all aspects of proposed settlements with the parent, including all legal effects of admissions or agreements. The attorney should advise the client about the chances of prevailing if the matter proceeds to trial and any potential negative impact associated with contesting the allegations. The final decision regarding settlement must be the client's.

A written, enforceable agreement should result from any settlement, so all parties are clear about their rights and obligations. The parent's attorney should ensure agreements accurately reflect the understandings of the parties. The parent's attorney should schedule a hearing if promises made to the parent are not kept.

29. Thoroughly prepare the client to testify at the hearing.

Action: When having the client testify will benefit the case or when the client wishes to testify, the parent's attorney should thoroughly prepare the client. The attorney should discuss and practice the questions that the attorney will ask the client, as well as the types of questions the client should expect opposing counsel to ask. The parent's attorney should help the parent think through the best way to present information, familiarize the parent with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

Commentary: Testifying in court can be intimidating. For a parent whose family is the focus of the proceeding, the court experience is even scarier. The parent's attorney should be attuned to the client's comfort level about the hearing, and ability to testify in the case. The attorney should spend time explaining the process and the testimony itself to the client. The attorney should provide the client with a written list of questions that the attorney will ask, if this will help the client.

30. Identify, locate and prepare all witnesses.

Action: The parent's attorney, in consultation with the parent, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the client.

The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Commentary: Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the parent. They may be service providers working with the parent, or individuals from the community who could testify generally about the family's strengths.

When appropriate, the parent's attorney should consider working with other parties who share the parent's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

Witnesses are often nervous about testifying in court. Attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them.

31. Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

Action: Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the parent needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advanced notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

When opposing counsel plans to call expert witnesses, the parent's attorney should file expert interrogatories, depose the witnesses or interview the witnesses in advance, depending on the jurisdiction's rules on attorney work product. The attorney should do whatever is necessary to learn what the opposing expert witnesses will say about the client during the hearing.

Commentary: By contacting opposing counsel's expert witnesses in advance, the parent's attorney will know what evidence will be presented against the client and whether the

expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the client, prepare a defense and call experts on behalf of the client, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

Hearings

32. Attend and prepare for all hearings, including pretrial conferences.

Action: The parent's attorney must prepare for, and attend all hearings and participate in all telephone and other conferences with the court.

Commentary: For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court. Participating in pretrial proceedings may improve case resolution for the parent. Counsel's failure to participate in the proceedings in which all other parties are represented may disadvantage the parent. Therefore, the parent's attorney should be actively involved in this stage. Other than in extraordinary circumstances, attorneys must appear for all court appearances on time. In many jurisdictions, if an attorney arrives to court late, or not at all, the case will receive a long continuance. This does not serve the client and does not instill confidence in the attorney. If an attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a short continuance. The parent's attorney should not have another attorney stand in to represent the client in a substantive hearing, especially if the other attorney is unfamiliar with the client or case.

33. Prepare and make all appropriate motions and evidentiary objections.

Action: The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The parent's attorney should always be aware of preserving legal issues for appeal.

Commentary: It is essential that parents' attorneys understand the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts).

34. Present and cross-examine witnesses, prepare and present exhibits.

Action: The parent's attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos and physical objects into evidence.

At each hearing the attorney should keep the case theory in mind, advocate for the child to return home and for appropriate services, if that is the client's position, and request that the court state its expectations of all parties.

Commentary: Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the parent's attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the parent's position. Seasoned attorneys may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the parent's attorney must be comfortable.

35. In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.

Commentary: Several jurisdictions around the country afford parties in child welfare cases the right to a jury trial at the adjudicatory or termination of parental rights stages. Parents' attorneys in those jurisdictions should be skilled at choosing an appropriate jury, drafting jury instructions that are favorable to the client's position, and trying the case before jurors who may not be familiar with child abuse and neglect issues.

36. Request closed proceedings (or a cleared courtroom) in appropriate cases.

Action: The parent's attorney should be aware of who is in the courtroom during a hearing, and should request the courtroom be cleared of individuals not related to the case when appropriate. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family. The attorney should also be aware of whether the case is one in which there is media attention. Confidential information should not be discussed in front of the media or others without the express permission of the client.

Commentary: In many courts, even if they have a "closed court" policy, attorneys, caseworkers, and witnesses on other cases listed that day may be waiting in the courtroom. These individuals may make the client uncomfortable, and the parent's attorney should request that the judge remove them from the courtroom. Even in an "open court" jurisdiction, there may be cases, or portions of cases, that outsiders should not be permitted to hear. The parent's attorney must be attuned to this issue, and make appropriate requests of the judge.

37. Request the opportunity to make opening and closing arguments.

Action: When permitted by the judge, the parent's attorney should make opening and closing arguments to best present the parent's attorney's theory of the.

Commentary: In many child abuse and neglect proceedings, attorneys waive the opportunity to make opening and closing arguments. However, these arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them. Making opening and closing argument is particularly important if the case is being heard by a jury.

38. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.

Action: Proposed findings of fact, conclusions of law, and orders should be prepared before a hearing. When the judge is prepared to enter a ruling, the judge can use the proposed findings or amend them as needed.

Commentary: By preparing proposed findings of fact and conclusions of law, the parent's attorney frames the case and ruling for the judge. This may result in orders that are more favorable to the parent, preserve appellate issues, and help the attorney clarify desired outcomes before a hearing begins. The attorney should offer to provide the judge with proposed findings and orders in electronic format. If an opposing party prepared the order, the parent's attorney should review it for accuracy before the order is submitted for the judge's signature.

Post Hearings/Appeals

39. Review court orders to ensure accuracy and clarity and review with client.

Action: After the hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

Commentary: The parent may be angry about being involved in the child welfare system, and a court order that is not in the parent's favor could add stress and frustration. It is essential that the parent's attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client. The attorney should counsel the client about all options, including appeal (see below).

Regardless of whether an appeal is appropriate, the attorney should counsel the parent about potential consequences of not complying with the order.

40. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.

Action: The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

Commentary: The parent's attorney should play an active role in assisting the client in complying with court orders and obtaining visitation and any other social services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan. When the child welfare agency does not offer appropriate services, the attorney should consider making referrals to social service providers and, when possible, retaining a social worker to assist the client. The drafting committee of these standards recommends such an interdisciplinary model of practice.

41. Consider and discuss the possibility of appeal with the client.¹⁹

Action: The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal. In most jurisdictions, the decision whether to appeal is the client's as long as a non-frivolous legal basis for appeal exists. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

Commentary: When discussing the possibility of an appeal, the attorney should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent's goals. For instance, an appeal could delay the case for a long time. This could negatively impact both the parent and the child.

42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.

Action: The parent's attorney should carefully review his or her obligations under the state's Rules of Appellate Procedure. The attorney should timely file all paperwork, including a notice of appeal and requests for stays of the trial court order, transcript, and

case file. If another party has filed an appeal, the parent's attorney should explain the appeals process to the parent and ensure that responsive papers are filed timely.

The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's claim.

In jurisdictions in which a different attorney from the trial attorney handles the appeal, the trial attorney should take all steps necessary to facilitate appointing appellate counsel and work with the new attorney to identify appropriate issues for appeal. The attorney who handled the trial may have insight beyond what a new attorney could obtain by reading the trial transcript.

If appellate counsel differs from the trial attorney, the appellate attorney should meet with the client as soon as possible. At the initial meeting, appellate counsel should determine the client's position and goals in the appeal. Appellate counsel should not be bound by the determinations of the client's position and goals made by trial counsel and should independently determine his or her client's position and goals on appeal.

If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client. For example, in some jurisdictions appellate counsel may file a reply brief instead of oral argument. The attorney should weigh the pros and cons of each option.

Commentary: Appellate skills differ from the skills most trial attorneys use daily. The parent's attorney may wish to seek training on appellate practice and guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a significant impact on the trial judge who heard the case and trial courts throughout the state, as well as the individual client and family.

43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

Action: If the state court allows, the attorney in a child welfare matter should always consider requesting an expedited appeal. In this request, the attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

44. Communicate the results of the appeal and its implications to the client.

Action: The parent's attorney should communicate the result of the appeal and its implications, and provide the client with a copy of the appellate decision. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

Obligations of Attorney Managers²⁰

Attorney Managers are urged to:

1. Clarify attorney roles and expectations.

Action: The attorney manager must ensure that staff attorneys understand their role in representing clients and the expectations of the attorney manager concerning all staff duties. In addition to in-office obligations staff attorneys may attend meetings, conferences, and trainings. The attorney may need to attend child welfare agency or service provider meetings with clients. The manager should articulate these duties at the beginning of and consistently during the attorney's employment. The manager should emphasize the attorney's duties toward the client, and obligations to comply with practice standards.

Commentary: All employees want to know what is expected of them; one can only do a high quality job when the person knows the parameters and expectations of the position. Therefore, the attorney manager must consistently inform staff of those expectations. Otherwise, the staff attorney is set up to fail. The work of representing parents is too important, and too difficult, to be handled by people who do not understand their role and lack clear expectations. These attorneys need the full support of supervisors and attorney managers to perform their highest quality work.

2. Determine and set reasonable caseloads for attorneys.²¹

Action: An attorney manager should determine reasonable caseloads for parents' attorneys and monitor them to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about such studies, or look into caseload sizes in similar counties to accurately determine ideal attorney caseloads. When assessing the appropriate number of cases, remember to account for all attorney obligations, case difficulty, time required to prepare a case thoroughly, support staff assistance, travel time, experience level of attorneys, and available time (excluding vacation, holidays, sick leave, training and other non-case-related activity). If the attorney manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: High caseload is considered a major barrier to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction. How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. The standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards. The type of practice the attorney has,

e.g., whether the attorney is part of a multidisciplinary representation team also has an impact on the appropriate caseload size. It is part of the attorney manager's job to advocate for adequate funding and to alert individuals in positions of authority when attorneys are regularly asked to take caseloads that exceed local standards.

3. Advocate for competitive salaries for staff attorneys.

Action: Attorney managers should advocate for attorney salaries that are competitive with other government and court appointed attorneys in the jurisdiction. To recruit and retain experienced attorneys, salaries must compare favorably with similarly situated attorneys.

Commentary: While resources are scarce, parents' attorneys deserve to be paid a competitive wage. They will likely not stay in their position nor be motivated to work hard without a reasonable salary. High attorney turnover may decrease when attorneys are paid well. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated.

4. Develop a system for the continuity of representation.

Action: The attorney manager should develop a case assignment system that fosters ownership and involvement in the case by the parent's attorney. The office can have a one-attorney: one-case (vertical representation) policy in which an attorney follows the case from initial filing through permanency and handles all aspects of the case. Alternatively, the cases may be assigned to a group of attorneys who handle all aspects of a case as a team and are all assigned to one judge. If a team approach is adopted, it is critical to establish mechanisms to aid communication about cases and promote accountability.

The attorney manager should also hire social workers, paralegals and/or parent advocates (parents familiar with the child welfare system because they were involved in the system and successfully reunited with their child), who should be "teamed" with the attorneys. These individuals can assist the attorney or attorney team with helping clients access services and information between hearings, and help the attorney organize and monitor the case.

Commentary: Parents' attorneys can provide the best representation for the client when they know a case and are invested in its outcome. Continuity of representation is critical for attorneys and parents to develop the trust that is essential to high quality representation. Additionally, having attorneys who are assigned to particular cases decreases delays because the attorney does not need to learn the case each time it is scheduled for court, but rather has extensive knowledge of the case history. The attorney also has the opportunity to monitor action on the case between court hearings. This system also makes it easier for the attorney manager to track how cases are handled. Whatever system is adopted, the manager must be clear about which attorney has

responsibility for the case preparation, monitoring, and advocacy required throughout the case.

5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.

Action: The attorney manager must ensure that each attorney has opportunities to participate in training and education programs. When a new attorney is hired, the attorney manager should assess that attorney's level of experience and readiness to handle cases. The attorney manager should develop an internal training program that pairs the new attorney with an experienced "attorney mentor." The new attorney should be required to: 1) observe each type of court proceeding (and mediation if available in the jurisdiction), 2) second-chair each type of proceeding, 3) try each type of case with the mentor second-chairing, and 4) try each type of proceeding on his or her own, with the mentor available to assist, before the attorney can begin handling cases alone.

Additionally, each attorney should attend at least 20 hours of relevant training before beginning, and at least 15 hours of relevant training every year after. Training should include general legal topics such as evidence and trial skills, and child welfare-specific topics that are related to the client population the office is representing, such as:

- Relevant state, federal and case law, procedures and rules
- Available community resources
- State and federal benefit programs affecting parties in the child welfare system (e.g., SSI, SSA, Medicaid, UCCJEA)
- Federal Indian Law including the Indian Child Welfare Act and state law related to Native Americans
- Understanding mental illness
- Substance abuse issues (including assessment, treatment alternatives, confidentiality, impact of different drugs)
- Legal permanency options
- Reasonable efforts
- Termination of parental rights law
- Child development
- Legal ethics related to parent representation
- Negotiation strategies and techniques
- Protection orders/how domestic violence impacts parties in the child welfare system
- Appellate advocacy
- Immigration law in child welfare cases
- Education law in child welfare cases
- Basic principles of attachment theory
- Sexual abuse
- Dynamics of physical abuse and neglect
 - Shaken Baby Syndrome

- Broken bones
 - Burns
 - Failure To Thrive
 - Munchausen's Syndrome by Proxy
- Domestic relations law

Commentary: Parents' attorneys should be encouraged to learn as much as possible and participate in conferences and trainings to expand their understanding of child welfare developments. While parents' attorneys often lack extra time to attend conferences, the knowledge they gain will be invaluable. The philosophy of the office should stress the need for ongoing learning and professional growth. The attorney manager should require the attorneys to attend an achievable number of hours of training that will match the training needs of the attorneys. The court and Court Improvement Program²² may be able to defray costs of attorney training or may sponsor multidisciplinary training that parents' attorneys should be encouraged to attend. Similarly, state and local bar associations, area law schools or local Child Law Institutes may offer education opportunities. Attorneys should have access to professional publications to stay current on the law and promising practices in child welfare. Child welfare attorneys benefit from the ability to strategize and share information and experiences with each other. Managers should foster opportunities for attorneys to support each other, discuss cases, and brainstorm regarding systemic issues and solutions.

6. Establish a regular supervision schedule.

Action: Attorney managers should ensure that staff attorneys meet regularly (at least once every two weeks) with supervising attorneys to discuss individual cases as well as any issues the attorney is encountering with the court, child welfare agency, service providers or others. The supervising attorney should help the staff attorney work through any difficulties the attorney is encountering in managing a caseload. Supervising attorneys should regularly observe the staff attorneys in court and be prepared to offer constructive criticism as needed. The supervising attorney should create an atmosphere in which the staff attorney is comfortable asking for help and sharing ideas.

Commentary: Parents' attorneys function best when they can learn, feel supported, and manage their cases with the understanding that their supervisors will assist as needed. By creating this office environment, the attorney manager invests in training high quality attorneys and results in long-term retention. Strong supervision helps attorneys avoid the burnout that could accompany the stressful work of representing parents in child welfare cases.

7. Create a brief and forms bank.

Action: Develop standard briefs, memoranda of law and forms that attorneys can use, so they do not "reinvent the wheel" for each new project. For example, there could be sample discovery request forms, motions, notices of appeal, and petitions. Similarly, memoranda of law and appellate briefs follow patterns that the attorneys could use,

although these should always be tailored to the specific case. These forms and briefs should be available on the computer and in hard copy and should be centrally maintained. They should also be well indexed for accessibility and updated as needed.

8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.

Action: The attorney manager should advocate for high quality technical and staff support. The office should employ qualified legal assistants or paralegals and administrative assistants to help the attorneys. The attorney manager should create detailed job descriptions for these staff members to ensure they are providing necessary assistance. For instance, a qualified legal assistant can help: research, draft petitions, schedule and prepare witnesses and more.

The attorney manager should ensure attorneys have access to working equipment, a user-friendly library conducive to research, and computer programs for word processing, conducting research (Westlaw or Lexis/Nexis), caseload and calendar management, Internet access, and other supports that make the attorney's job easier and enhances client representation.

Commentary: By employing qualified staff, the attorneys will be free to perform tasks essential to quality representation. The attorneys must at least have access to a good quality computer, voice mail, fax machine, and copier to get the work done efficiently and with as little stress as possible

9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.

Action: The attorney manager should hire the best attorneys possible. The attorney manager should form a hiring committee made up of managing and line attorneys and possibly a client or former client of the office. Desired qualities of a new attorney should be determined, focusing on educational and professional achievements; experience and commitment to representing parents and to the child welfare field; interpersonal skills; diversity and the needs of the office; writing and verbal skills; second language skills; and ability to handle pressure. Widely advertising the position will draw a wider candidate pool. The hiring committee should set clear criteria for screening candidates before interviews and should conduct thorough interviews and post-interview discussions to choose the candidate with the best skills and strongest commitment. Reference checks should be completed before extending an offer.

Commentary: Hiring high quality attorneys raises the level of representation and the level of services parents in the jurisdiction receive. The parent attorney's job is complicated and stressful. There are many tasks to complete in a short time. It is often difficult to connect with, build trust and represent the parent. New attorneys must be aware of these challenges and be willing and able to overcome them. Efforts should be made to recruit staff who reflect the racial, ethnic, and cultural backgrounds of the clients. It is

particularly important to have staff who can communicate with the clients in their first languages, whenever possible.

10. Develop and implement an attorney evaluation process.

Action: The attorney manager should develop an evaluation system that focuses on consistency, constructive criticism, and improvement. Some factors to evaluate include: communicating with the client, preparation and trial skills, working with clients and other professionals, complying with practice standards, and ability to work within a team. During the evaluation process, the attorney manager should consider:

- observing the attorney in court;
- reviewing the attorney's files;
- talking with colleagues and clients, when appropriate, about the attorney's performance;
- having the attorney fill out a self-evaluation; and;
- meeting in person with the attorney.

Where areas of concern are noted, the evaluation process should identify and document specific steps to address areas needing improvement.

Commentary: A solid attorney evaluation process helps attorneys know what they should be working on, management's priorities, their strengths and areas for improvement. A positive process supports attorneys in their positions, empowers them to improve and reduces burnout.

11. Work actively with other stakeholders to improve the child welfare system, including court procedures.

Action: The attorney manager should participate, or designate someone from the staff to participate, in multidisciplinary committees within the jurisdiction that are focused on improving the local child welfare system. Examples of such committees include: addressing issues of disproportional representation of minorities in foster care, improving services for incarcerated parents, allowing parents pre-petition representation, drafting court rules and procedures, drafting protocols about outreach to missing parents and relatives, removing permanency barriers and delays, and accessing community-based services for parents and children. Similarly, the attorney manager should participate in, and strongly encourage staff participation in, multidisciplinary training.

Commentary: Working on systemic change with all stakeholders in the jurisdiction is one way to serve the parents the office represents as well as their children. Active participation of parents' attorneys ensures that projects and procedures are equitably developed, protect parents' interests, and the attorneys are more likely to work on them over the long term. Collaboration can, and generally does, benefit all stakeholders.

Role of the Court:

The court is urged to:

1. Recognize the importance of the parent attorney's role.

Commentary: The judge sets the tone in the courtroom. Therefore, it is very important that the judge respects all parties, including the parents and parents' counsel. Representing parents is difficult and emotional work, but essential to ensuring justice is delivered in child abuse and neglect cases. When competent attorneys advocate for parent clients, the judge's job becomes easier. The judge is assured that the parties are presenting all relevant evidence, and the judge can make a well-reasoned decision that protects the parents' rights. Also, by respecting and understanding the parent attorney's role, the judge sets an example for others.

2. Establish uniform standards of representation for parents' attorneys.

Commentary: By establishing uniform representation rules or standards, the judge can put the parents' attorneys in the jurisdiction on notice that a certain level of representation will be required for the attorney to continue to receive appointments. The rules or standards should be jurisdiction specific, but should include the elements of these standards.

3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.

Commentary: Once the standards are established, the court must hold all parents' attorneys accountable to them. A system should be developed that would delineate when an attorney would be removed from a case for failure to comply with the standards, and what actions, or inactions, would result in the attorney's removal from the appointment list (or a court recommendation to an attorney manager that an attorney be disciplined within the parent attorney office). The court should encourage attorneys to participate in educational opportunities, and the judge should not appoint attorneys who have failed to meet the minimum annual training requirements set out in the rules or standards.

4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.

Commentary: The parent is disadvantaged in a child abuse and neglect case if not represented by a competent attorney throughout the life of the case. The attorney can explain the case to the parent, counsel the parent on how best to achieve the parent's goals with respect to the child, and assist the parent access necessary services. In most child welfare cases, the parent cannot afford an attorney and requires the court to appoint one. The court should make every effort to obtain an attorney for that parent as early in the case as feasible – preferably before the case comes to court for the first time or at the first hearing. In jurisdictions in which parents only obtain counsel for the termination of

parental rights hearing, the parent has little chance of prevailing. A family that may have been reunified if the parent had appropriate legal support is separated forever.

5. Ensure parents' attorneys receive fair compensation.

Commentary: While resources are scarce, parents' attorneys deserve a competitive wage. They should receive the same wage as other government and court-appointed attorneys for other parties in the child abuse and neglect case. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated. In most jurisdictions, the court sets the attorneys' fees and individual judges can recommend to court administration that parents' attorneys should be well compensated.

6. Ensure timely payment of fees and costs for attorneys.

Commentary: Often judges must sign fee petitions and approve payment of costs for attorneys. The judges should do so promptly so parents' attorneys can focus on representing clients, not worrying about being paid.

7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.

Commentary: Attorneys can not provide competent representation for parents without using certain specialists. For instance, if the client speaks a language different from the attorney, the attorney must have access to interpreters for attorney/client meetings. Interpreter costs should not be deducted from the attorney's compensation. A parent should be permitted to use an expert of the parent's choosing in some contested cases. If the expert charges a fee, the court should reimburse that fee separate and apart from what the court is paying the attorney.

8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.

Commentary: The maximum allowable caseload should be included in local standards of practice for parents' attorneys. This committee recommends no more than 50-100 cases for full time attorneys, depending on the type of practice the attorney has and whether the attorney is able to provide each client with representation that follows these standards. Once this number has been established, the court should not appoint an attorney to cases once the attorney has reached the maximum level. Attorneys can only do high quality work for a limited number of clients, and each client deserves the attorney's full attention. Of course, the caseload decision is closely tied to adequate compensation. If paid appropriately, the attorney will have less incentive to overextend and accept a large number of cases.

9. Ensure all parties, including the parent’s attorney, receive copies of court orders and other documentation.

Commentary: The court should have a system to ensure all parties receive necessary documentation in a timely manner. If the parent and parent attorney do not have the final court order, they do not know what is expected of them and of the other parties. If the child welfare agency, for example, is ordered to provide the parent with a certain service within two weeks, the parent’s attorney must know that. After two weeks, if the service has not been provided, the attorney will want to follow up with the court. In some jurisdictions, copies of court orders are handed to each party before they leave the courtroom. This is an ideal situation, and if it is not feasible, the court should determine what other distribution method will work.

10. Provide contact information between clients and attorneys.

Commentary: Often parties in child welfare cases are difficult to locate or contact. Some parents lack telephones. The court can help promote contact between the attorney and parent by providing contact information to both individuals.

11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.

Commentary: Judges should attempt to schedule hearings and make decisions quickly. Allotted court time should be long enough for the judge to thoroughly review the case and conduct a meaningful hearing.

When possible, judges should schedule hearings for times-certain to avoid delaying attorneys unnecessarily in court. When attorneys are asked to wait through the rest of the morning calendar for one brief review hearing, limited dollars are spent to keep the attorney waiting in hallways, rather than completing an independent investigation, or researching alternative placement or treatment options.

Judges should avoid delays in decision making. Delays in decision making can impact visitation, reunification and even emotional closure when needed. If a parent does not know what the judge expects, the parent may lack direction or motivation to engage in services.

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Their input was essential to this project, and their willingness to assist was extraordinary.

¹ Model Rules of Professional Conduct 1.1 (Competence).

² The National Association of Counsel for Children is accredited by the American Bar Association to certify attorneys as specialists in Child Welfare Law. The Certification Program is open to attorneys who represent children, parents, or agencies in child welfare proceedings.

³ Model Rule 1.3 (Diligence).

⁴ Model Rule 1.4 (Communication).

⁵ Model Rule 2.1 (Advisor).

⁶ Model Rule 1.2 (Scope of Representation and Allocation of Authority).

⁷ Model Rule 1.6 (Confidentiality of Information).

⁸ Model Rule 1.4 Communication

⁹ Id.

¹⁰ Id.

¹¹ Model Rules 1.7 (Conflict of Interest: Current Client); 1.8 (Conflict of Interest: Current Clients: Specific Rules); 1.9 (Duties to Former Clients).

¹² Renne, Jennifer L. Chapter 4, page 49, "Handling Conflicts of Interest," *Legal Ethics in Child Welfare Cases*. Washington, DC: American Bar Association, 2004.

¹³ Model Rule 1.3 (Diligence).

¹⁴ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁵ Model Rule 1.4 (Communication).

¹⁶ Model Rules 1.1 (Competence); 1.3 (Diligence).

¹⁷ Id.

¹⁸ Id.

¹⁹ Model Rule 3.1 (Meritorious Claims and Contentions).

²⁰ Model Rule 5.1 (Responsibility of Partners, Managers and Supervisory Lawyers).

²¹ Model Rule 1.1 (Competence).

²² The Court Improvement Program (CIP) is a federal grant to each state's (as well as the District of Columbia and Puerto Rico) supreme court. The funds must be used to improve child abuse and neglect courts. States vary in how they allocate the dollars, but funds are often used for training, benchbooks, pilot projects, model courts and information technology systems for the courts.

Exhibit D

Practice Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases

Preface

In order to ensure quality representation for all litigants, the Colorado Supreme Court's Respondent Parents' Counsel Task Force developed practice guidelines for respondent parents' counsel in dependency and neglect cases. These practice guidelines are based in part on the American Bar Association Standards for Respondent Parent Representation that were approved in August 2006.

There are nine practice guidelines that were developed through a collaborative process that involved Colorado judges and magistrates, respondents' counsel representing parents in dependency and neglect cases, City and County Attorneys, and Guardians ad Litem for children and parents. The comments set forth with each guideline explain and illustrate the meaning and purpose of the guideline and are intended as a guide to its interpretation.

These guidelines are intended to assist in ensuring quality representation for respondent parents, ensuring due process of law, and affording parents the best opportunity to maintain familial relationships successfully. All attorneys appointed as respondent parents' counsel are subject to the rules and standards of the legal profession, including the additional responsibilities set forth by Colorado Rule of Professional Conduct 1.14. Violation of a guideline should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached or that a professional ethical violation has occurred. These guidelines are intended to promote quality representation and uniformity of practice among the attorneys appointed to defend a parent's fundamental liberty interest in the care and custody of his or her child.

One TRAINING

An attorney appointed as respondent parents' counsel in a dependency or neglect case (hereinafter "RPC") shall possess the knowledge, expertise, and training necessary to perform the court appointment. RPC shall be familiar with the Colorado Children's Code, basic agency practices, procedural rules of the court, the applicable Chief Justice Directives, local custom or practice, and relevant state and federal law. In addition, RPC shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney's knowledge of the issues in best interest representation. These requirements should be met prior to attorney's first appointment and per legal education reporting period. When

submitting an application to provide attorney services or to renew a contract, the attorney shall provide the district of appointment with proof of compliance with this requirement.

Commentary: Dependency and neglect cases are both factually and legally complicated. Not only do these cases involve difficult issues related to litigation, they also involve numerous other systems that must be navigated by parents whose families are involved in the child welfare system.

RPC who have a basic knowledge and understanding of the practices of the social service agencies with whom their clients must deal may facilitate earlier, more appropriate services by extra-judicial advocacy on behalf of their client with the agency.

RPC must be able to seek help from the court when necessary. This requires a working knowledge of statutory remedies, rules of procedure, applicable Chief Justice Directives (including CJD 96-08 and 98-02), and local court practices. In addition, if the child/ren is eligible for membership in an Indian Nation, the family and child/ren have additional legal rights under the Indian Child Welfare Act.

Counsel should attend court- or DHS-sponsored trainings, continuing legal education seminars, or other specialized programs to assist them in developing the necessary expertise in dependency practice. These trainings should include multidisciplinary trainings that educate the attorney on, among other things, substance abuse evaluations, mental health or psychological evaluations, visitation assessments, safety assessments, and other family reunification services.

Two REPRESENTATION

RPC shall diligently advocate for the client at all stages of the proceedings. RPC shall be adequately prepared for proceedings. A RPC shall make reasonable efforts to expedite litigation consistent with the interests of his or her client. RPC must be aware of the impact that his or her client's dependency and neglect case may have on other legal proceedings. RPC shall advise the parents of his or her rights to information and decision making while the child/ren is in out-of-home placement.

Commentary: RPC should personally attend all court hearings and provide accurate and current information directly to the court. When counsel is unavailable for a court appearance, substitute counsel should be obtained. Participating in pretrial proceedings may improve case resolution for the parent either to help the client obtain early access to services or to deter the agency from filing a petition or removing the client's child if a petition is filed. The attorney should discuss available services with the client. RPC must balance the need for early treatment for the client against the potential waiver of important rights at a very early stage of the proceedings.

Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Additionally, continuances may actually prejudice a client's rights, particularly in expedited permanency planning cases, where the Adoption and Safe Families Act timelines continue to run regardless of any delay in the proceedings. If a continuance is imperative to protect the client's interests, RPC should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests. If there is a delay in either the provision of services to the family or the procedural status of the case, RPC should take care to request the Court make "good cause" findings for the extension of Expedited Permanency Planning guidelines.

Three COMMUNICATION

RPC shall meet or otherwise communicate with the client on a regular basis to the greatest extent possible. Communication with imprisoned clients raises special challenges, and the RPC representing an incarcerated respondent parent shall take particular care to ensure that the incarcerated parent is kept informed of the status of the case.

Counsel shall also stay in communication with other professionals involved in the case or with the client.

Commentary: Representing parents in dependency and neglect cases presents unique challenges for an attorney. Parents are frequently unemployed, homeless, incarcerated, or without telephones. Financial circumstances, substance abuse, or unresolved mental health issues may cause parents to have extremely unstable living arrangements that make it difficult and sometimes impossible, despite counsel's best efforts, to communicate with the client.

Establishing a system for communication is one method of making certain that there is ongoing contact between RPC and the client. RPC may wish to have clients acknowledge receipt of an advisement of their responsibility to stay in communication with RPC.

When possible, meeting with the client well in advance of court hearings outside of the courthouse will assist RPC in effectively representing the client. It is extremely important that the client understands each stage of the case and the consequences that may flow from non-compliance with court orders. RPC should make sure that his or her client understands any court orders.

Incarcerated parents are in an especially vulnerable position regarding their parental rights. Treatment plans adopted to remediate the difficulties that bring families before the court often cannot be realistically implemented due to the parental incarceration. This problem is exacerbated by the difficulty in communicating with someone in jail or prison. RPC representing an incarcerated parent must take communication limitations

into consideration in case planning. There may, for example, be long time lags between a message and a response.

The parent's attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent's attorney should communicate with the caseworker and service providers to learn about the client's progress and their views of the case, as appropriate. The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody, or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders, and administrative determinations do not conflict with the client's goals in the dependency and neglect case.

Four DOCUMENTATION

Unless prohibited by order of the court or confidentiality rules or statutes, RPC shall access copies of pleadings, court reports, court orders, the child welfare agency case file, and all other documents that are necessary to represent the client. When possible, copies of treatment plans and court orders shall be provided and explained to the client.

Commentary: Miscommunication or misunderstanding is less likely when the client possesses information in written form. Having information in writing also allows a client to review the information with other professionals involved in his or her case.

In order for a parent to make informed decisions regarding the course of the litigation, including whether he or she is in compliance with a court ordered treatment plan, the client should also have access to all of the necessary and available documents in advance of each hearing.

Five INVESTIGATION

RPC shall conduct an independent investigation of facts at every stage of the proceedings through a review of records and interviews of witnesses or professionals, as dictated by the needs of the case.

Commentary: The parent's attorney must take all reasonable steps to prepare an independent case theory, and a thorough investigation is an essential element of that preparation. Consistent with the client's interests and goals, and as permitted by agreement or court order, RPC should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher, caregivers, or other people who can develop facts helpful to the client, or to clarify information relevant

to the case. Pending availability of funding for investigators, the attorney should petition the court for funds to hire an investigator.

Six AGENCY ADVOCACY

RPC shall, consistent with the interests of their clients, engage in case management planning, advocate for appropriate family or individual services, and, where appropriate, explore placements of the child/ren with kin when return to the parent may not be a viable option.

Commentary: Case management planning is critical to the parents' successful resolution of a dependency and neglect case. Making certain that the treatment plan for the parents and child/ren is client-specific, reasonable, practical, culturally appropriate and that it adequately addresses the issues that resulted in the case being filed is a crucial part of RPC's representation.

RPC must not only have an understanding of the issues at the initiation of the case, but also of the issues that are disclosed as the case evolves. Dependency and neglect cases are dynamic by their very nature. This often requires adjustments of the services provided to the family during the course of the litigation. Effective advocacy for appropriate adjustments requires RPC to advocate informally with the social services agency and, when necessary, formally before the court.

If parental incarceration or other circumstances justify a finding that no appropriate treatment plan can be identified to reunify the parent and child/ren, RPC may serve the client's interest by advocating for an outcome that preserves the familial relationship. To this end, RPC should counsel clients to share information about potential kinship placement and extended family members as mandated by ICWA or other requirement. RPC should advocate for concurrent planning when it allows an opportunity for a more positive result for the client.

Seven CLIENT LOCATION

RPC shall make good faith efforts to locate his or her client.

Commentary: Upon accepting an appointment, RPC should advise the client of his or her responsibility to stay in contact with the attorney. In order to protect the due process rights and liberty interests of his or her client, RPC representing a missing parent should make good faith efforts to locate that person. Good faith efforts include leaving contact information with the client's family, the caseworker, or service providers, or sending a letter to the last known address of the parent, address correction requested. If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a

position consistent with the client's last clearly articulated position. In other cases the attorney may decline to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence. After a prolonged period without contact with the client, the attorney should consider moving to withdraw from representation.

Eight CULTURAL AWARENESS

RPC shall be aware of the client's culture and how that culture may impact the parents' participation in the case.

***Commentary:** A significant number of respondent parents who enter the child welfare system are from cultures other than the community's dominant culture. There may be language barriers or cultural considerations that affect the client's ability to understand what the court is requiring.*

Unless RPC is respectful of the client's culture and sensitive to the impact of these considerations upon the client's participation in the case, the attorney cannot be sure that the client understands the nature of the proceedings or what is required of the client or the possible consequences for failing to comply with court-mandated treatment plans.

Nine APPEALS

RPC shall make certain that appellate options, timelines, and requirements are fully explained to parents whose rights have been affected by orders of the court. RPC handling the appeal shall keep the client informed as to the status of any appeal that is filed.

***Commentary:** Appeals in dependency and neglect proceedings are now expedited pursuant to Rule 3.4 of the Colorado Appellate Rules. RPC must discuss the specific requirements of an appeal with the client at the earliest practicable time so that the appellate timelines do not lapse before the client can make an informed decision about whether to seek appellate review. RPC must also be familiar with local practices that may affect the ability of counsel to perfect the appellate record. Specifically, RPC must be familiar with the local compliance plan adopted by each jurisdiction pursuant to Chief Justice Directive 05-03 for the transcription of the record for appeal.*

Exhibit E

TECHNICAL ASSISTANCE BRIEF

PERMANENCY PLANNING FOR CHILDREN DEPARTMENT
AUGUST 2003

**IMPROVING PARENTS' REPRESENTATION
IN DEPENDENCY CASES:
A WASHINGTON STATE PILOT
PROGRAM EVALUATION**



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

**IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES:
A WASHINGTON STATE PILOT PROGRAM EVALUATION**

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**NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES**

OJJDP

Office of Juvenile Justice and
Delinquency Prevention

IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION¹

Improving legal representation for parents of dependent children is at the forefront of reform efforts throughout many jurisdictions across the country. As noted in the National Council of Juvenile and Family Court Judges' *RESOURCE GUIDELINES*, "Each party must be competently and diligently represented in order for juvenile and family courts to function effectively."² Proper representation by defense attorneys will help to ensure that parents of dependent children retain their right to due process, as well as assist the court in complying with state and federal case processing time frames for achieving permanency for and ensuring the safety of children.

In 2000, the Washington State Office of Public Defense (OPD) created a parents' representation pilot program, at the request of the state's legislature, to address the need for improved legal representation for parents. This pilot program aimed to provide enhanced legal representation to parents in dependency and termination cases.

Pilot Program Implementation

The Washington State Legislature appropriated \$500,000 to the OPD and mandated the following objectives for the pilot program:³

- Provide better representation to parents: Attorneys will communicate regularly with their clients, provide them with meaningful legal counsel and advice, and properly prepare their cases for court hearings and negotiations.
- Decrease the number of court delays caused by overburdened parents' attorneys: Reduce parents' attorneys' caseloads to manageable levels, and require them to refrain from requesting continuances based on their unavailability for court hearings due to over-scheduling.⁴
- Increase compensation for parents' attorneys: Raise the payment level per case to an amount more equal to the funding provided to the state for initiating and pursuing dependency and termination cases.

Complying with an additional mandate calling for the program to be implemented in both eastern and western Washington, the OPD chose the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court to serve as pilot demonstration sites. This allowed the program to be tested in a rural setting (a combined Benton County and Franklin County juvenile court in eastern Washington) and an urban setting (Pierce County in western Washington).

In addition to demographic differences between the two pilot counties, the model of defense representation also differed. Benton-Franklin Juvenile Court contracts part-time with four private attorneys, while Pierce County Juvenile Court utilizes a public defender's office with one supervisor and four full-time parents' attorneys. The pilot program added two half-time attorneys to Benton-Franklin Juvenile Court, as well as two full-time attorneys to Pierce County Juvenile Court. The additional attorneys were necessary to meet the maximum caseloads of 90 cases per full-time defense attorney and 45 cases per part-time defense attorney established by the legislature. All pilot program attorneys are ultimately under the direction and supervision of the OPD.

The pilot program also increased the level of support staff and services available to parents' attorneys. The Pierce County Public Defender's Office added two paralegals and two social workers to decrease the

¹ This *Technical Assistance Brief* is adapted from a full report written by the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges that was submitted to the Washington State Office of Public Defense in January 2003. The author of this *Technical Assistance Brief* wishes to thank Melissa Litchfield, Dionne Maxwell, Ph.D., Sophia Gatowski, Ph.D., and Shirley Dobbin, Ph.D., who contributed to the data collection and analysis phases of the study. Additionally, the evaluation would not have been possible without the assistance of the clerks at the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court.

² *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*. (1995). National Council of Juvenile and Family Court Judges. Reno, NV, p. 22.

³ Bridge, B.J., Moore, J.I. (2002). "Implementing Equal Justice for Parents in Washington: A Dual Approach." *Juvenile and Family Court Journal*, Vol. 53(4), pp. 31-41.

⁴ Evaluation of this goal was not included in the current study due to budgetary and scope limitations. However, compliance with statutory timeframes was examined by this evaluation.

staffing discrepancy between the Public Defender's Office and the Attorney General's Office and the Department of Social and Health Services. This funding allowed pilot attorneys to utilize expert evaluators, to increase discovery, and to increase the number of documents submitted to the court.⁵

County Demographics

	Benton County	Franklin County	Pierce County
Population	142,475	51,015	719,407
Persons under 18 years old	29.7%	34.6%	27.2%
Race			
White	86.2%	61.9%	78.4%
Black or African American	0.9%	2.5%	7.0%
American Indian, Alaska Native	0.8%	0.7%	1.4%
Asian	2.2%	1.6%	5.1%
Native Hawaiian, Other Pacific Islander	0.1%	0.1%	0.8%
Other	7.0%	29.0%	2.2%
Persons reporting two or more races	2.7%	4.1%	5.1%
Hispanic or Latino origin ⁶	12.5%	46.7%	5.5%
White, not of Hispanic/Latino origin	81.7%	47.6%	76.0%
Median Household Income	\$47,044	\$38,991	\$45,204
Dependency	1998	Benton-Franklin: 113	Pierce: 389
Petition	1999	121	402
Filings ⁷	2000	160	507
	2001	117	511

Role of a Pilot Attorney

Since July 2000, pilot attorneys have attended two specialized trainings per year and an annual conference. The following guidelines for pilot attorney practice were developed to reflect the "counselor-at-law" aspect of the attorney-client relationship:⁸

- A. Meet and communicate regularly with the parent
 - 1) Describe case procedures and timelines
 - 2) Enable parents to candidly communicate
 - 3) Facilitate agreements by realistically evaluating allegations and evidence with parents
- B. Ensure parents have adequate access to services, including visitation
 - 1) Explain the importance of reasonable efforts services to parent-clients
 - 2) Develop a thorough knowledge of the resources available to parent-clients
 - 3) Explore with parents ways to effectively participate in services
 - 4) Ask parents for feedback if obstacles prevent their participation, and follow up with the agency and in court when appropriate
- C. Prevent continuances and delays within attorney's control
 - 1) Treat dependency and termination cases as the highest priority
 - 2) Avoid over-scheduling whenever possible
 - 3) Request unavoidable continuances if they are needed for substantive reasons
- D. Prepare cases well
 - 1) Conduct high-quality, early case investigation
 - 2) Use discovery appropriately
 - 3) Prepare for and participate in settlement conferences and other resolution opportunities
 - 4) Obtain experts and evaluators for cases involving psychological, bonding, or similar issues, when appropriate
 - 5) Draft well-researched and written trial memoranda and other documents
 - 6) Litigate hearings and trials if no agreement is reached

⁵ For example, attorneys in Benton-Franklin were furnished funds for part-time parents' investigators and for expert evaluators.

⁶ According to the U.S. Census Bureau: "People who identify their origin as Spanish, Hispanic, or Latino may be of any race" so they are included here in the applicable race categories. See www.census.gov.

⁷ Although there was an increase in the number of petition filings, the annual increase was not found to be statistically significant.

⁸ *Supra* note 3.

National Council of Juvenile and Family Court Judges' Evaluation

In November 2002, the OPD contracted with the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges to conduct a limited evaluation of the pilot program.

The evaluation of the pilot program was based on data collected through a review of hearing protocols and procedures, and a comparative case file analysis of a random sample of dependency (or child protection) cases, both pre- and post-pilot program implementation. The evaluation gathered information pertaining to case demographics, compliance with mandated case processing timeframes, child's out-of-home placement, and case closure outcome and date.

Specifically, the evaluation reviewed court case files opened after January 1, 1998 with a case closure date between February 1, 2000 and July 31, 2000 (pre-pilot cases) or between February 1, 2002 and July 31, 2002 (pilot cases). These study periods ensured that both samples were subject to the same shortened case processing timeframes mandated by the Adoption and Safe Families Act and Washington State Statutes.

The final evaluation sample for data analysis included 144 cases.⁹ Three sub-samples were created out of the larger sample. The Pre-Pilot Sample was comprised of 57 cases, and the Pilot Sample was comprised of two sub-samples: those cases that were initiated prior to the pilot program implementation but were completed during the pilot (Pilot Sample A, 48 cases); and those cases that were opened after the pilot program implementation and utilized all of the practices of the pilot during their case history (Pilot Sample B, 39 cases).

Case Demographics

	Overall Sample	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
Number of cases	144	57	48	39
Total number of children	208	81	67	60
Average number of children per case	1.4	1.4	1.4	1.5
Average age of child at petition filing (years)	4.8	5.3	4.2	4.7
Mother incarcerated at some point during case	10.4%	7.0%	16.7%	7.7%
Mother's whereabouts unknown	9.0%	7.0%	14.6%	5.1%
Father incarcerated at some point during case	9.7%	8.8%	10.4%	10.3%
Father's whereabouts unknown	18.1%	19.3%	20.8%	12.8%
Previous history with the Department	77.1%	77.2%	77.1%	76.9%
Previous history with the Court	45.1%	52.6%	39.6%	41.0%
Interstate Compact for the Placement of Children	5.5%	10.5%	0%	5.1%
Indian Child Welfare Act	2.8%	1.8%	2.1%	5.1%

Petition Allegations

	Overall Sample (N=131)	Pre-Pilot Sample (N=52)	Pilot Sample A (N=44)	Pilot Sample B (N=35)
Mother				
Abused/Neglected	90.8%	47.5%	95.5%	85.7%
Dependent	100%	100%	100%	100%
Abandoned	0.8%	0%	1.1%	0%
Father				
Abused/Neglected	87.7%	82.1%	96.0%	85.0%
Dependent	100%	100%	100%	100%
Abandoned	1.4%	0%	4.0%	0%

⁹ The number represented by "N" throughout this *Technical Assistance Brief* is the number of cases in the study that contained appropriate documentation for analysis and therefore may fluctuate. The number represented by "n" is the number of cases out of the population (N) that fit the analysis criteria (i.e., the sample).

Petition Allegations (continued)

Other Caregiver				
Abused/Neglected	93.3%	100%	100%	83.3%
Dependent	100%	100%	100%	100%
Abandoned	0%	0%	0%	0%

The types of presenting problems of the parents that were noted in the petition did not have a statistically significant effect on the final outcome of the case. The presence of substance abuse as a presenting problem was also found to not have a statistically significant impact on the final outcome of the case.

Presenting Problems

	Overall Sample (N=94)	Pre-Pilot Sample (N=41)	Pilot Sample A (N=26)	Pilot Sample B (N=27)
Substance abuse	70.2%	75.6%	76.9%	55.6%
Domestic violence	24.5%	19.5%	38.5%	18.5%
Parents with criminal history	20.2%	17.1%	23.1%	22.2%
Mental health issues	17.0%	17.1%	15.4%	18.5%
Sexual abuse	12.8%	14.6%	3.8%	18.5%
Medical neglect	8.5%	7.3%	7.7%	11.1%
Severe physical abuse	4.3%	0%	11.5%	3.7%
Child developmentally delayed	1.1%	2.4%	0%	0%
Mother in foster care	1.1%	0%	0%	3.7%

Summary of Major Findings

Cases in the evaluation sample were analyzed for timing of hearings and statutory compliance, length of time in out-of-home placement, and case outcomes.

Timing of Hearings and Statutory Compliance

The Revised Code of Washington requires that:

- A *shelter care hearing* be held within 72 hours after the child is taken into custody (excluding weekends and holidays) (WASH. REV. CODE §13.34.060);
- A *fact-finding hearing* be held no later than 75 days after the filing of the petition, unless exceptional reasons for a continuance are found (WASH. REV. CODE §13.34.070);
- A *dispositional hearing* be held immediately after entry of the findings of fact, unless there is good cause for continuing the matter for up to 14 days (WASH. REV. CODE §13.34.110);
- The initial *review hearing* be held six months from the beginning date of the placement episode or no more than 90 days from the entry of the dispositional order. *Review hearings* are to be held every six months thereafter (WASH. REV. CODE §13.34.138);
- A *permanency planning hearing* be held in all cases where the guardianship order or permanent custody order has not previously been entered. The *permanency planning hearing* must take place no later than 12 months following the current placement episode (WASH. REV. CODE §13.34.145).

Percentage of Cases Compliant with Statutory Timeframes

	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
<i>Shelter Hearing</i>	61.8%; n=34; N=55	60.4%; n=29; N=48	58.3%; n=21; N=36
<i>Fact-Finding Hearing</i>	73.5%; n=36; N=49	72.7%; n=32; N=44	66.7%; n=20; N=30
<i>Disposition Hearing</i>	73.3%; n=22; N=30	84.8%; n=28; N=33	100%; n=25; N=25
<i>Review Hearing</i>	88.9%; n=24; N=27	81.8%; n=27; N=33	87.0%; n=20; N=23
<i>Permanency Planning Hearing</i>	63.9%; n=23; N=36	65.9%; n=29; N=44	100%; n=21; N=21

The majority of cases heard by both the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court are compliant with statutory timeframes. Although slight decreases in the court's overall compliance with statutory time frames were observed in some areas (i.e. *shelter hearing*, *fact-finding hearing*, *review hearing*), there are significant reductions in the average number of days and the range of days from

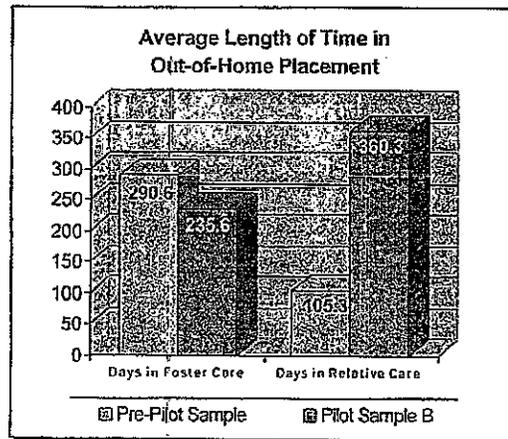
removal to *shelter hearing*. During the Pre-Pilot Sample, the *shelter hearing* was held, on average, 6.35 days from removal with a range of 0 to 130 days. During Pilot Sample B, the *shelter hearing* was held, on average, 4.81 days from removal with a range of 1 to 22 days. The most common timeframe for both samples was 3 days. This reduction indicates a practically significant trend towards increasing future compliance.

Average (Mean) Length of Time from Court Event to Court Event in Days

	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
Petition Filing to Shelter Hearing	6.4	10.6	4.8
Petition Filing to Fact-Finding Hearing	67.0	77.5	75.9
Fact-Finding Hearing to Disposition Hearing	14.1	10.5	0.3
Dispositional Order to Review Hearing	97.1	135.7	109.7
Removal to Permanency Planning Hearing	344.8	369.7	251.9

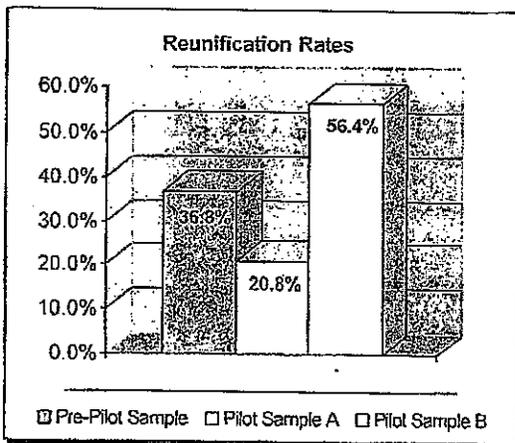
Length of Time in Out-of-Home Placement

When examining the length of time the child(ren) spent in out-of-home care across samples, only the Pre-Pilot Sample (N=20) and the Pilot Sample B (N=19) were compared.¹⁰ The average number of days spent in foster care decreased between the Pre-Pilot Sample, 290.6 days, and Pilot Sample B, 235.6 days. In contrast, the average number of days spent in relative care increased from the Pre-Pilot Sample, 105.3 days, to Pilot Sample B, 360.3 days.



Case Outcomes

Cases in the Pre-Pilot Sample (N=57) and Pilot Sample B (N=38) resulted in reunification, at 36.8% and 56.4% respectively.¹¹ A large increase in reunifications can be seen between the Pre-Pilot Sample, the timeframe without enhanced pilot program representation, and Pilot Sample B, the timeframe capturing cases initiated after pilot program implementation. In addition, cases involving termination of parental rights decreased from 41.3% in the Pre-Pilot Sample to 22.9% in Pilot Sample B. Adoption (51.1%) was the most common outcome in Pilot Sample A (N=47).



Previous history with the court was determined to be statistically significant with respect to the likelihood of reunification as an outcome. Cases in Pilot Sample A that had a previous history with the court were 2.9 times more likely to have an outcome of reunification than cases in the Pre-Pilot Sample with a previous history with the court. Additionally, cases in Pilot Sample B that had a previous history with the court were 6.9 times more likely to have an outcome of reunification than cases in the Pre-Pilot Sample. This statistically significant increase in the likelihood of reunification may correspond to the enhanced representation in the pilot cases.

¹⁰ Due to the nature and length of the samples, the Pre-Pilot Sample and Pilot Sample B were compared to examine the effects of the pilot program on the cases prior to program implementation against those cases receiving the full benefits of the completely implemented program without being influenced by the transitional timeframe (Pilot Sample A).
¹¹ *Ibid.*

Data provided by the State of Washington, Office of the Administrator for the Courts indicate that a new dependency petition was not filed on any case that researchers coded as having an outcome of reunification.

Case Outcomes

	Pre-Pilot Sample (N=57)	Pilot Sample A (N=47)	Pilot Sample B (N=38)
<i>Reunification</i>	36.8%	20.8%	56.4%
<i>Adoption</i>	35.1%	51.1%	18.4%
<i>Aged-out</i>	15.8%	14.9%	7.9%
<i>Custody, non-offending parent</i>	3.5%	4.2%	7.7%
<i>Parent obtained custody through Superior Court</i>	7.0%	2.1%	2.6%
<i>Permanent ward of the state</i>	0%	4.3%	2.6%
<i>Kinship guardianship</i>	0%	2.1%	2.6%
<i>Transferred to Tribal Court</i>	1.8%	0%	0%

Conclusion

Although its scope was limited (i.e. restricted to an archival review of court records), the evaluation found a noticeable difference in case processing timeframes, time spent in out-of-home care, and case outcomes among each of the samples. While the pilot program may not be the sole explanation for these outcomes (e.g. other factors may include changes made by the court and child welfare agency including systemic reforms implemented to address ASFA compliance), it is evident that the pilot program succeeded in having a positive impact on the legal representation of parents of dependent children.

For more information about the Washington State Office of Public Defense Parents' Representation Pilot Program, please contact:

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