

**Commission on Families in  
the Colorado Courts**

*Final Report*

**August 2002**

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## EXECUTIVE SUMMARY

Over 50 percent of all Colorado district court filings involve families. These family cases dominate dockets throughout the state requiring almost every judge in Colorado to handle family issues at some point in time. This compelling reality prompted Chief Justice Mary Mullarkey to create the Commission on Families in the Colorado Courts in January 2001. She directed the Commission to examine the ways in which Colorado courts serve families and to recommend changes that would improve policies, procedures, rules and laws that affect families involved in the judicial system.

This report sets forth the Commission's findings and recommendations, which are based upon information received from the Court Improvement Committee, public hearings and special meetings, and written submissions from the public and others who interact with the courts in cases involving families. The Commission developed these recommendations after extensive discussion, debate, and review.

The Commission found that Colorado's tradition of striving for excellence in the administration of justice is very much alive. Across the state, judges and court employees are working hard to do the best they can with the resources they have available to them. The Commission learned that judicial districts across the state have implemented innovative programs aimed at providing better service to families. These initiatives are set forth in Appendix IV of this report.

The Commission chose to focus on common themes or problem areas that appeared most in need of attention. Seventy-seven recommendations are organized according to twelve themes summarized in the following paragraphs. In addition, the Commission recommends continued study of the staffing pattern issues raised by these recommendations, and recommends that the Chief Justice appoint a standing oversight committee to ensure implementation of its recommendations.

### **Developing A Central Case Management Process for Cases Involving Families**

The Commission found that a common problem with cases involving families is a lack of coordination and communication within the court system. The Commission recommends the implementation of a central case management process in each judicial district, which may vary by district, but should, at a minimum, establish a process to provide complete information to the court concerning all past and current involvement of family members and related parties with the courts. This process should define procedures to transfer cases involving the same families to one judicial district, and/or the same county within a judicial district, and assign, to the extent possible, those related cases to one judge. Districts should utilize family court facilitators to achieve this coordination of cases and to monitor issues concerning the family. The goal of this coordinated approach is to avoid inconsistent and/or contradictory court orders, multiple and/or conflicting treatment plans, and time consuming multiple court appearances by family members. Additional

goals are to determine appropriate junctures in the case for judicial intervention, and provide for better-informed judicial decisions.

### **Providing Non-adversarial Alternatives**

The Commission found that the inherent adversarial nature of the judicial system causes protracted cases, greater conflict between the parties and increased expense. The Commission recommends amendment of statutes and court rules to provide non-adversarial alternatives to the current procedures for family cases. The goal of this approach is to reduce conflict, costs and time.

### **Status and Roles of Judges and Magistrates**

The Commission found that there is a perception that domestic and juvenile dockets are less demanding than civil and criminal dockets resulting in less respect for judges and magistrates assigned to hear family cases. The Commission recommends recognition of judges and magistrates for exceptional and innovative work with family dockets, and provision of support services from other professionals such as CASA volunteers, special advocates, mediators and mental health workers involved in family matters as appropriate to each case. The goal of this series of recommendations is to enhance the perception that the judicial system treats family cases with the same respect as all other cases.

### **Selection and Evaluation of Judicial Officers**

The Commission heard reports of less than acceptable judicial behavior or performance. In view of the volume of cases involving families, the Commission recommends that the judicial selection and evaluation process recognize skills required to hear these cases. The goal of these recommendations is to educate nominating and performance commissions, and judicial applicants about the volume of this caseload, and the importance to the community of resolution of family disputes.

### **Training of Judicial Officers**

The Commission found a need for special training in family issues for judges and magistrates hearing family cases. The Commission recommends training in the fundamentals of family law, and provision of docket coverage to allow adequate time for training. The goal is to provide thorough and ongoing training for judicial officers to enable the courts to make better informed decisions for families.

### **Community Involvement by Judicial Officers**

The Commission found that judicial officers could assist in identifying resource gaps, and work with community groups to develop services to assist families in the community. The Commission recommends that judicial officers be encouraged to engage in community activities, and that the Code of Judicial Conduct should not prohibit these activities. The goal of this recommendation is to draw upon the expertise of judicial officers who are observing the problems and needs of the families in our communities on a daily basis.

### **Compensation and Training for Public Sector Attorneys**

The Commission found that public sector attorneys who represent children may also have less status than their colleagues, receive less compensation, and have inadequate training. Recognizing that costs will increase, the Commission recommends that public sector attorneys who represent children should receive compensation comparable to that of public defenders and alternate defense counsel, and ongoing, high quality training. The goal of these recommendations is to provide children with the same quality of representation afforded to others in the judicial system.

### **Training and Mentoring for Private Attorneys**

The Commission heard concerns about the practices and performance of private attorneys involved with family cases. The Commission considered a certification requirement for family law attorneys, but ultimately decided to recommend minimum continuing legal education requirements for attorneys practicing in this area, and to support volunteer mentoring programs. The goal of these recommendations is to assure quality representation on family issues.

### **Ethics, Professionalism, and Accountability of Attorneys**

The Commission heard reports of unethical practices and a lack of professionalism by private attorneys practicing family law. The Commission recommends support of programs to build collegiality, and educational efforts to explore the role of attorneys in family disputes.

### **Accessibility and Availability of Legal Services**

The Commission heard numerous concerns about the lack of, or inaccessibility to, legal services for families, and lack of information about the judicial process. The Commission recommends ongoing support of existing pro bono programs, development of uniform and consistent pro bono programs throughout the state, and consideration of funding for legal services.

### **Roles, Responsibilities, Guidelines, and Accountability of Professionals Who Interact with the Courts**

The Commission found that families involved in the legal process are often confused about the roles, responsibilities and accountability of the various professionals involved in family cases. The Commission recommends that the Chief Justice appoint a committee, or assign to the recommended family issues oversight committee, the task of additional identification and definition of these positions, establishment of standards of practice and training requirements for each position, and establishment of a regulating authority to which each position is accountable.

### **Providing Support for Current Judicial Branch Efforts in the Areas of Pro Se Litigants and Domestic Violence and Restraining Orders**

The Commission heard concerns about domestic violence issues, restraining orders, services for pro se litigants and a need for family-friendly facilities, and researched current initiatives in Colorado in these areas. The Commission recommends specific ongoing efforts in these areas to address the issues.

## **I. Introduction: Commission Formation, Charge, and Process**

In January 2001, Chief Justice Mary Mullarkey convened the Commission on Families in the Colorado Courts (the Commission). At the same time, the Chief Justice asked the judicial branch Court Improvement Committee (CIC), an existing group of judges, magistrates, and court personnel that addressed dependency and neglect issues, to study the manner in which family cases are handled in Colorado and propose recommendations. The CIC presented a report to the Commission in April 2001. The Commission was to (1) review the findings and recommendations in the CIC report, (2) expand on the findings and recommendations in that report through feedback received from users of the courts and the general public, and (3) provide to the Supreme Court, the General Assembly, and the Governor a plan for necessary statutory and rule changes, administrative improvements, and funding suggestions that will assist Colorado's courts to serve families and children better. The Commission was to prepare a final report to be completed by June 30, 2002. This document is the Commission's final report.

During the past 18 months, the Commission met seven times, held nine public hearings throughout Colorado, held special meetings with family law practitioners, made presentations at several conferences and meetings, and held over a dozen subcommittee meetings. At the public hearings and special meetings, the Commission received feedback from attendees. The Commission also solicited and received written comments from interested persons. A Commission member list may be found in Appendix I. Appendix II is a list of public hearings, special meetings, and presentations. An index of all written submissions received is contained in Appendix III.

The Commission reviewed all written submissions and transcripts of the public hearings, and created a comprehensive issues list based on the feedback and comments it had received. It categorized these into four groups and created corresponding subcommittees: (1) Judges and Magistrates, (2) Attorneys, (3) Other Professionals, and (4) Court Process. The Commission debated subcommittee recommendations and ultimately approved the recommendations presented in this final report.

## **II. Background: Filings for Cases Involving Families Dominate Colorado's Courts and General Findings of the Commission**

Over 50 percent of all Colorado court filings involve families.<sup>1</sup> These cases include domestic relations (dissolution, legal separation, invalidity of marriage, parenting responsibility, and child support), dependency and neglect of children, juvenile matters (truancy, delinquency, status offenses, adoptions, relinquishments, and paternity), domestic violence, and other cases that fall under probate or mental health. Cases

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<sup>1</sup> In fiscal year '01, the total of domestic relations, juvenile, probate, and mental health new filings was 53 percent of all new filings in Colorado district courts. If certain criminal filings involving families were included, the percentage would increase. Additionally, if county court domestic violence and temporary restraining order new filings were included, they would also increase the percentage.

involving families dominate dockets throughout the state such that almost every judge in Colorado will handle these cases at some point in time.

The CIC and the Commission found that cases involving families are distinguishable from other civil cases because they invariably involve emotional and psychological dimensions that transcend other civil cases. 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. Colorado citizens place great trust in the judicial system—the court personnel and the administrative processes—to handle their cases in a timely, professional manner. The purpose of the Commission's work was to evaluate how well the current system is justifying the public's trust and, to the extent it is not, recommend how to provide trustworthy service for cases involving families.

The Commission's study of Colorado's 22 judicial districts shows that management of cases involving families varies throughout the districts, although common approaches do exist. Each district's Chief Judge makes assignments to the district's judges, which can range from one to three years. Assignments also vary by the mix of cases: civil with domestic, criminal with domestic, or civil with criminal. In rural districts, distance and geography can greatly influence how these assignments are made. Some districts have so few judges that there is not much opportunity to vary assignments significantly. Rural judges are often generalists who handle all types of cases. Assignments in urban districts can be influenced by high volume, although even some larger districts' judges are generalists who handle all types of cases. The Commission also found that local rules vary significantly among the districts, and procedures for individual courtrooms across the state vary by judge. These procedures particular to judges are often not documented. They are not easily available to pro se litigants, and, consequently, the ability of attorneys to practice effectively and pro se litigants to participate effectively is hindered.

The Commission's study also found many examples of districts taking initiatives to address the needs of families as they come into the judicial system. A survey reveals that every district is implementing services or projects to better serve families involved in the judicial process. See Appendix IV. The Commission found that space limitations often caused problems. The October 1, 1999, report by the Colorado Supreme Court Family Friendly Facilities Task Force and the passage of HB 02-1101 Concerning Family-Friendly Courts, which takes effect July 1, 2002, should address many of these concerns.

While the Commission received feedback about specific problems, it chose to focus on general themes to develop specific recommendations. Section III presents these themes generally with references to particular recommendations. The detailed recommendations can be found in section IV. Each recommendation is followed by an identification of 1) who is responsible for implementing the recommendation and 2) the timeline for implementation in terms of short or long term, i.e., within one year or longer than one year. Recommendations that identify both short and long term timeframes, i.e., Short/Long, are anticipated to have some components implemented within a year while other components will take longer. Cost estimates are indicated in terms of low, medium,



or high to give a general sense of anticipated costs for implementing the recommendation.

### **III. Problems that Impede Better Service Delivery for Cases Involving Families**

Twelve general problem areas were identified. For each general area, a reference is included to specific recommendations that can be found in section IV of this report. These problem statements summarize the issues and problems raised at public hearings and in written submissions to the Commission. For illustrative purposes, quotes from the public hearings are set forth in Appendix V, and referenced through footnotes in the report.

#### ***1. A Central Case Management Process for Cases Involving Families***

The Commission found that problems of lack of communication and coordination pervade the court process.<sup>2</sup> Although some computer limitations exist in the current ICON system, ICON does offer assistance to judges and other court personnel when handling cases involving families.<sup>3</sup> Nevertheless, the Commission recommends the implementation of a central case processing approach, which is detailed in Recommendations 1 through 18. This approach relies on a central case management team in the district, and facilitation by court facilitators to monitor cases, avoid multiple treatment plans and multiple and/or conflicting orders, and, at appropriate junctures in the case, determine when judicial intervention is needed.<sup>4</sup> Where possible, the recommendations require that cases in this area be assigned to one judge for the duration of the case. The recommendations also include a minimum two-year rotation for judges assigned to domestic dockets. The Commission considered but ultimately decided against the creation of a family court as a means for improving coordination and management of family cases.

#### ***2. Non-adversarial Alternatives***

Much of the feedback the Commission received highlighted the inherent adversarial nature of the judicial system.<sup>5</sup> Process, procedure, and emphasis on money tend to cause protracted cases, higher conflict between the parties, and more expense. Some said that the process generally is adversarial with a particular culture built up around and within the judicial system that leads to breakdowns in communication and coordination as well as resistance to change. Further, the feedback collected suggests that the culture makes it difficult to foster a collaborative approach where, ideally, information would be appropriately exchanged to enable all participants to function optimally within the

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<sup>2</sup> Peggy Rudden, *Advocates for Children*, Denver 6/29/01, Transcript p.3. Cheri Trine, *mother*, Fort Collins 7/11/01, Transcript p.3. See Appendix V. numbers 1 and 2.

<sup>3</sup> ICON cannot automatically relate family cases—cases are related manually by staff .

<sup>4</sup> Ms. Valero, Fort Collins 7/11/01, Transcript p.64. Ms. Westbrook, *Magistrate*, Grand Junction 8/29/01, Transcript p.20. See Appendix V. numbers 3 and 4.

<sup>5</sup> Dianne Peterson, *Attorney*, Fort Collins 7/11/01, Transcript p.17. Ms. Roe, *CASA Director and Special Advocate*, Grand Junction 8/29/01, Transcript p.43. See Appendix V. numbers 5 and 6.

system.<sup>6</sup> Several people claimed that the system does not put a proper emphasis on the child's best interest, i.e., the system is not child-focused.

Recommendations 19 through 24 strive to reduce the adversarial aspects of court process with regard to family cases. Statutory and rule changes are recommended to provide for non-adversarial or less adversarial procedures.<sup>7</sup> They also include a presumption that parties will follow the least adversarial process unless the parties show good cause to the court to do otherwise, except as provided by the Mandatory Procedures for Simplified Dissolution in Appendix VI. The recommendations also address the need for independent evaluation of non-adversarial alternatives so determinations can be made as to their effectiveness.

### ***3. The Status and Roles of Judges and Magistrates<sup>8</sup>***

Several problems have been identified that relate to the current culture within the judiciary and the status of judicial officers with domestic dockets. Many comments the Commission received from across the state indicate that judicial officers assigned to domestic dockets are perceived within the legal and larger communities as having less status than judicial officers assigned to civil and criminal dockets.<sup>9</sup> The inference is that domestic cases require less intellectual and judicial skill than other case types and judicial officers who handle these cases are less respected than other judicial officers. As information about family dynamics is used more frequently in resolving matters involving families, judicial officers expressed concerns that their role as ultimate decision maker and authority figure is becoming blurred.<sup>10</sup> Some judicial officers may be reluctant to seek training in the domestic and family area.

The judicial system must be seen to treat family cases with the same respect as all other cases. Recommendations 25 through 31 address these issues. The Commission makes several recommendations that it believes will help equalize the status of judicial officers handling cases involving families. Some of these, such as recognition awards, would cost little or nothing to implement. Others that would enhance the appearance and functioning of court surroundings will require moderate or higher costs but could be phased in over time. The recommendations also clarify that judicial officers are not mental health professionals but should understand the important role of mental health professionals and other professionals assisting on these cases.<sup>11</sup>

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<sup>6</sup> Judge Lowenbach, Fort Collins 7/11/01, Transcript p.96. See Appendix V. number 7.

<sup>7</sup> Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.20. See Appendix V. number 8.

<sup>8</sup> Judges and magistrates are judicial officers. In this report, references to judicial officers means both judges and magistrates.

<sup>9</sup> Tim Downey, *Attorney*, Fort Collins 7/11/01, Transcript p.74. Ms. Valero, Fort Collins 7/11/01, Transcript p.34. See Appendix V. numbers 9 and 10.

<sup>10</sup> Harlan Bockman, *District Court Chief Judge in Adams County*, Denver 6/29/01, Transcript p.54. See Appendix V. number 11.

<sup>11</sup> Harlan Bockman, *District Court Chief Judge in Adams County*, Denver 6/29/01, Transcript p.54. See Appendix V. number 11.

#### ***4. The Selection and Evaluation of Judicial Officers***

There were several reports of less-than-acceptable judicial officer behavior or performance. While these incidents are thought to be a small percentage of the overall performance of the bench, the feedback has been significant enough to prompt a close review of the selection and evaluation elements within the judicial system. While some reports have been stated generally as judicial officer “horror stories,” others have been very specific examples of judicial officers not treating people in the courtroom with civility or of judges literally falling asleep on the bench. Occasionally, judicial officers’ decisions are not understood by all involved and sometimes raise ethical concerns such as bias.<sup>12</sup> Many of these incidents are not reported with specificity because attorneys and litigants are reluctant to be openly critical of judicial officers. Some people at the public hearings raised issues of accountability and wondered whether there is a way to monitor “customer” satisfaction and provide an opportunity to report the manner in which a judge handled a case.

The Commission chose to address these issues through recommendations directed toward the selection and performance evaluation processes. These can be found in Recommendations 32 through 41. The recommendations suggest that there are distinguishable skills that are important for all judicial officers but especially for those hearing cases involving families.<sup>13</sup> The recommendations in this area highlight the need for applicants to be made aware of the high volume of case filings in this area.<sup>14</sup> Another recommendation encourages Chief Judges to take into consideration the expressed preference of judicial officers to be assigned to cases involving families where there is a recognized need for family law judicial officers in a particular district. The recommendations also include enhancements for the judicial evaluation process.

#### ***5. Training of Judicial Officers***

Many of the problems identified throughout the Commission’s process could be linked to training of judicial officers.<sup>15</sup> Recommendations 42 through 49 address training issues, some of which would have little or no associated cost. Additionally, the recommendations include specific subject matter for judicial officer training. They stress the need for new judicial officers to receive no less than eight hours of training directly relevant to family issues before they are assigned to cases involving families.

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<sup>12</sup> Colt Simms, Denver 6/28/01, Transcript p.23. See Appendix V. number 12.

<sup>13</sup> Patricia Hall, *Attorney and former County Court Judge and Tribal Judge*, Durango 9/25/01, Transcript p.65. See Appendix V. number 13.

<sup>14</sup> Melinda Bronson, *Clinical Social Worker, Parenting Time Evaluations, Parenting Time Coordinator and S.A.*, Durango 9/25/01, Transcript p.40. See Appendix V. number 14.

<sup>15</sup> Patricia Hall, *Attorney and former County Court Judge and Tribal Judge*, Durango 9/25/01, Transcript p.65. Maria Subia, *Director of the East Child Care Center and Preschool*, Pueblo 10/10/01, Transcript p.52. See Appendix V. numbers 15 and 16.

## **6. *Community Involvement by Judicial Officers***

Many suggestions were made that judges ought to be given latitude both under the Judicial Code of Conduct and culturally to engage more freely in community activities.<sup>16</sup> While certain activities are clearly prohibited or limited under the Code, it is suggested that judges can play a more direct and active role in communities to help identify resource needs and provide leadership to develop services to meet those needs. Recommendations 50 through 52 address this concern. They provide that community leadership should be encouraged and specify certain activities in which judicial officers can participate. There is also a recommendation that to the extent the Code does not clearly allow or prohibit any of the specified activities, an authoritative interpretation should be sought and made available.

## **7. *Compensation and Training for Public Sector Attorneys***

Current practice (out of necessity) dictates that attorneys newly admitted to the bar are more frequently appointed to represent children because more experienced attorneys do not accept such appointments by reason of the inadequate compensation. Issues were raised concerning the qualifications and performance of public attorneys who represent children.<sup>17</sup> Recommendations 53 through 54 recommend that compensation for these attorneys be raised to levels comparable to those paid to other public attorneys such as public defenders and alternate defense counsel. Additionally, the recommendations recognize the need for ongoing, quality training for all public sector attorneys, and urge that minimum training standards should be developed and applied consistently statewide.<sup>18</sup>

## **8. *Training and Mentoring for Private Attorneys***

The Commission debated whether there should be a certification requirement for attorneys who practice in the family law area and ultimately decided that there should not be such a requirement. However, the Commission is recommending that the Chief Justice through a Chief Justice Directive set minimal training standards for private attorneys who practice in the family area.<sup>19</sup> The standard should be a minimum of eight continuing legal education credits in the family law area within each three-year reporting period. Recommendations 55 through 57 address the issues of training and mentoring for private attorneys.

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<sup>16</sup> Mr. Lococo, *Attorney*, Fort Collins 7/10/01, Transcript p.2. See Appendix V. number 17.

<sup>17</sup> Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.23. Ms. Strewler, *Executive Director of CASA of Colorado Springs*, Pueblo 10/10/01, Transcript p.60. Julie Ridgeway, *Member of the Judicial Study Committee*, Grand Junction 8/28/01, Transcript p.37. See Appendix V. numbers 18, 19 and 20.

<sup>18</sup> Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.23. See Appendix V. number 21.

<sup>19</sup> Mary Dawes, Durango 9/25/01, Transcript p.29. See Appendix V. number 22.

## ***9. Ethics, Professionalism, and Accountability of Attorneys***

The Commission heard reports of unethical practices or lack of professionalism by attorneys practicing in this area.<sup>20</sup> These ranged from unreturned phone calls to charging exorbitant fees.<sup>21</sup> The Commission spent considerable time exploring options that would help improve attorney conduct. Recommendations 58 through 61 encourage judicial officers to enforce their orders through the imposition of sanctions against attorneys and parties who appear before them.<sup>22</sup> They also provide ideas for building collegiality among family law practitioners.

## ***10. Accessibility and Availability of Legal Services***

There were numerous concerns raised about the lack of or inaccessibility to legal services.<sup>23</sup> Many reasons or factors seem to drive this problem. Sometimes excessive fees prevent individuals from hiring an attorney. Another reason is lack of attorneys, particularly in rural areas. Rural areas are underserved yet at the same time there often is not enough business in a rural area for an attorney to build a practice around cases involving families. At the public hearings, the Commission heard several reports of people wishing they had more and better information up front in the judicial process.<sup>24</sup> Recommendations 62 through 67 provide many ideas for enhancing accessibility and availability of legal services. They suggest that more can be done within the districts to ascertain information about existing services and make that information available within the community.

## ***11. Roles, Responsibilities, Guidelines, and Accountability of Professionals who Interact with the Courts***

The Commission discovered a compelling need to clearly identify each of the individuals involved in cases involving families and their respective roles, responsibilities, and accountability mechanisms. Included in this group are special advocates, CASA volunteers, *guardians ad litem*, court facilitators, parenting coordinators, parent educators, case workers, school psychologists, mediators, mental health professionals, doctors, accountants, and other experts or professionals called upon in these cases for various reasons.<sup>25</sup> In Recommendations 68 through 74, the Commission recommends

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<sup>20</sup> Mary Dawes, Durango 9/25/01, Transcript p.29. See Appendix V. number 22.

<sup>21</sup> Ms. Leland, Durango 9/25/01, Transcript p.10. See Appendix V. number 23.

<sup>22</sup> Ms. Leland, Durango 9/25/01, Transcript p.10. See Appendix V. number 23.

<sup>23</sup> Mary Dawes, Durango 9/25/01, Transcript p.39. Mr. Vaughan, Fort Collins 7/10/01, Transcript p.11. See Appendix V. numbers 24 and 25.

<sup>24</sup> Colt Simms, Denver 6/28/01, Transcript p.25. Catherine Cattarello, *Executive Director for the Women's Resource Center*, Durango 9/25/01, Transcript p.71. Bev Keith, Grand Junction 8/28/01, Transcript p.11. See Appendix V. numbers 26, 27 and 28.

<sup>25</sup> Ms. Schure, Fort Collins 7/11/01, Transcript p.47. Robert Smith, *Attorney and SCAO employee*, Fort Collins 7/11/01, Transcript p.66. Ms. Waters, *Mediator*, Fort Collins 7/11/01, Transcript p.49. See Appendix V. numbers 29, 30 and 31.

that position descriptions be developed for many of these individuals and accountability mechanisms be clearly established either through existing regulatory entities or through statutory amendment, if necessary.<sup>26</sup> Appendix VII contains position descriptions for most of the professionals involved in either domestic relations matters or dependency and neglect matters. The Commission intends for these descriptions to be a useful tool to all involved in these cases.

### ***12. Support for Current Judicial Branch Efforts in the Areas of Pro Se Litigants, Domestic Violence and Restraining Orders, and Family-Friendly Facilities***

Upon hearing concerns raised over domestic violence and restraining orders, services for *pro se* litigants, and the need for family-friendly facilities, the Commission conducted research into current efforts in these areas.<sup>27</sup> The Commission found that Colorado is making progress in these areas, and has recommended that the judicial branch maintain resources and support to continue these efforts. These recommendations are 75 through 77.

The Commission also adopted two **general recommendations (78 and 79)** that relate directly to implementation of its recommendations. The Commission recognizes that several of its recommendations raise issues of staffing configurations or patterns within the 22 judicial districts as well as variances in the availability of resources within the districts. The Commission has compiled relevant information to assist the judicial branch in addressing these concerns. It is asking the Staffing Patterns Subcommittee within the Branch to review this material to develop staffing models that will assist the districts in implementing the Commission's recommendations.

Finally, the Commission recommends that a Family Issues Oversight Committee be created to oversee implementation of the recommendations and maintain the momentum created by the Commission during the past 18 months.

## **IV. Recommendations**

### ***A Central Case Management Process for Cases Involving Families***

1. All open cases involving a family should be coordinated by a centralized case management team. In this context central case management means:
  - A. Transfer all cases involving the same family to one judicial district;
  - B. Assign all cases in a judicial district involving the same family to one judicial officer for the duration of all such cases;

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<sup>26</sup> Celeste Kling, *Attorney, GAL, SA, Mediator and Teacher*, Fort Collins 7/11/01, Transcript p.55. See Appendix V. number 32.

<sup>27</sup> Grace Herrera, Pueblo 10/10/01, Transcript p.21. See Appendix V. number 33.

- C. Gather for the judicial officer or court facilitator information about out-of-district cases concerning the same family;
- D. Use court facilitators to monitor progress of the case and determine when the case needs judicial intervention; and
- E. Use a team approach where applicable.

*Who is responsible: Supreme Court, SCAO, Chief Judges, judicial officers, court facilitators, other court personnel*

*Timeline for implementation: Long*

*Estimated costs: Medium*

2. The central case management team must be knowledgeable of the history of legal proceedings and all open cases involving all members of the same family in order to offer a uniform and rational approach to resolving family issues.

*Who is responsible: Court facilitators, other court personnel, other professionals*

*Timeline for implementation: Long*

*Estimated costs: Low*

3. For the purpose of achieving recommendation number 1., family members shall be defined as all of the minor children in a household, their parents or guardians living in and out of the household, and the significant others (boyfriends, girlfriends, spouse) of parents living in the household. The court facilitator may recommend to the judicial officer the inclusion of other family members in the bundle of cases.

*Who is responsible: Judicial officers, court facilitators, other court personnel*

*Timeline for implementation: Long*

*Estimated costs: None*

4. Family case types should include the following: dependency and neglect, delinquency, truancy, adoptions, relinquishments, family related misdemeanors under Title 18 of C.R.S., TROs, PROs, DUIs, DWAI, mental health, and domestic relations. The court should have the discretion to add other case types not listed above if it is in the best interest of the family, except for felony cases.<sup>28</sup>

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<sup>28</sup> Combining felony cases was a disputed issue before the Commission. No consensus was reached but the subject should be studied further. Some Commission members believe that felony cases involving sex assault, sex abuse, incest, domestic abuse, child abuse and possession of controlled substances should be included to provide a complete, coordinated case management process for families.

*Who is responsible: Judicial officers, court facilitators, other court personnel*

*Timeline for implementation: Long*

*Estimated costs: None*

5. Develop case management protocols for family matters within each judicial district that:
  - A. Identify cases to be included within the central case management approach or those that must proceed independently;
  - B. Articulate clearly the extent to which accelerated and non-adversarial procedures will be used and for which cases;
  - C. Determine which judicial officer will be responsible for a given case; and
  - D. If the judicial officer assigned to a case is a magistrate, then determine at what stage the case will be forwarded to a district court judge using what procedure;
  - E. Define clearly the roles of the court facilitators, magistrate, and mediator with regard to who may prepare orders and recommend resolutions; and
  - F. As directed by the Court of Appeals in Tripp v. Borcard, 29 P.3d 345 (Colo. App. 2001), avoid the situation where a judicial officer participates in mediation or settlement discussion in a case where that judicial officer might eventually be required to adjudicate formally.

*Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators*

*Timeline for implementation: Long*

*Estimated costs: Medium*

6. Multi-discipline or cross-system teams should be established as an independent community resource to assist the central case management team in order to assure that all applicable services are provided to the family and a sensible treatment plan is developed. This team should include volunteer members of the community including clergy, teachers, pediatricians, mental health professionals, attorneys, and other appropriate people in addition to special advocates, parenting coordinators, and court facilitators.

*Who is responsible: Judicial districts via Chief Judges, District Administrators, court facilitators, other professionals*



*Timeline for implementation: Long*

*Estimated costs: Medium*

7. Develop processes that require professionals involved in the case to meet prior to a court hearing to assure that the court gets the most complete and accurate information, particularly with regard to treatment plan specifics. This may include providing judicial officers with information about available resources for evaluation, counseling and other mental health services, placement options for children and domestic violence victims, and other experts. It should be made clear whether these resources are available directly to the judicial officer.

*Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators, other professionals*

*Timeline for implementation: Long*

*Estimated costs: Medium*

8. Develop required training of all professionals that would focus on teamwork among professionals, processes that can be used for case conferences either with the central case management team or the multi-disciplinary team, child development, and other appropriate topics.

*Who is responsible: SCAO, judicial districts via Chief Judges, District Administrators, court facilitators, other professionals*

*Timeline for implementation: Long*

*Estimated costs: Medium*

9. Methods should be developed to resolve conflicts that arise when criminal matters such as domestic violence are combined with civil matters such as dissolution and dependency and neglect.

*Who is responsible: Judicial officers, court facilitators, other court personnel, practitioners*

*Timeline for implementation: Long*

*Estimated costs: Low*

10. Judicial officers should be assigned to family matters for a minimum rotation period of two years, with an option to continue at the election of the judicial officer and the chief judge. A fixed number of years by which judicial officers must rotate out of a family assignment is inappropriate.

*Who is responsible: Chief Judges, judicial officers*

*Timeline for implementation: Long*

*Estimated costs: Low*

11. Cases should stay with the central case management team when a judicial officer unavoidably rotates out of hearing family cases and cannot take the case with him or her. Ideally, another judicial officer who has been part of the central case management team would take over the case.  
*Who is responsible: Court facilitators, judicial officers*  
*Timeline for implementation: Long*  
*Estimated costs: Low*
12. The court facilitators must coordinate issues involving the same family to avoid multiple treatments and assessment plans and/or potentially conflicting orders, monitor the progress of cases, and determine appropriate junctures for judicial intervention as well as involvement of other members of the case management team, the multi-discipline/cross-system team, or other professionals who may be involved in the case.  
*Who is responsible: Court facilitators*  
*Timeline for implementation: Long*  
*Estimated costs: Medium*
13. Court facilitators must be given additional funding and resources to perform their present and expanded assignments.  
*Who is responsible: Supreme Court, SCAO, General Assembly*  
*Timeline for implementation: Long*  
*Estimated costs: Medium*
14. The central case management team should be phased in over an 18-month period and should start with family cases that have a dependency and neglect component. During the start-up phase, initial cases should be identified, the volunteer multi-discipline team should be selected, and the court facilitator should be trained. By the 19<sup>th</sup> month the central case management team should be sufficiently organized to accept all family cases.  
*Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators, other professionals*  
*Timeline for implementation: Long*  
*Estimated costs: Medium*
15. Seek funding from the General Assembly to measure results from central case management approach.  
*Who is responsible: Supreme Court, SCAO, General Assembly, judicial districts*  
*Timeline for implementation: Long*

*Estimated costs: Medium/High*

16. As much as possible, extend the use of ICON in identifying cases related to the same family. Train court facilitators for optimal use of ICON.

*Who is responsible: SCAO, court facilitators*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium*

17. Create an interdepartmental and interagency task force comprised of representatives who understand the current technologies to evaluate technology issues, develop improved collaboration across departments and agencies, continue ICON improvements where possible, and foster better information sharing.

*Who is responsible: Supreme Court, SCAO, other organizations outside the judicial branch*

*Timeline for implementation: Short*

*Estimated costs: Low*

18. The Chief Justice should establish performance standards for the Chief Judges in each of the 22 districts that outline goals and objectives used to measure how the districts are handling cases involving families. This should be accomplished through one or more of the following resources: the Families Issues Oversight Committee, a task force, or a public advisory committee.

*Who is responsible: Supreme Court, Chief Judges, Families Issues Oversight Committee*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

### ***Non-adversarial Alternatives***

19. Court rules and state statutes should be amended as needed to provide non-adversarial alternatives to the procedures currently required.

*Who is responsible: Supreme Court, SCAO, General Assembly*

*Timeline for implementation: Short/Long*

*Estimated costs: Low/Medium*

20. The amendments should apply to the following rules or statutes: Dissolution of Marriage, probate code regarding guardianship, sections of the Children's Code relating to dependency and neglect, delinquency, and paternity and support.

*Who is responsible: Supreme Court, SCAO, General Assembly*

*Timeline for implementation: Short/Long*  
*Estimated costs: Low/Medium*

21. There should be a presumption that parties will follow the least adversarial process unless the parties show good cause to the court to do otherwise, except as provided in the Mandatory Procedures for Simplified Dissolution. The least adversarial process may differ by case and should not be presumed to be exclusively mediation.

*Who is responsible: Supreme Court, Chief Judges, judicial officers, practitioners*

*Timeline for implementation: Short/Long*  
*Estimated costs: Low*

22. Where implemented, the simplified dissolution program should incorporate the Mandatory Procedures developed by the Office of the State Court Administrator as well as the revised financial affidavit and authorization for release form developed by the practicing family bar. These documents are attached to this report in Appendix VI.

*Who is responsible: Supreme Court, SCAO, Chief Judges, judicial officers, practitioners*

*Timeline for implementation: Short/Long*  
*Estimated costs: Low*

23. Independent evaluations must be conducted for non-adversarial alternatives such as the simplified dissolution program. The General Assembly should be asked to provide the funds to carry out such evaluations.

*Who is responsible: Supreme Court, SCAO, General Assembly*

*Timeline for implementation: Long*  
*Estimated costs: Medium*

24. Measurements for assessing district success must be developed, particularly in the area of family matters. Such qualitative measurements may include whether there are improved results other than quantitative results, are there savings in dollars, and are projects subjectively supported by participants.

*Who is responsible: SCAO, district administrators*

*Timeline for implementation: Short*  
*Estimated costs: Low/Medium*

## *Status and Roles of Judges and Magistrates*

25. Accord judicial officers hearing family matters recognition for outstanding, exceptional, and innovative work through awards or other means of commendation.  
*Who is responsible: Supreme Court, Chief Judges, SCAO, organizations outside judicial branch*  
*Timeline for implementation: Short*  
*Estimated costs: Low*
26. Implement a system by which judicial officers who are ill-suited, burned out, or ineffective in the family law area are removed from this assignment.  
*Who is responsible: Supreme Court, Chief Judges*  
*Timeline for implementation: Long*  
*Estimated costs: Low/Medium*
27. Enhance the functioning of family court cases by upgrading computers to meet the specific needs of family cases arising in more than one judicial district. Also, continue to implement the October 1, 1999, Colorado Supreme Court Family-Friendly Facilities Task Force report recommendations for enhancing courtroom surroundings as required by HB02-1101 which is effective July 1, 2002.  
*Who is responsible: SCAO, General Assembly*  
*Timeline for implementation: Long*  
*Estimated costs: High*
28. Accord magistrates who hear family matters the same increased recognition and enhanced surroundings as recommended for judges.  
*Who is responsible: SCAO, General Assembly*  
*Timeline for implementation: Long*  
*Estimated costs: High*
29. Develop methods of open and candid channels of communication for judicial officers who hear family matters. For these judicial officers, schedule a group meeting at least annually, i.e., at the annual judicial conference.  
*Who is responsible: SCAO, judicial officers*  
*Timeline for implementation: Short*  
*Estimated costs: Low*
30. If the judicial function will always be performed by a district level judicial officer in a courtroom setting, then provide support services to that judicial officer in the form of CASA workers, special advocates, mediators, mental health workers and other experts and advisors

who can fulfill the evaluation, counseling and especially facilitation roles for that district court.

*Who is responsible: SCAO, General Assembly*

*Timeline for implementation: Short*

*Estimated costs: Medium/High*

31. Judges are not mental health professionals but they should understand the important role of mental health and other professionals in the case and engage those professionals in the case as appropriate.

*Who is responsible: SCAO, other professionals, judicial officers*

*Timeline for implementation: Short*

*Estimated costs: Low*

### ***Selection and Evaluation of Judicial Officers***

32. Judicial officers hearing family matters should have distinguishable skills to improve performance with resulting greater job satisfaction. These skills include but are not limited to: empathy, good common sense, patience, an ability not to “talk down” (be condescending) nor “talk above” the heads of the parties, (i.e., explain legal concepts in an understandable manner), a sensitivity to know when parties are understanding the concepts and expectations presented, an interest in family matters, an understanding of the integral importance and implications of family matters to individuals and their extended families, an ability to make immediate and appropriate emergency decisions, an ability to help the clients realize that they will be involved with their children forever and must keep their spousal conflict away from those children, an ability to help the clients move through the process and then on with their lives, an ability to keep their own marital experiences separate from what they see in the courtroom, and an ability to keep themselves in control, i.e., stay calm. These are important qualities for every judicial officer, but especially for those handling cases involving families.

*Who is responsible: Performance Commissions, Chief Judges*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

33. The Judicial Nominating Commissions and the Governor must be made aware that more than half of

the “consumers” in the judicial system are seeking resolution of family issues, the most important issues in their lives. Therefore, expertise in family law is desirable. When there is a recognized need for a family law judicial officer in a particular district, the Nominating Commission should take into consideration those with expressed preference for and experience in family law. The applicant should be advised of the nature of family issues, the extraordinary challenges presented by them, and the skills and qualities required to meet those challenges.

*Who is responsible: SCAO, Nominating Commissions, Governor*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

34. In a district where judicial officers are not specifically assigned to family law, the Judicial Nominating Commission must clearly advise the applicant that he or she will likely be asked to commit as much or more than half of his or her time and energy to dealing with family issues. When screening applicants, senior or retired family law judicial officers recognized for prior extraordinary service should be included in the screening process of interested applicants (perhaps via a formal presentation or seminar) to explain the day-to-day realities, pressures, and substantive challenges of family law.

*Who is responsible: SCAO, Nominating Commissions, senior or retired family law judicial officers*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

35. Because the selection process does not always produce candidates to meet the need for judicial officers experienced in family law, magistrates with demonstrated skill and expertise in dealing with family issues should be carefully considered for elevation to district court judge.

*Who is responsible: Nominating Commissions, Governor*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

36. Judicial nominating commissioners should be trained in understanding the specific nature of the family law assignment so they can identify the distinct qualities of applicants that translate to a higher potential for success in dealing with family issues.

*Who is responsible: SCAO, Nominating Commissions*  
*Timeline for implementation: Short/Long*  
*Estimated costs: Low*

37. A process such as that used in the District of Columbia or the Colorado Women's Bar seminar "Getting Benched" should be used to help identify prospective judicial officers suited for family matters and encourage interested, experienced individuals (who might be otherwise discouraged due to the past tendency not to appoint family law practitioners to the bench) to apply for judicial offices.

*Who is responsible: Nominating Commissions, bar groups*

*Timeline for implementation: Short/Long*

*Estimated costs: Low/Medium*

38. Judicial Nominating Commissions should be instructed that political affiliation of a candidate should not be a factor in selection of judicial officers.

*Who is responsible: SCAO, Nominating Commissions*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

39. Consumers of court services should be clearly advised as to where and how complaints can be most effectively registered. The reporting, screening and response process should be as advanced as the process created by the Office of Attorney Regulation. Give the public an opportunity to voice complaints and praise by establishing a well-publicized "open door" comment policy on a more approachable level.

*Who is responsible: SCAO, judicial districts via Chief Judges or District Administrators*

*Timeline for implementation: Short*

*Estimated costs: Low/Medium*

40. Develop a system of lay (and, perhaps, peer) volunteers with some knowledge and appreciation of family law to randomly "sit in" on family law proceedings and offer observations regarding the judicial officer's performance, which could be used as part of the judicial evaluation process.

*Who is responsible: SCAO, bar groups, other organizations outside judicial branch*

*Timeline for implementation: Short*

*Estimated costs: Low*

41. Evaluation criteria should include general demeanor and civility; ability to talk to litigants in a straightforward manner; substantive understanding of



not only family law, but also bankruptcy, taxation, and other related areas when appropriate; ability to explain the law to *pro se* litigants; ability to issue timely orders and act decisively when necessary; and the willingness to utilize sanctions or contempt powers when necessary.  
*Who is responsible: SCAO, Performance Commissions*  
*Timeline for implementation: Short/Long*  
*Estimated costs: Low*

### ***Training of Judicial Officers***

42. Significant efforts to obtain private funding for all types of judicial training and education should be pursued aggressively. Collaborations with disinterested third parties, e.g., the Colorado Judicial Institute, which are currently under consideration and fall within ethical parameters, should serve as alternative funding sources for training and education of judicial officers.

*Who is responsible: SCAO, organizations outside the judicial branch*

*Timeline for implementation: Long*

*Estimated costs: Medium*

43. Docket coverage should be provided to judicial officers handling cases involving families to assure that case time demands are met while still allowing adequate time for training. The senior judge program needs to be enhanced to help meet this need.

*Who is responsible: SCAO, Chief Judges, District Administrators*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium*

44. The Supreme Court should direct the State Court Administrator's Office to provide appropriate training in the fundamentals of family law, child development, domestic violence, dependency and neglect, and delinquency to judges. Exposure to this training will enable the court to make better decisions in cases involving families. The following specific items are suggested for inclusion:
- A. The special characteristics and needs of sexual abuse victims, and the tendencies of perpetrators to continue committing acts of sexual abuse;
  - B. The changing developmental needs of children—patterns of child growth;
  - C. The impact of removal and placement on a child—separation, attachment, and bonding;

- D. Child-sensitive approaches to interviewing and communicating with children;
- E. Family dynamics in incidents involving child abuse and domestic violence;
- F. The roles of social services, law enforcement, the courts, schools, and treatment specialists in the protection and treatment of abused children.
- G. A comprehensive understanding of the Colorado Children’s Code, and standards relevant to *guardians ad litem*;
- H. The nature, purpose, and roles of the various agencies and advocates involved as well as the community services available to the child and family.
- I. The complexity of intercultural communications (language and traditions) and cultural sensitivity; cultural sensitivity training should include family dynamics, ethnicity, socio-economic factors, education and financial matters.
- J. Substantive areas for training should include: child development and impact of early childhood trauma, high-conflict divorce, cycle of domestic violence, bankruptcy, social security, retirement plans, tax law relevant to property allocation and maintenance, and business and other asset valuation.
- K. Before being assigned to family cases, a new judicial officer should be required to receive training of a minimum of eight hours directly relevant to basic family issues. A judicial officer who has not dealt with family issues for as long as two years should be required to receive “refresher” training of no less than four hours on recent developments in family law before returning to family cases.

*Who is responsible: Supreme Court, SCAO*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium/High*

- 45. Training of judicial officers should include appropriate use of available means to sanction and correct unprofessional lawyering and uncontrolled litigant behavior. This training should include the following:

- A. Prompt and decisive enforcement of previously-entered orders<sup>29</sup>;
- B. C.R.C.P. 11;
- C. C.R.S. §13-17-101 et seq.;
- D. C.R.S. §14-10-119 and “fault;” and
- E. Complaints to the Office of Attorney Regulation.

*Who is responsible: SCAO*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium/High*

46. Volunteer training from senior family law bar and mental health professionals should be provided to judicial officers at little or no cost to them, the judicial branch, or taxpayers if those opportunities are specifically approved as involving no appearance of impropriety. These opportunities include:
- A. Periodic revisions of the family law bench book by the Family Law Section of the CBA.
  - B. Traveling “judicial officer only” family law seminars.
  - C. Initial classes and continuing mentoring for judicial officers by a senior, experienced family law attorney and/or mental health professional with the unequivocal and enforceable commitment that neither the mentoring attorney/mental health professional nor any member of her/his firm or practice shall ever appear before the mentored judicial officer or disclose to anyone any aspect of the mentoring process. Experienced senior judges could be used in this capacity as well.
  - D. Free dissemination of CLE materials to judicial officers, e.g., CLE video recordings, annual updates of Colorado family law.
  - E. Waiver of CLE registration fees for judicial officers.
  - F. Use of Canon 3.A. (4) that provides, “A judicial officer...may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judicial officer if the judicial officer gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.”

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<sup>29</sup> The Commission found that judicial officers are often reluctant to impose sanctions. Training in this area may help judicial officers overcome this reluctance.

*Who is responsible: SCAO, bar groups, practitioners*  
*Timeline for implementation: Short/Long*  
*Estimated costs: Low*

47. Establish peer training through a confidential judicial officer family issues computer “list serve” or “chat room.”

*Who is responsible: SCAO, judicial officers*  
*Timeline for implementation: Short*  
*Estimated costs: Medium*

48. The Commission’s recommendations regarding judicial officer training should be incorporated into the judicial branch’s forthcoming strategic education plan.

*Who is responsible: SCAO Human Resources Division*  
*Timeline for implementation: Short*

49. As resources become available, distance learning opportunities should be developed. To the extent that technological resources need to be improved to make such opportunities available, they should be.

*Who is responsible: SCAO, General Assembly*  
*Timeline for implementation: Long*  
*Estimated costs: Medium/High*

### ***Community Involvement by Judicial Officers***

50. Community involvement by judicial officers should be encouraged and opportunities should be made available for those who choose to participate. The contributions made by those who engage in community and other activities should be recognized in their performance review. Leadership can be exercised both internally and externally.

*Who is responsible: Judicial officers, Performance Commissions*

*Timeline for implementation: Short/Long*

*Estimated costs: Low*

51. Externally, judicial officers may, and should, be involved in the following opportunities:

- A. Testify before legislative committees or tribunals regarding family law and family resource issues;
- B. Set high expectations and minimum standards of practice for attorneys and other professionals who practice in the area of family and juvenile law and hold accountable those who do not meet those high expectations and standards;

- C. Maintain a close liaison with schools, departments of human services, law enforcement, mental health and other private and public agencies involved in the provision of services to children and families; interagency collaboration and cooperation should be developed and maintained by the court;
- D. Devise and organize strategies and programs to educate and involve the community in assisting children and families;
- E. Investigate and determine the availability of specific prevention, intervention, and treatment services in the community for children and families;
- F. Provide leadership for and assist in developing resources to meet the needs of families and children as identified.

*Who is responsible: Judicial officers*

*Timeline for implementation: Short*

*Estimated costs: Low*

52. To the extent the Code of Judicial Conduct does not clearly allow or prohibit any of the foregoing or other opportunities, authoritative interpretation upon which a judicial officer can rely should be available.

*Who is responsible: SCAO Legal Counsel*

*Timeline for implementation: Short*

*Estimated costs: Low*

### ***Compensation and Training for Public Sector Attorneys***

53. Compensation 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.<sup>30</sup>

*Who is responsible: Office of the Child's Representative, SCAO, General Assembly*

*Timeline for implementation: Short/Long*

*Estimated costs: High*

54. All public sector attorneys should receive ongoing, high-quality training that includes the following components:

- A. Training should be readily accessible statewide; this includes training that is economically feasible for the public sector attorney as well as geographically available;

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<sup>30</sup> See Appendix VIII. for a detailed analysis on public sector attorneys.

- B. Minimum training standards should be established that are consistent and uniform statewide; standards should address content, achievement, and outcomes;
- C. Training should be specific to the attorney's area of practice; and
- D. Training programs should be established that are ongoing and provide for the continuous improvement in the competency and quality of public sector attorneys.

*Who is responsible: Bar groups, SCAO, other organizations outside judicial branch*

*Timeline for implementation: Short/Long*

*Estimated costs: High*

### ***Training and Mentoring for Private Attorneys***

55. There should be no requirement of certification for attorneys who practice in the family law area. However, the Supreme Court should impose a requirement of minimal training standards for private attorneys practicing in the family law area similar to the continuing legal education requirements now required of *guardians ad litem*. A Chief Justice Directive should be issued, requiring those who accept family law cases to obtain a minimum of eight continuing legal education credits in the area of family law during each three-year reporting period. This should be monitored according to the following two options: a) the filing of a certificate of compliance with the Supreme Court, which could be referenced by members of the public seeking counsel in the domestic relations area, or b) a requirement similar to Rule 11 of the C.R.C.P., which would state that by signing a pleading in a domestic relations case an attorney is certifying his or her compliance with the CLE requirement.

*Who is responsible: Supreme Court*

*Timeline for implementation: Short/Long*

*Estimated costs: Low/Medium*

56. Family law continuing legal education programs should be made available at no cost or a reduced fee to those attorneys who agree to take at least one *pro bono* family law case during each reporting period. A basic CLE family law practice and procedure videotape program should be created and made available through the mail

to *pro bono* attorneys at no cost as well as to all other attorneys at a reasonable cost.

*Who is responsible: Bar groups*

*Timeline for implementation: Short/Long*

*Estimated costs: Low/Medium*

57. Support the creation of a volunteer mentoring program between experienced members of the family law bar and attorneys who lack experience in the practice of family law. The Family Law Section of the CBA should sponsor a program where members would make themselves available by telephone to field inquiries from less experienced practitioners or occasionally provide informal supervision for an attorney handling his or her first few family law cases. The “Harhai” list serve can be used as a mentoring tool as well.

*Who is responsible: Bar groups, practitioners*

*Timeline for implementation: Short*

*Estimated costs: Low*

### ***Ethics, Professionalism, and Accountability of Attorneys***

58. Any issues concerning noncompliance with a previously entered court order should have priority setting and be heard within a short period of time. Judicial officers should be encouraged to enforce their orders by imposing sanctions or utilizing their contempt powers to ensure compliance with court orders.

*Who is responsible: SCAO, judicial officers*

*Timeline for implementation: Short/Long*

*Estimated costs: Low/Medium*

59. Influence the legal community to be more professional, more collegial, and better acquainted by encouraging participation in professional activities, including:
- A. Inns of Court, a group of new and more experienced attorneys, including judges, who meet monthly to develop personal and mentoring relationships;
  - B. Activities sponsored by local and specialty bar associations in addition to those organizations’ more formal events;
  - C. Mentoring programs within local and specialty bar associations;
  - D. The Colorado Bar Association should encourage and assist all local bars to develop professional conciliation panels. The CBA should follow up

with the local bars to ensure the conciliation panels continue to exist and are active.

*Who is responsible: Bar groups, practitioners*

*Timeline for implementation: Short*

*Estimated costs: Low*

60. The Supreme Court should strongly recommend that Colorado law schools teach real-life ethics in every course including corporations, bankruptcy, and family law, by integrating real-life ethical situations in each area. In the ethics course (professional responsibility) itself, which is required by most law schools, ensure the course integrates real-life situations instead of allowing the course curriculum to be driven by the multi-state exam.

*Who is responsible: Supreme Court, Colorado law schools*

*Timeline for implementation: Long*

*Estimated costs: Low*

61. Revisit the representation standard within the Rule of Professional Conduct with regard to family law cases; specifically explore whether the current representation standard always best serves the family; refer this matter to the *ad hoc* domestic relations committee, which recently studied other ethical dilemmas in the practice of family law.

*Who is responsible: ad hoc domestic relations committee, practitioners*

*Timeline for implementation: Short*

*Estimated costs: Low*

### ***Accessibility and Availability of Legal Services***

62. The Supreme Court and the Colorado Bar Association should continue their support of bar associations, particularly local bar associations, to continue organizing *pro bono* nights, and in conjunction with the courts, dissolution settlement days at courts, although more should be done to ensure that these programs are occurring uniformly and consistently across the state.

*Who is responsible: Supreme Court, bar groups*

*Timeline for implementation: Short*

*Estimated costs: Low/Medium*

63. Each judicial district should investigate the availability, structure, and success of local programs by communicating with the local bar associations and reporting to the Office of the State Court Administrator



annually, incorporating recommendations for modifications and additions; the districts should be provided with consultative help, if needed, in identifying what they should be looking for to conduct this assessment.<sup>31</sup>

*Who is responsible: Judicial districts via Chief Judges and District Administrators, SCAO*

*Timeline for implementation: Short*

*Estimated costs: Medium*

64. A video-taped seminar on “How to Select An Attorney” should be prepared, perhaps based on seminar materials previously prepared by the Colorado Bar Association and the Colorado Women’s Bar Association; the video tape should be consistent with materials available on the CBA Web site and it should be made available in every jurisdiction to the public, women’s and men’s organizations, and other organizations and forums through state offices.

*Who is responsible: SCAO, bar groups*

*Timeline for implementation: Short*

*Estimated costs: Medium*

65. The Supreme Court should form a committee of judges and attorneys to investigate, study, and make recommendations for providing legal services not just to the poor or working-poor but also to middle class citizens who can afford to pay some part of legal services but not the current high rates. The committee should **consider** the following:<sup>32</sup>

- A. The Colorado General Assembly should enhance funding for existing legal services in Colorado, e.g., Rural Legal Services, Pueblo Legal Services, and Denver Legal Services.
- B. Investigate the feasibility and timeliness of certifying a new type of legal practitioner with more limited client duties for those clients with more limited needs and means, e.g., the working-poor and middle class. Such a program should incorporate the highest ethical, educational, and certification requirements and should not proceed if these requirements are not possible. Other features to be researched and considered in the program include:

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<sup>31</sup> There is a process underway that encompasses Recommendations 63 and 65, by establishing statewide and district legal services committees. These recommendations could be referred to those committees.

<sup>32</sup> This is not to be confused with unbundling of legal services, which attorneys may do and thereby make certain pieces of legal work more affordable.

- i. A new, two-year college degree;
- ii. Rejection of any grandfathering of existing legal providers, but possibly allowing for some limited advanced placement based on merit;
- iii. Primary requirements of a complete and verifiable understanding of the ethical responsibilities of client confidentiality and loyalty and every other ethical precept;
- iv. Close, full-time, accountable attorney supervision of a limited number of legal practitioners; and
- v. Institute as a pilot program, preferably focusing on the area of family law.

*Who is responsible: Supreme Court, SCAO, General Assembly, prospective educational institutions interested in developing a program*

*Timeline for implementation: Long*

*Estimated costs: High*

66. Judicial districts should make self-help curricula available in each jurisdiction by communicating with litigants and the local bar associations. The districts should be required to report on the status and success of these programs annually, incorporating recommendations as to modifications and additions. (Also, see recommendation no. 76.)

*Who is responsible: Judicial districts via Chief Judges and District Administrators, SCAO, local bar groups*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium*

67. Each judicial districts should investigate the availability and structure of low-cost or no-cost alternative dispute resolution by communicating with local mental health, religious, and social service providers and the local bar associations, and be required to report on local availability annually, incorporating recommendations as to modifications and additions. The districts should educate the local bar as to available alternative dispute resolution services.

*Who is responsible: Judicial districts via Chief Judges and District Administrators, local service providers, local bar groups*

*Timeline for implementation: Short/Long*

*Estimated costs: Medium*

***Roles, Responsibilities, Guidelines, and Accountability of Professionals Who Interact with the Courts***

68. Position descriptions for professionals in the domestic relations and dependency and neglect areas have been completed by the Commission and should be used by judicial officers, attorneys, court facilitators, and others as a tool for understanding the various roles and responsibilities of those involved in family cases. These position descriptions may be found in Appendix VII.

*Who is responsible: SCAO, judicial officers, court facilitators, practitioners, other professionals*

*Timeline for implementation: Short*

*Estimated costs: Low*

69. A committee should be created consisting of the various court-related personnel to develop standards of practice in the court context; these standards should be developed by July 1, 2003. The committee should address the following:

- A. Develop an assessment process for personnel named by the court that determines whether the individuals are meeting the established standards. Individuals who do not meet the standards should be subject to consequences.
- B. Develop a system that allows for removal of individuals who are not competent in the functions of the position or role to which they have been appointed. The committee should develop an appropriate process for identifying individuals who are not performing competently and steps for corrective action and/or removal of those individuals. These processes should specify the regulatory entities and/or court to be involved.
- C. Court facilitators should be responsible to recommend to the court which professionals need to be involved in a case to ensure that they are brought into the case at the appropriate time.
- D. Pursue an amendment to the special advocate statute to identify the regulatory entity responsible for each type of special advocate.
- E. Identify professionals who are given court appointments, including Parenting Coordinators, for whom there is no statutory authority and pursue statutory additions or amendments.

- F. For both D. and E. above, assure that the statutory provisions place court-appointed professionals' accountability for complying with the standards of practice with their professional regulatory board or agency.

*Who is responsible: Supreme Court, SCAO, General Assembly*

*Timeline for implementation: Short*

*Estimated costs: Medium*

70. Develop legislation to change the name **special advocate** to **Domestic Relations Advocate**.

*Who is responsible: Supreme Court, SCAO, General Assembly*

*Timeline for implementation: Short*

*Estimated costs: Low/Medium*

71. Develop a universal, enabling contract for CASA agencies providing CASA volunteers to serve as **Domestic Relations Advocates** in domestic relations cases; the contract should clarify the role of the CASA volunteer when serving as a **Domestic Relations Advocate** (currently most CASAs serve in dependency and neglect cases); by such a contract, the CASA agencies would receive public funds set aside specifically for purposes of compensating what are currently called special advocates who serve in domestic relations cases (other types of special advocates receive these funds already, if eligible; see position descriptions in Appendix VII); these funds would flow directly to the CASA agencies and not to the CASA volunteers.<sup>33</sup>

*Who is responsible: SCAO, CASA agencies*

*Timeline for implementation: Short*

*Estimated costs: Low/Medium*

72. To assure compliance with the current Chief Justice Directive and state statute, past efforts between the Colorado Department of Human Services and the Office of the State Court Administrator to report judge deviations from county case worker recommendations for out-of-home placements should be renewed. Specifically, a form should be developed that outlines what information should be reported.

*Who is responsible: SCAO, CDHS*

*Timeline for implementation: Short*

*Estimated costs: Low*

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<sup>33</sup> CASA stands for court-appointed special advocate. CASAs are part of a national network of CASA agencies and are volunteers who work for the CASA agency. Colorado has several CASA agencies.

73. A procedure should be developed for the courts and county social services departments to follow to assure the report is completed and submitted. The procedure needs to outline clearly who is responsible for monitoring the process.  
*Who is responsible: SCAO, CDHS*  
*Timeline for implementation: Short*  
*Estimated costs: Low*
74. Provide training for judges and case workers to assure an understanding of the reporting procedures and expectations.  
*Who is responsible: SCAO, CDHS*  
*Timeline for implementation: Short*  
*Estimated costs: Low*

***Support for Current Judicial Branch Efforts in the Areas of Pro Se Litigants and Domestic Violence and Restraining Orders***

75. Self-help services for *pro se* litigants should continue to be established with uniformity and consistency statewide. These services should include kiosks or staffed information centers where litigants can obtain help completing forms and acquire other information regarding court process, scheduling, and other helpful materials.  
*Who is responsible: SCAO, judicial districts*  
*Timeline for implementation: Long*  
*Estimated costs: Medium*
76. The Office of the State Court Administrator should create a standard self-help curriculum for *pro se* litigants for implementation in every judicial district including forms, educational videos, self-help seminars, and disclosure of statewide resources, such as the Colorado Bar Association Web site, that are already available, thus assuring statewide uniformity. Local rules and courtroom procedures unique to judges in the district should be included in the self-help curriculum and made available through self-help centers.  
*Who is responsible: SCAO, bar groups*  
*Timeline for implementation: Short*  
*Estimated costs: Medium*
77. The judicial branch should support the cross-departmental committee currently working on a Comprehensive Restraining Order Improvement Plan, which will ultimately lead to appropriate legislation, by

assigning staff and resources to this effort. A preliminary draft of this plan is included as Appendix IX.

*Who is responsible: Supreme Court, SCAO*

*Timeline for implementation: Short*

*Estimated costs: Low/Medium*

### **General Recommendations**

In addition to the recommendations developed within the subcommittees, the Commission has also approved two other general recommendations.

The Commission recognizes that several of its recommendations raise issues of staffing configurations or patterns within the 22 judicial districts as well as variances in the availability of resources within the districts. The Commission has compiled relevant information to assist the judicial branch in addressing these concerns and makes the following recommendation:

78. The Staffing Pattern Study found in Appendix IV should be forwarded to the Staffing Pattern Subcommittee of the judicial branch Trial Court Resource Committee. The Subcommittee is asked to consider this information and develop staffing models that will help the judicial districts implement the Commission's recommendations and/or accomplish district objectives with regard to serving families better.

*Who is responsible: SCAO, Staffing Patterns*

*Subcommittee of the Trial Court Resource Committee*

*Timeline for implementation: Short*

*Estimated costs: Low*

Finally, the Commission wishes to acknowledge that many efforts have been made during the past decade to study, understand, and address family issues in the Colorado courts. In some sense, the Commission on Families in the Colorado Courts is a culmination of all those efforts. Commission members feel strongly that the momentum generated during the past 18 months not be allowed to dissipate. Therefore, the Commission makes the following recommendation:

79. The Chief Justice should create an ongoing, oversight committee for family issues to ensure implementation of the Commission's recommendations. This committee should be new and separate from the Commission, although a few Commission members should be appointed to the new committee. As other committee members are appointed, the Chief Justice should be mindful of those recommendations requiring

creation of committees, task forces, and study groups. If those groups develop as subcommittees of the new committee, members should be able to provide the substantive expertise required to help resolve the issues described.

*Who is responsible: Supreme Court, SCAO*

*Timeline for implementation: Short*

*Estimated costs: Medium*