

Chief Judge, Twelfth Judicial District
**ORDER REGARDING
DEPENDENCY &
NEGLECT PROCEDURE**



**CHIEF JUDGE
ADMINISTRATIVE
ORDER
2006-01**

Introduction

In compliance with Chief Justice Directive 98-02, the Twelfth Judicial District adopted policies and procedures for Dependency and Neglect cases on October 26, 1998. It is now necessary to modify that plan to take into account changes in staffing, procedures and law. The purpose of this plan continues to be to expedite the permanent planning and placement for all children subject to Dependency and Neglect actions. The District's particular concern is to ensure that families receive the services they need to achieve a permanent home for every child involved in a D & N action within 12 months of a judicial finding of abuse and neglect. In addition, the District wants to ensure that the Court has addressed the issue of permanent placement no later than ninety days after a child is removed from the home.

The Twelfth Judicial District encompasses six counties and five separate departments of social services. The District has drafted this updated plan after consultation with representatives of each of the five departments as well as their legal representatives. The District has also consulted with guardians ad litem (GAL's) and respondent parents' counsel.

To achieve its purposes the District adopts certain case processing procedures including:

- "Front-loading" by early identification of needed services, timely notification of parents and interested family members, early assessment and evaluation, and early development of meaningful treatment plans.
- Providing clearly defined objectives for each court hearing.
- Providing opportunities for the parties to resolve issues consensually in a non-adversarial problem-solving environment
- Focusing on permanency from the beginning and at every stage of a case.

In addition, the District has determined that efficient management of some case-processing tasks requires centralizing these tasks by assigning responsibility for them to the Division Clerks for the two District Judges.

District Plan

Following is a list of major case events together with a discussion of the purpose of the event and the process the Court will follow.

I. Temporary Custody/Advisement Hearing (Detention or Shelter Hearing and Advisement of Respondent Parents' Rights)

A. Purposes: To decide temporary custody and appropriate placement of the child, to ensure that the Department has identified all respondent parents, that they are represented by counsel and that they understand the D & N process, and to facilitate the Department's early case assessment and provision of appropriate services.

B. Process:

1. Timing

Removal Cases. When the Department initiates the case by removing the child, the Court must hold the Temporary Custody/Advisement hearing within 72 hours of the child's removal (exclusive of weekends and holidays), unless an earlier hearing is mandated by statute.

Non-removal Cases: When the Department initiates the case by filing a D & N petition, the Court will hold the advisement hearing on the next motion day of the assigned judge. The Department will serve the respondent parents personally with the summons and petition at least 5 days before the hearing.

2. Prior to the Temporary Custody/Advisement Hearing *in every case*, the Department will:
 - a. File a motion to allow the filing of a D & N petition or file a Motion for Temporary Custody with the court.
 - b. Identify and notify all respondent parents.
 - c. Identify potential relative placements.
 - c. File and serve the D & N petition. (This may occur at the hearing by handing the petition to the respondents in open court.)

3. Prior to the Temporary Custody Hearing *in a Removal Case*, the Department will:
 - a. Contact the Division Clerk to seek appointment of a GAL. The Department shall notify the GAL of the date and time of the Temporary Custody Hearing. (Note—**Before** the Department contacts the Division Clerk, the Department should have opened a case with the local Court Clerk by filing a Motion for Temporary Shelter and/or a motion to allow the filing of a D & N Petition.)

- b. To the extent possible, provide respondent parents with applications for court-appointed counsel when they are notified of the removal.
 - c. Inform the Division Clerk if the respondent parents will be applying for court-appointed counsel.
 - d. Inform respondent parents to appear in court at least one-half hour prior to the scheduled time for the Temporary Custody hearing so they may meet with their attorney prior to the hearing.
4. Prior to the Temporary Custody Hearing *in a removal case* the Division Clerk will:
- a. Review the list of GAL's to determine the appropriate GAL to appoint.
 - b. Notify the Department of the appointed GAL;
 - c. Prepare the form order appointing the GAL to the case.
- If the Department informs the Division Clerk that the parents will be seeking court-appointed counsel, the Division Clerk will:
- d. Review the list of potential court-appointed attorneys and determine the appropriate attorney to appoint.
 - e. Notify the attorney of the appointment and of the date and time of the Temporary Custody Hearing and remind the attorney to appear at least one-half hour before the hearing to meet with the attorney's client.
5. At the Temporary Custody/Advisement Hearing, the Court will
- a. Appoint counsel for eligible respondent parents if that has not already happened.
 - b. Appoint a GAL if that has not already happened.
 - c. Require each respondent parent to complete JDF 559 "Affidavit and Advisement Concerning Child's Potential Placement."
 - d. Advise the respondents concerning their rights, potential consequences of the D & N petition and permanency options.
 - e. Determine the need for continued placement if removal has occurred and inquire as to potential relative placements and what investigations the Department is making. The Court may authorize a change of placement to a relative prior to the next court hearing if the Department and the GAL agree.
 - f. Enter orders concerning temporary custody, visitation, evaluations, release of family information and provision of services.
 - g. Inquire as to the identity and location of respondent father(s) if not named in the petition and require the Department to amend the petition accordingly.
 - h. Inquire into the whereabouts of non-appearing parents and the efforts made to locate and notify them.
 - i. Authorize service by publication if appropriate.
 - j. Inquire whether the Indian Child Welfare Act (ICWA) applies.
 - k. Set a date for entry of admission or denial.

1. Order a family decision making conference or other settlement opportunity to occur before the next hearing if appropriate.
6. Non-Appearing Respondents: If a respondent parent has not been served and does not appear at the Temporary Custody/Advisement Hearing, the Court will set the non-appearing respondent's advisement for the next hearing. The Department will serve a notice of hearing and the D & N petition on the non-appearing respondent parent prior to the next hearing. If the Department wants to serve a respondent by publication, the Department will file a verified motion for service by publication before the next hearing.

II. Adjudicatory Hearing/Trial

A. Purpose: To enter an admission to the petition or to contest the petition and obtain a judicial finding whether the allegations have been proven.

B. Process:

1. Timing: Generally this hearing is set for the presiding judge's next motion day. At that time, if the respondents decide to deny the petition, then a trial will be set: In an Expedited Permanency Planning (EPP) case, the trial will be set within 60 days of the filing of the D & N petition. In a non-EPP case, the trial will be set within 90 days of the filing of the D & N petition.
2. When the respondents will be entering an admission, the parties are encouraged to combine the adjudication and disposition at the Adjudicatory Hearing. (The Department is *strongly* encouraged to have a proposed treatment plan prepared for the Adjudicatory Hearing.)
3. The Court will take the following actions at the Adjudicatory Hearing if the respondent(s) is/are not contesting the petition:
 - a. Accept admission(s) to the petition.
 - b. Enter default judgment as to all properly served, non-appearing parties.
 - c. If the child has been removed, make appropriate findings regarding placement and reasonable efforts.
 - d. If no treatment plan has been submitted, set a Dispositional Hearing within 30 days for EPP cases and 45 days for non-EPP cases. (As a general rule, the judge will set the Dispositional Hearing in three weeks, at the judge's next motion day.)
 - e. If a treatment plan has been submitted proceed to the actions to be taken at a Dispositional Hearing (see below).
4. The Court will take the following actions at the Adjudicatory Hearing if the respondents are contesting the petition:

- a. Determine whether the respondents are requesting a jury trial.
- b. Set the trial or jury trial.
- c. On the date of the trial the Court will enter a default judgment as to any properly served, non-appearing parties. If the judge/jury determines that the petition has been proved, the court will set a Dispositional Hearing within 30 days for EPP cases and within 45 days for non-EPP cases.

III. Dispositional Hearing

A. Purpose: To order a treatment plan and to order an appropriate placement for the child.

B. Process:

1. Timing. The Court will hold a Dispositional Hearing within 30 days of adjudication in EPP cases and within 45 days of adjudication in non-EPP cases.
2. The Department's caseworker will prepare a treatment plan. The treatment plan will be developed with the family members whenever possible. The treatment plan will be filed with the court and provided to the parties and counsel at least one week prior to the Dispositional Hearing.
3. The Court will take the following actions at the Dispositional Hearing:
 - a. If the plan is contested either hear the disputed issues or set a hearing as soon as possible to make a judicial finding concerning what the treatment plan should include. The Court may order that the parties engage in some form of settlement conference before setting a hearing for a judicial finding concerning the treatment plan.
 - b. Review the terms of the treatment plan. Adopt the treatment plan if the Court finds that it is reasonable and appropriate.
 - c. Advise the respondents of the potential consequences of not complying with the treatment plan, including termination of parental rights.
 - d. If the Department has filed a motion requesting a finding that no reasonable treatment plan can be devised, the Court will set a hearing to determine whether, by clear and convincing evidence, no appropriate treatment plan can be devised for a parent.
 - e. If the child has been removed, the court will determine the appropriate placement for the child, as well as requirements and timelines for reunification.
 - f. If the child has been removed, the Court will set a Permanency Planning Hearing. The hearing will be set within 90 days of the dispositional hearing in an EPP case. The hearing will be set within 6 months of the Dispositional Hearing in a non-EPP case.

IV. Review Hearing

A. Purpose: To review progress on the treatment plan; to review the need to modify the treatment plan; to review the need for continued placement if the child has been removed and to review the continued appropriateness of the permanency goal.

B. Process:

1. Timing. The court will hold review hearings as necessary and at least every 90 days.
2. The Department shall prepare a written report before each review hearing. The report should be filed with the Court and served on all other parties *at least five days* prior to the review hearing.

The written report should include a placement history and a discussion of developments in the case since the last hearing or review, the parties' progress on the treatment plan, the parents' participation in visitation and interaction with the child, and the continued appropriateness of the permanency goal.

3. The Court will take the following actions at a review hearing:
 - a. Consider the continued need for placement and consider the continued appropriateness of the placement; If placement will continue the Court will make appropriate findings regarding placement, reasonable efforts, etc.;
 - b. Consider the continued appropriateness of the permanency goal;
 - c. Consider whether the treatment plan or proposed services should be modified because of changed circumstances or additional information;
 - d. Assess the parents' progress on the treatment plan goals and parental involvement with the child.
 - e. If the child has been in placement for 15 of the last 22 months, the court will consider whether to order a show cause as to why a motion for termination of parental rights has not been filed;
 - f. Review the need to schedule a Permanency Planning Hearing. The Court must hold a Permanency Planning Hearing every six months when a child is placed outside the home.

V. Permanency Planning Hearing

A. Purpose: To adopt a specific permanency plan for the child and to take significant steps toward implementing the permanency plan.

B. Process:

1. Timing. In an EPP case where the child has been removed from the home, the Court will hold a Permanency Planning Hearing within three months of the dispositional hearing. In a non-EPP case, the Court will hold a Permanency Planning Hearing within twelve months of the removal of the child. If the permanency goal is reunification and the child has not been returned within six months of the hearing, a second Permanency Planning Hearing will be held at that time.
2. At least one week prior to the hearing, the Department will file with the Court and serve on the parties and counsel a written court report clarifying the proposed permanent plan for the child and including any proposed amendments to the treatment plan.
3. At the Permanency Planning Hearing, the parties should be prepared to take whatever steps are necessary to implement the permanency plan the Court approves. The possible outcomes of a Permanency Planning Hearing include:
 - a. Reunification at or before the Permanency Planning Hearing.
 - b. Reunification on a date certain beyond the Permanency Planning Hearing (not to exceed 6 months from the date of the Permanency Planning Hearing). The Court must find that the parents have made significant progress on the treatment plan, that there is a substantial probability that the child will be returned home within 6 months, and that reunification is in the best interest of the child. The Court will adopt amendments to the treatment plan, as necessary. The Court will set another review at the time the child should be returned home. If the child is not returned home by the scheduled date, the Court will adopt an amended permanency plan at the review hearing.
 - c. Reunification more than 6 months after the Permanency Planning Hearing.
 - d. Termination of Parental Rights to Enable Adoption or Other Permanent Plan.
 - e. Relinquishment to Enable Adoption or Other Permanent Plan.
 - f. Permanent Custody or Guardianship.
 - g. Independent Living.
 - h. Long Term Foster Care or Other Out of Home Placement Arrangement.
4. At the Permanency Planning Hearing, the Court will determine the long-term placement of the child. The Court will also take the following actions:
 - a. If the permanent plan is that the child will not return home, the Court may suspend the parents' treatment plan and modify or suspend visitation as appropriate.
 - b. If the out-of-home placement will continue, the Court will make appropriate findings concerning placement, reasonable efforts, etc.
 - c. The Court will set a review hearing.

VI. Termination of the Parent-Child Legal Relationship.

A. Purpose: To obtain a judicial finding whether there are statutory grounds to sever the parent/child legal relationship and whether termination is in the best interests of the child.

B. Process:

1. The Department or the GAL may file the motion to terminate parental rights at any time following the Dispositional Hearing. The Court will set the hearing no earlier than 30 days and no later than 120 days after the filing of the motion. The hearing may be set more than 120 days after the filing of the motion if the Court finds good cause to do so.
2. Respondent parents must file a motion for appointment of an expert witness within 15 days after the Department files a motion to terminate parental rights.
3. Expert reports must be distributed to all parties at least 15 days before the termination trial.
4. Motions for summary judgment must be filed at least 30 days prior to the termination trial.
5. Where possible, parties are to rely on reports already on file with the Court and admissible under C.R.S. §19-3-604(3). Witnesses may be called as necessary to supplement the report, but the witness need not repeat the contents of the report. Each party is to designate the reports on which it intends to rely not less than 30 days before hearing. Any reports not already on file shall be submitted at that time.
6. Any party desiring to cross-examine the author of any such report shall file a request to produce the author for such examination, C.R.S. § 19-3-604(3), not less than 25 days before hearing. The proponent of the report shall be responsible for securing the attendance of the witness. The Court reserves ruling on the admissibility of such reports. Admissibility of the witness's testimony under *Peo. v. Shreck*, 22 P.3d 68 (Colo. 2001) shall be raised by motion in limine filed not less than 15 days before hearing; other issues of admissibility under C.R.S. § 19-3-604(3) shall also be raised at the same time.
7. The Court will grant a motion to continue the termination hearing only upon a finding that manifest injustice will occur if the continuance is not granted.
8. If a child remains in placement following the termination trial, the Court will determine whether the Department has made reasonable efforts to place the child in a permanent placement in a timely manner according to the permanent plan.

9. If the Court grants the motion to terminate the parent-child legal relationship, the Court will set a post-termination review hearing to adopt a post-termination placement plan within 90 days of the termination order.

VII. Post-Termination Review Hearing:

A. Purpose: To review and, if necessary, amend the post-termination permanent placement plan to best serve the interests and needs of the child.

B. Process:

1. Timing. This hearing is to be held within 90 days of the order terminating the parent-child legal relationship.
2. The Department and the GAL will file a written report setting forth the permanent placement plan for the child.
3. The Court will determine if the plan is appropriate.
4. If the child will remain in placement after the hearing, the Court will decide whether the Department has made reasonable efforts to place the child in a permanent home in a timely manner.
5. The Court will set another review date.

VIII. Adoption Hearing:

A. Purpose: After all parental rights are terminated or after the parents have relinquished their rights, and if appropriate, the Court will proceed to adoption. At the Adoption Hearing, the child is permanently placed with adoptive parents who assume all parental rights and responsibilities.

B. Process:

1. Timing. The Court will hold an Adoption Hearing as soon as possible after the child becomes free for adoption. If the respondent parents do not appeal the Court's order terminating parental rights, the child is available for adoption 45 days after entry of the written termination order. If the respondent parents appeal the Court's termination order, the child is available for adoption after the appellate court issues the final mandate. If the parents relinquish their parental rights, the child is available for adoption 90 days after the relinquishment order enters.
2. At the Adoption Hearing, the Court will:

- a. Determine that the parents have relinquished their parental rights or that the Court has terminated them and the appeal process is complete.
- b. Determine that the Department or GAL have provided all required consents.
- c. Review any home-study or other Court-ordered report.
- d. Explain to the adoptive parents that adoption is permanent and irreversible.
- e. In cases involving children with special needs, be sure that the parents have been fully advised of all necessary services and special circumstances surrounding the child, review the adequacy of any adoption subsidies, and be sure the adoptive parents are aware of services and assistance that will be available to them after the adoption.
- f. Generally the Court will issue the adoption decree at the hearing.

IX. Continuances: It is the policy of the District Judges of the Twelfth Judicial District that continuances of hearings in D & N cases will only be granted when there is an emergency or when granting the continuance will be in the best interests of the child.

X. Revisions: The District will review this plan periodically and revise it as necessary.

DONE AND SIGNED THIS 24TH DAY OF AUGUST, 2006.

BY THE COURT



O. JOHN KUENHOLD
CHIEF JUDGE