

# **Recommendations to Reduce Delay and Improve the Quality of Appellate Litigation and Court Handling of Appeals in Child Welfare Cases**

**REPORT TO THE COLORADO SUPREME COURT**

Submitted by the  
Child Welfare Appeals Workgroup  
April 23, 2021

## **SENIOR EDITOR**

*Jenny Carman*, Staff Attorney, Colorado Court of Appeals

## **EDITORS**

*Honorable David Furman*, Judge, Colorado Court of Appeals

*Claire Collins*, Attorney

*Sheri Danz*, Deputy Director, Colorado Office of the Child's Representative

*Laura Eibsen*, Assistant City Attorney, Denver City Attorney's Office

*Melanie Jordan*, Director of Strategy, Office of Respondent Parents' Counsel

*Ruchi Kapoor*, Appellate Director, Office of Respondent Parents' Counsel,  
2016-2020

*Megan Kearsley*, Coordinator, Court Improvement Program

*Jennifer Mullenbach*, Deputy County Attorney, Jefferson County Attorney's  
Office

## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
A.	Appellate Delay .....	2
B.	Workgroup Members.....	5
C.	Methodology .....	7
D.	Outcomes and Achievements.....	8
E.	Recommendations .....	9
<b>II.</b>	<b>SIGNIFICANT REFORMS THAT CONTRIBUTED TO DELAY .....</b>	<b>12</b>
A.	Revised Colorado Appellate Rule 3.4.....	12
B.	Creation of the Office of Respondent Parents' Counsel.....	13
C.	Compliance with the Indian Child Welfare Act .....	16
1.	Bureau of Indian Affairs Regulations and Guidelines .....	16
2.	The Special Indian Child Welfare Act Division.....	17
<b>III.</b>	<b>PROCESS DELAYS IN CHILD WELFARE CASES .....</b>	<b>20</b>
A.	Proceedings in the Juvenile Court .....	20
B.	Proceedings in the Court of Appeals.....	23
1.	The judgment being appealed.....	23
2.	Filing the notice of appeal.....	24
3.	Designation of transcripts.....	25
4.	Transmitting the appellate record .....	26
5.	The appellate record pilot program .....	27
6.	Jurisdictional screening and motions.....	28
7.	Filing of briefs .....	32
C.	Case Assignments .....	36
1.	Priority case class.....	36
2.	Case assignments to staff attorneys .....	36
3.	Case assignments to judges.....	37
4.	Oral arguments .....	42
5.	Division conferences .....	43
6.	Cases proposed for publication.....	43
7.	Opinions announced .....	43
8.	Petitions for rehearing .....	44
9.	Petitions for writ of certiorari .....	44
D.	Mandate .....	46

<b>IV. IMPROVING THE QUALITY OF APPELLATE LITIGATION IN CHILD WELFARE CASES .....</b>	<b>47</b>
A. The Student Practice Act.....	47
B. Colorado’s Court Improvement Program .....	48
1. Best Practices Court teams .....	48
2. The appellate Best Practices Court team .....	49
<b>V. CONCLUSION .....</b>	<b>50</b>

## I. EXECUTIVE SUMMARY

*“Justice too long delayed is justice denied.”  
William E. Gladstone*

Timeliness is important to everyone involved in a dependency and neglect case.<sup>1</sup> While an appeal is pending, families face an uncertain future. Imagine how that feels — children don’t know where they will live or who will care for them; parents who have lost their parental rights hope they will see their children again.

Imagine, too, that the appellate court reversed the judgment terminating parental rights because the parents had not received fundamentally fair procedures at the termination of parental rights hearing. While such reversals are rare, it has not been uncommon for the Court of Appeals to take nearly a year to issue an opinion. The repercussions of a reversal are magnified by a long delay; parents, overjoyed to win their appeal, face the uphill battle of rebuilding a bond with their children after a year without visitation or other services, and children face a roller coaster of emotions and instability. Even if the appellate court affirms the judgment, the months spent awaiting a decision take a toll on everyone involved.

---

<sup>1</sup> A child is dependent or neglected if a parent has abandoned the child or subjected the child to abuse or neglect. See section 19-3-102, C.R.S. 2020, for specific criteria.

## **A. Appellate Delay**

Appellate delay in child welfare cases at the Court of Appeals increased between 2015 and 2019. Resolution of a dependency and neglect case took on average:

- 175 days in 2015;
- 178 days in 2016;
- 257 days in 2017;
- 308 days in 2018; and
- 310 days in 2019.

The General Assembly established a six-month target to resolve appeals in relinquishment, adoption, and dependency and neglect cases.<sup>2</sup> The Workgroup determined this six-month target for Court of Appeals cases applied from when a party initiated the appeal (by filing the notice of appeal) to the date the Court of Appeals issued an opinion in the case. Because the Court of Appeals and the Colorado Supreme Court were not meeting this target, Chief Justice Nancy Rice appointed a Child Welfare Appeals Workgroup (the Workgroup) in April 2018 to “study, develop, and recommend to the Supreme Court practices, policies, and procedures to implement

---

<sup>2</sup> See § 19-1-109(3), C.R.S. 2020 (“A workgroup to consider necessary changes to practices, rules, and statutes in order to ensure that appeals in cases concerning relinquishment, adoption, and dependency and neglect be resolved within six months after being filed shall be established. The workgroup shall be known as the child welfare appeals workgroup and shall be created in the state judicial department.”).

[statutory] policy goals . . . and to improve the quality of appellate litigation and court handling of appeals in relinquishment, adoption, and dependency and neglect cases.”<sup>3</sup> Through this Workgroup, the Chief Justice invited attorney practitioners to help evaluate and recommend reforming the procedures the appellate courts use to decide appeals involving child welfare cases.

Appellate delay in child welfare cases is a complex issue that has existed for decades. But this reached a crisis point in recent years, stemming in part from a set of reforms instituted in 2016. Although these reforms led to significant improvements in the child welfare system, they also set off a perfect storm of events that contributed to child welfare cases taking longer to resolve on appeal. For example, in 2016:

- The Colorado Supreme Court repealed and reenacted Colorado Appellate Rule (C.A.R.) 3.4. Traditional briefing timelines and the need to obtain a complete record under the reenacted rule resulted in additional time to resolve an appeal.
- The Colorado legislature created the Office of Respondent Parents’ Counsel to “improve the quality of legal representation for parents involved in dependency and neglect proceedings and who often do

---

<sup>3</sup> See Appendix for a copy of the Chief Justice Charge Establishing Child Welfare Appeals Workgroup.

not have the financial means to afford legal representation.”<sup>4</sup> The Court of Appeals now sees more child welfare cases and more complex issues being raised on appeal. This resulted in an increasing backlog of these cases.

- The federal Bureau of Indian Affairs (BIA) issued new rules and guidelines to promote the uniform application of the federal Indian Child Welfare Act (ICWA) by state courts.<sup>5</sup> Colorado courts and local departments of human and social services largely did not comply with ICWA. To address the compliance problem, the Court of Appeals established an ICWA Division pilot program between 2018 and 2019. The goal of this program was to prevent overall delay in permanency for children by remanding a case to cure defects in ICWA compliance instead of reversing a final judgment for noncompliance. Through this program, the Court of Appeals issued remands in seventy-three cases. Noncompliance with ICWA contributed to significant appellate delay in these cases and others due to the time needed for Court of Appeals staff attorneys to address compliance issues and for juvenile courts to come into compliance.

---

<sup>4</sup> § 13-92-101(2), C.R.S. 2020.

<sup>5</sup> 25 U.S.C. §§ 1901-1963 (2018); *see also* 25 C.F.R. § § 23 (2019), Executive Summary, p. 1.



The Workgroup also examined delays at each stage of juvenile court and appellate proceedings to discover opportunities for improvement. The Workgroup assessed the role of incomplete juvenile court records and inconsistent quality of appellate briefing in contributing to appellate delay. The Workgroup developed recommendations to address these delays and the delays occasioned by the reforms.

To improve the quality of appellate litigation, the Workgroup developed recommendations to propagate best practices and expand training of practitioners, judicial officers, and student attorneys. The Workgroup also produced a successful training program on appellate advocacy for juvenile law practitioners that may serve as a model for future annual training.

#### **B. Workgroup Members**

Experientially diverse professionals comprise the twelve-member Workgroup. Members appointed for two-year terms include:

- *Honorable Richard L. Gabriel.* Justice Gabriel serves as the Colorado Supreme Court's liaison to the Workgroup.
- *Honorable David M. Furman (chair).* Judge Furman serves on the Colorado Court of Appeals.
- *Polly Brock.* Ms. Brock serves as the Clerk of Court and Court Executive for the Colorado Court of Appeals.

- *Sheri Danz*. Ms. Danz serves as Deputy Director of the Colorado Office of the Child’s Representative.
- *Honorable Katherine R. Delgado*. Judge Delgado serves in the Seventeenth Judicial District.
- *Laura Eibsen*. Ms. Eibsen serves as an Assistant City Attorney in the Denver City Attorney’s Office and represents the Colorado County Attorneys Association.
- *Korey Elger*. Ms. Elger serves as the Permanency Manager of the Division of Child Welfare at the Colorado Department of Human Services.
- *Ruchi Kapoor*. Ms. Kapoor served as the Appellate Director of the Office of Respondent Parents’ Counsel from 2016 to 2020.
- *Honorable Ann Gail Meinster*. Judge Meinster serves as the presiding juvenile court judge in the 1st Judicial District.
- *Gretchen Russo*. Ms. Russo serves as the Judicial and Legislative Administrator for the Colorado Department of Human Services.
- *Shelden Spotted Elk*. Mr. Spotted Elk served as the Director for Indian Child Welfare Programs at Casey Family Programs until 2021.
- *Jack Trope*. Mr. Trope is a Senior Director for Indian Child Welfare Programs at Casey Family Programs.

- *Alison Young*. Ms. Young served as Colorado’s Court Improvement Program Coordinator until 2020.

Each stakeholder provided a respected voice, ensuring accurate and balanced recommendations.

### **C. Methodology**

The Workgroup divided itself into five subcommittees: (1) a practitioner subcommittee; (2) a judicial officer subcommittee; (3) a records subcommittee; (4) an ICWA subcommittee; and (5) a subcommittee to ensure consistency of the Workgroup’s recommendations with federal requirements. The Workgroup met regularly in these subcommittees and as a full committee to review data, determine the causes of appellate delay at each stage of a Court of Appeals case, and develop recommendations. The Workgroup, through its subcommittees, studied data and reports from Court of Appeals staff attorneys and the Court of Appeals Clerk of Court to identify the average time a relinquishment, adoption, or dependency and neglect case took in the Court of Appeals. The Workgroup assumed that expediting timelines at each stage of a case was important because even small time periods can add up to a missed holiday, an entire summer break, or half of a school year. These delays are magnified for a child.

#### **D. Outcomes and Achievements**

To date, the Workgroup has achieved or prompted these outcomes that reduced delay in child welfare appeals:

- ✓ **SERVICE OF ICWA REMAND ORDERS:** Members of the Workgroup alerted the Court of Appeals that some cases languished because parties did not timely request hearings on remand. The Court of Appeals now serves juvenile court judicial officers with copies of all ICWA remand orders.
- ✓ **ELECTRONIC FILING:** The judicial branch began implementation of electronic filing in juvenile cases in April 2020, with expected completion in late 2021.
- ✓ **TRAINING:** The Workgroup developed and presented an appellate advocacy training for attorneys in child welfare cases.
- ✓ **EXTENSIONS:** The Court of Appeals now applies the limits in C.A.R. 3.4 to extensions for filing briefs in adoption cases.
- ✓ **BACKLOG:** The Court of Appeals reduced a backlog of dependency and neglect cases by implementing two temporary measures: (1) a special dependency and neglect division recommended by Workgroup chair Judge Furman; and (2) direct assignment of some dependency and neglect cases to divisions.

## E. Recommendations

The Workgroup makes the following recommendations to address identified sources of delay and improve the quality of appellate litigation and court handling of appeals in child welfare cases.

### ICWA Compliance

- **RECOMMENDATION #1:** All stakeholders in the juvenile case ensure that parents and relatives are asked about American Indian and Alaskan Native heritage, that notices are sent to all required tribes, that these notices are accurate and complete, and that all notices and responses are immediately filed in the juvenile court case.
- **RECOMMENDATION #2:** All participants and the juvenile courts ensure that ICWA inquiries are made at every child custody proceeding.
- **RECOMMENDATION #3:** Appellate counsel consider moving for a limited remand when noncompliance with ICWA’s inquiry or notice provisions is identified while the appeal is pending.
- **RECOMMENDATION #4:** The judicial branch train new judges and

### Creating the Record

- **RECOMMENDATION #5:** The judicial branch prioritize statewide improvement of courtroom technology to ensure an accurate record.
- **RECOMMENDATION #6:** The judicial branch provide training to court reporters and transcribers about terminology and acronyms used in juvenile court cases.
- **RECOMMENDATION #7:** The judicial branch create a “cheat sheet” for those transcribing hearings for juvenile appeals. This sheet should include commonly used acronyms and phrases used in juvenile court, so transcribers better understand the proceedings, resulting in more accurate transcripts with fewer “inaudible” notations.

### Advisement

- **RECOMMENDATION #8:** The Office of Respondent Parents’ Counsel ensure wider distribution and application of the Office of Respondent Parents Counsel training and policies for advisement of parents about their right to appeal and the appellate process.

The Record on Appeal

- **RECOMMENDATION # 9:** All attorneys of record on the case review the electronically filed record within seven days of receipt of the record to ensure that all transcripts and filings are included. Prompt filing of a motion to supplement the record can minimize delay in the briefing schedule.
- **RECOMMENDATION # 10:** All appellate attorneys on a case collaborate and communicate regarding perceived problems with the record. Many motions to settle the record, for example, can be resolved through C.A.R. 10(e) statements of the evidence.
- **RECOMMENDATION # 11:** When a party determines an appellate record is incomplete, the party file a motion to complete the record and promptly contact the juvenile court to allow the court to promptly prepare the record while the Court of Appeals reviews and rules on the motion.

Improving Appellate Litigation

- **RECOMMENDATION # 12:** The judicial branch create instructions, forms, and samples for appellate briefs and filings submitted under C.A.R. 3.4.
- **RECOMMENDATION # 13:** The Workgroup provide annual live-streamed and recorded training on appellate advocacy for judicial officers, trial attorneys, and appellate attorneys in child welfare cases about issue preservation, standards of review, and standards of reversal governing child welfare cases. For appellate attorneys, include training on the brief requirements under the Colorado Appellate Rules. Provide webinars or podcasts to improve access.
- **RECOMMENDATION # 14:** The Colorado Supreme Court modify C.R.C.P. 205.7(2)(a)(i) to permit law student externs to appear and participate in any civil proceeding before the Colorado Court of Appeals and Colorado Supreme Court.

Looking Ahead

- **RECOMMENDATION # 15:** The judicial branch prioritize obtaining additional resources to meet the increasing demands of this case class.
- **RECOMMENDATION # 16:** The Chief Justice authorize the Workgroup for an additional two years to monitor the implementation and results of these recommendations, provide annual training, and study additional areas for improvement.

The Workgroup submits this report to the Colorado Supreme Court. In this report, we identify sources of delay and recommend solutions in two areas: (1) significant reforms, which brought about broad improvements to child welfare practices but also produced delays in child welfare appeals; and (2) process delays at each stage of a child welfare case. We also identify opportunities to improve appellate practice and court procedures in child welfare cases. Throughout this report, we recommend specific practices, policies, and procedures in the context of how a case moves through the juvenile court and the Court of Appeals and identify ways to enhance appellate practice in these cases.

## II. SIGNIFICANT REFORMS THAT CONTRIBUTED TO DELAY

### A. **Revised Colorado Appellate Rule 3.4**

In 2016, the Colorado Supreme Court repealed C.A.R. 3.4 for a new version. The prior version of this rule required appellants to file a Petition on Appeal within an expedited timeframe. But this meant that parents' counsel often had to file a petition on appeal before a court reporter had time to prepare transcripts of hearings relevant to the order or judgment being appealed.<sup>6</sup> These Petitions did not require substantive briefing of issues, the abbreviated records available sometimes included unedited transcripts of only a few hearings, and the format for this Petition differed significantly from the format required for a traditional appellate brief. This hampered the ability of appellate counsel in dependency and neglect cases to advance meaningful appellate arguments.<sup>7</sup>

The new version of C.A.R. 3.4 requires traditional briefing in lieu of a Petition on Appeal, a complete record in lieu of an abbreviated transcript, and documentation of juvenile court compliance with ICWA (the first such requirement in the United States). But these improvements contributed to appellate delay in two ways. First, the new rule doubled the time for the appellant to submit a complete record — an increase of twenty-one days.<sup>8</sup>

---

<sup>6</sup> Respondent Parents Counsel Work Group (2014), p. 33.

<sup>7</sup> *Id.*

<sup>8</sup> C.A.R. 3.4(e)(1).



(And in fiscal year 2020, the Court of Appeals ruled on eighty-nine requests for extension of time to file the record in dependency and neglect cases, which was about 30% of all dependency and neglect cases.) Second, while the old rule allowed the appellant to file the Petition before the record was filed, the new rule required the appellant to file an opening brief within twenty-one days after the record was filed.<sup>9</sup>

The new appellate rule eliminated the requirement that a notice of appeal demonstrate that the appellant had authorized the appeal. This change, combined with new procedures regarding the appointment of appellate counsel detailed below, may have contributed to delay because the Court of Appeals lacked resources to match staffing to the increased number of appeals.

#### **B. Creation of the Office of Respondent Parents' Counsel**

In 2016, the Colorado legislature created the Office of Respondent Parents' Counsel to enhance the provision of parents' counsel services in Colorado.<sup>10</sup> The structure of this office arose from recommendations by the Respondent Parents' Counsel Work Group, which noted the inadequacies of Colorado's efforts over the past decade to support and enhance the quality of parent representation in dependency and neglect cases.<sup>11</sup> The legislature

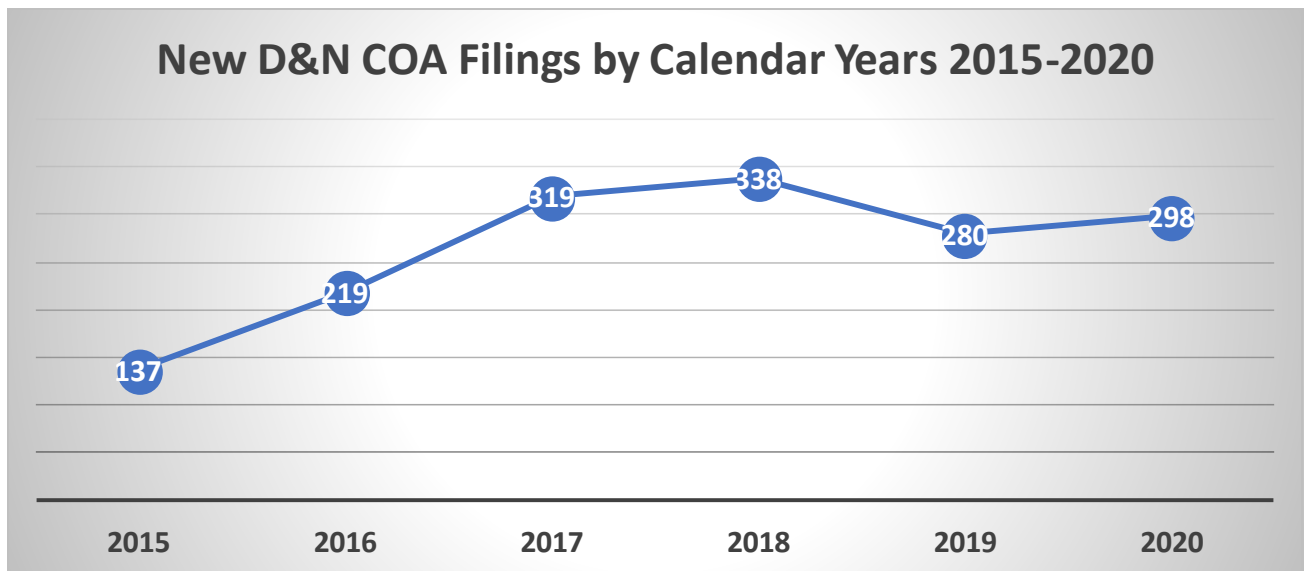
---

<sup>9</sup> C.A.R. 3.4(f)(1).

<sup>10</sup> §13-92-101.

<sup>11</sup> Respondent Parents' Counsel Work Group, pp. 12-13.

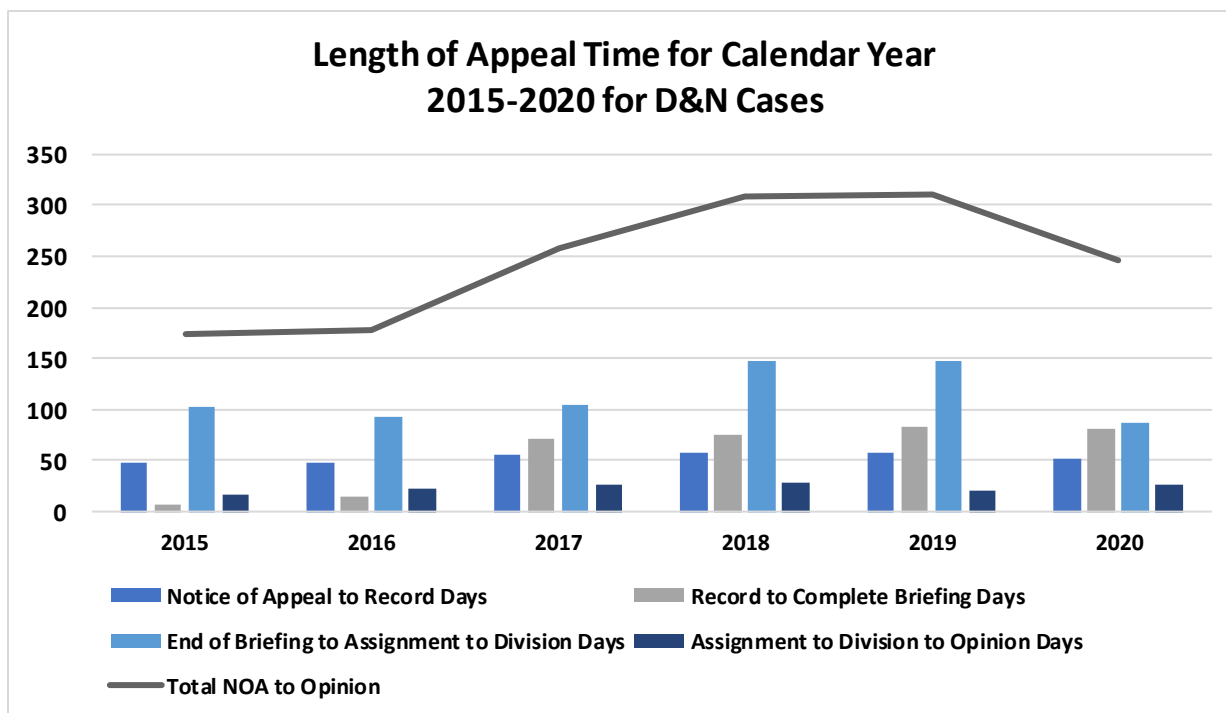
charged the new office with ensuring the provision and availability of high-quality legal representation for indigent parents involved in dependency and neglect proceedings.<sup>12</sup> After the creation of this office, the number of dependency and neglect cases appealed increased dramatically from 137 in 2015 to over 300 per year in 2017 and 2018.



This correlated with an increase in the time the Court of Appeals took to resolve a dependency and neglect case:

---

<sup>12</sup> §13-92-102(2).



Calendar Year	Notice of Appeal to Record	Record to Complete Briefing	End of Briefing to Assignment to Division	Assignment to Division to Opinion		Total NOA to Opinion
	Days	Days	Days	Days	Cases	
2015	48	7	102	17	125	175
2016	49	14	93	22	126	178
2017	56	71	104	26	174	257
2018	57	76	148	28	276	308
2019	57	84	148	22	337	310
2020	53	82	86	26	281	247

Case load for Court of Appeals staff attorneys who specialize in juvenile law nearly doubled in 2016 and continued to rise through 2018. Besides the increased filings, traditional briefing resulted in lengthier and more complex issues being raised on appeal. This required the staff attorneys and judges to

spend additional time addressing these issues. These factors combined to create a significant backlog of cases at the Court of Appeals.

### **C. Compliance with the Indian Child Welfare Act**

#### **1. Bureau of Indian Affairs Regulations and Guidelines**

In 2016, the BIA enacted regulations and guidelines to ensure uniform state compliance with ICWA.<sup>13</sup> These regulations and guidelines contained updated definitions, inquiry requirements, and provisions for notice to Tribes when a state court has reason to know that a child is an Indian child.<sup>14</sup>

Appellate briefs in dependency and neglect cases revealed poor ICWA compliance in the juvenile courts. For example, caseworkers and attorneys did not ask parents or family members about American Indian or Alaskan Native ancestry, local departments of human services did not include ICWA documentation in dependency and neglect petitions,<sup>15</sup> and courts did not consistently inquire of the parties about their ancestry and whether proper notice was given to all identified tribes.

---

<sup>13</sup> 25 C.F.R. § 23 (2019); Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act Proceedings, 81 Fed. Reg. 96,476 (Dec. 30, 2016), <https://perma.cc/3TCH-8HQM> (2016 Guidelines); *see also* Notice of Guidelines, 81 Fed. Reg. 96,476 (Dec. 30, 2016), 778, 38, 779 (June 14, 2016).

<sup>14</sup> 2016 Guidelines, pp. 10-12, 30-38. *Id.*

<sup>15</sup> The Administrative Review Division of the Colorado Department of Human Services estimated that in 2016, less than twenty percent of all dependency and neglect cases complied with ICWA. *See* Statewide Quarterly Results for Administrative Review, 7/1/2015-6/30/2016, §1804.

**RECOMMENDATION #1: All stakeholders in the juvenile case ensure that parents and relatives are asked about American Indian and Alaskan Native heritage, that notices are sent to all required tribes, that these notices are accurate and complete, and that all notices and responses are immediately filed in the juvenile court case.**

**RECOMMENDATION #2: All participants and the juvenile court ensure that ICWA inquiries are made at every child custody proceeding.**

In 2019, the Colorado legislature amended Colorado's ICWA implementing statute to conform to federal requirements.

## **2. The Special Indian Child Welfare Act Division**

In 2018 and 2019, the Court of Appeals piloted a special ICWA Division because of insufficient ICWA compliance in Colorado's juvenile courts.<sup>16</sup> The ICWA Division was a temporary special division of three judges and two alternates who worked with staff attorneys who specialize in juvenile law to screen dependency and neglect cases for compliance with ICWA<sup>17</sup> and Colorado's ICWA-implementing legislation<sup>18</sup> before a decision on the merits of an appeal. The aim was to prevent overall delay in permanency for children by

---

<sup>16</sup> Judges Furman, Ashby, and Welling served on this division, with Chief Judges Loeb and Bernard and Judges Román and Dunn serving as alternates.

<sup>17</sup> 25 U.S.C. §§ § 1901-1963 (2012).

<sup>18</sup> § 19-1-126, C.R.S. 2020.

remanding a case for ICWA compliance instead of reversing a final judgment for noncompliance. Remands prevented the unnecessary disruption of final judgments in cases determined not to involve an Indian child.

ICWA noncompliance contributed to appellate delay in these ways:

1. Staff attorneys and judges spent significant time reviewing records for ICWA compliance, drafting remand orders, tracking cases on remand, and addressing ICWA compliance issues raised on appeal.
2. The ICWA Division remanded seventy-three cases during its two years of service.
3. Tribal response to ICWA inquiries was slow, apparently based on tribal resource shortages to determine whether a child was enrolled or eligible for enrolment.

**RECOMMENDATION #3: Appellate counsel consider moving for a limited remand when noncompliance with ICWA's inquiry or notice provisions is identified while the appeal is pending.**

In 2017-2018, ICWA remands took on average over sixteen weeks to resolve. Sometimes, it took over a year to resolve the noncompliance issues. After cases were recertified, supplementing the appellate record and related briefing took about three more weeks.

Based on a recommendation from the Workgroup, the Court of Appeals clerk's office began serving remand orders from the ICWA Division on the juvenile court judicial officer in addition to counsel of record and the trial court clerk's office. This practice eliminated delay caused when the juvenile court did not learn of the remand until counsel brought it to the court's attention.

✓ SERVICE OF ICWA REMAND ORDERS: **The Court of Appeals now serves juvenile court judicial officers with copies of all ICWA remand orders.**

Members of the ICWA division and juvenile law practitioners provided training to district courts, juvenile courts, city/county attorneys, GALs, and parents' counsel on how to comply with Colorado's ICWA-implementing legislation to prevent later delays in permanency for children in Colorado.

**RECOMMENDATION #4: The judicial branch train new judges and court staff on ICWA compliance.**

### III. PROCESS DELAYS IN CHILD WELFARE CASES

To tackle appellate delay, the Workgroup focused on each stage of the appellate litigation process at the Court of Appeals. After identifying what delay existed at each stage and the source for delay, the Workgroup formulated its recommendations. We turn to this next, addressing what happens at each stage, the problems contributing to delay, and recommended solutions.

#### **A. Proceedings in the Juvenile Court**

Most dependency and neglect cases involve appeals of judgments terminating parental rights. Because a parent's fundamental liberty interest is at stake, the United States Supreme Court held in *Santosky v. Kramer*, 455 U.S. 745, 757 (1982), that parents must be afforded fundamentally fair procedures in termination of parental rights proceedings. Adherence to fundamentally fair procedures also serves children's interest in permanency; failing to do so could cause remand or reversal of a case, and may lead to a new termination hearing and appeal. Finality of decisions is of paramount importance to children who, by the time a termination proceeding reaches trial, have usually been subjected to a great deal of emotional trauma. *See People in Interest of C.A.K.*, 652 P.2d 603, 608 (Colo. 1982).

Two types of judicial officers preside over child welfare cases in the juvenile courts: juvenile court magistrates and juvenile court judges.



Magistrates are appointed by the juvenile court to hear any case or matter under the juvenile court's jurisdiction, unless a jury trial is requested or a party objects to the magistrate's jurisdiction.<sup>19</sup> Magistrates generally preside over high volume dockets and hold hearings that involve temporary orders not appealed.

Many hearings in dependency and neglect cases are recorded through a For The Record (FTR) recording system. A transcriber, rather than a court reporter, will listen to an FTR recording to create the record. Many juvenile courts try to have either a live court reporter or a virtual court reporter for contested adjudication and termination hearings, but these reporters are not always available, and these proceedings also may be recorded by an FTR recorder. The Court of Appeals receives requests for extension of time to file a record because a shortage of court reporters at both the state and local levels has overloaded reporters and transcribers.

A contested hearing in a juvenile case may involve the presentation of evidence, such as witnesses testifying under oath subject to cross-examination. At the conclusion of the hearing, the judicial officer makes findings of fact based on the credibility of the evidence. Based on these findings, the judicial officer enters orders or judgments.

---

<sup>19</sup> § § 19-1-108 (1) and (3)(a.5), C.R.S. 2020.

A party who believes that an error occurred may appeal a final order or judgment to the Court of Appeals.<sup>20</sup> But court precedent generally requires that party to have first brought the error to the juvenile court's attention.<sup>21</sup> Appellate courts do not hold evidentiary hearings; instead, they decide whether the juvenile court committed error and, if so, whether the error means the judgment should be reversed. The appellate court bases its decision on the evidence and objections in the record on appeal. A clear record thus allows the appellate court fairly to consider the issues raised on appeal — without having to remand the case for further proceedings or ruling on an issue based on a limited or flawed record. But a clear record is not always readily available.

If there is an error in starting an FTR recording or a problem with aging FTR equipment, the transcriber may not be able to provide an accurate transcript. And because of the specialized language and use of acronyms in juvenile cases, an inexperienced transcriber or reporter may use the wrong word or simply may not be able to understand what is being said. Having excellent courtroom and case management technology will greatly improve the quality and the timeliness of the juvenile court record.

---

<sup>20</sup> § 19-1-109(1).

<sup>21</sup> See, e.g., *People in the Interest of M.B.*, 2020 COA 13, ¶ 33.

**RECOMMENDATION #5: The judicial branch prioritize statewide improvement of courtroom technology to ensure an accurate record.**

**RECOMMENDATION #6: The judicial branch provide training to court reporters and transcribers about terminology and acronyms used in juvenile court cases.**

**RECOMMENDATION #7: The judicial branch create a “cheat sheet” for those transcribing hearings for juvenile appeals. This sheet should include commonly used acronyms and phrases used in juvenile court, so transcribers better understand the proceedings, resulting in more accurate transcripts with fewer “inaudible” notations.**

## **B. Proceedings in the Court of Appeals**

### **1. The judgment being appealed**

The legislature limits the jurisdiction of the Court of Appeals to hearing only final orders and judgments.<sup>22</sup> The legislature has determined that an order terminating or refusing to terminate parental rights constitutes a final, appealable order.<sup>23</sup> And an order decreeing a child to be dependent or neglected constitutes a final, appealable order after the entry of the dispositional order.<sup>24</sup>

---

<sup>22</sup> § 13-4-102, C.R.S. 2020.

<sup>23</sup> § 19-1-109(2)(b).

<sup>24</sup> § 19-1-109(2)(c).

## 2. Filing the notice of appeal

A party commences an appeal by filing a notice of appeal in the Court of Appeals within twenty-one days after the juvenile court enters a final judgment.<sup>25</sup>

The Workgroup heard anecdotal stories that appeals were filed on behalf of some parents without understanding if the parent wanted to proceed with an appeal or without locating the client. This suggested that with limited resources, the Court of Appeals was deciding more dependency and neglect cases than necessary.

The Office of Respondent Parents' Counsel has investigators available to help counsel locate a missing parent to determine whether the parent wishes to appeal an adverse judgment. If counsel cannot locate a parent whose last clearly articulated position expressed an interest in appealing, counsel must appeal the termination of parental rights judgment.<sup>26</sup>

**RECOMMENDATION # 8: The Office of Respondent Parents' Counsel ensure wider distribution and application of Office of Respondent Parents Counsel training and policies for advisement of parents about their right to appeal and the appellate process.**

---

<sup>25</sup> C.A.R. 3.4(b)(1).

<sup>26</sup> Colorado Chief Justice Directive 16-02, Court Appointments Through the Office of Respondent Parents' Counsel, §IV(e) (amended Mar. 2021).

### 3. Designation of transcripts

The juvenile court in a child welfare case has forty-two days to submit a complete record.<sup>27</sup> The party appealing a case must designate the required transcripts.<sup>28</sup> Because appellate counsel generally was not trial counsel, locating all hearing dates and methods of recording may be cumbersome. The Workgroup learned that until 2020, about 30% of dependency and neglect cases required an extension to prepare the record, and another 23% required supplementation of the record with a transcript that was missing or had not been designated. Understanding the juvenile court's register of actions and properly designating all required hearings can be time consuming and complex. Often hearings necessary for appellate review are not initially designated. When this happens, counsel must file a motion to supplement the record.<sup>29</sup> Other times, recordings or transcripts of hearings may be missing from the record. When this happens, counsel must file a motion to settle the record.<sup>30</sup> Both settling and supplementing the record create delay. We discuss how these motions contribute to appellate delay later in this Report.

---

<sup>27</sup> C.A.R. 3.4(e)(1).

<sup>28</sup> C.A.R. 3.4(b)(1), (d)(2), and (d)(3); C.A.R. 10(d).

<sup>29</sup> See C.A.R. 10(f).

<sup>30</sup> See C.A.R. 10(g).

#### **4. Transmitting the appellate record**

Juvenile courts transmit electronic records to the appellate court by placing them in a shared transmission folder. The appellate court clerk reviews the complete record and transmits all electronic records to counsel via a secured transmission link. Any record item that cannot be uploaded to the E-file system is mailed to the appellate court, including many exhibits. Counsel must arrange to pick up physical items from the appellate court.

The Information Technology Services division of the State Court Administrator's Office has helped to streamline this process by prioritizing implementation of statewide electronic filing of records in relinquishment, adoption, and dependency and neglect cases through the Colorado Courts E-Filing system. The judicial branch began the initial stages of implementing electronic filing in trial court juvenile cases in April 2020 by allowing the trial courts to upload documents and serve litigants electronically. The branch hopes to expand electronic filing in juvenile cases to attorneys and agencies by mid to third quarter 2021. (The appellate courts have accepted E-filed juvenile appeals since 2014.) E-filing also allows the appellate courts to open documents in the juvenile court record and screen cases more accurately.

Implementing electronic delivery of most of the appellate record to all counsel shortened the appellate process by approximately two weeks. Records

are now available for download on demand, and the briefing schedule does not need to account for mail delays.

✓ **ELECTRONIC FILING: The judicial branch began implementation of electronic filing of juvenile cases in April 2020, with expected completion in late 2021.**

#### **5. The appellate record pilot program**

The Workgroup learned that one stumbling block for appellants' counsel was that they were not identifying all necessary hearing dates to allow for a complete designation of hearings and trials when an appeal is filed. As a result, many motions to supplement the record are filed in this case class. To test a possible solution, the Workgroup asked four juvenile courts to transcribe every hearing in appealed dependency and neglect cases at state expense without a designation of record. The Court received about twenty-eight records through this program. But many records were still missing some exhibits or transcribed events. Thus, while this pilot project appeared to benefit appellants' counsel by eliminating the time-consuming task of designating the appellate record, it did not significantly decrease the number of cases that required a supplemental record. As a result, the Workgroup concluded that universal transcription of dependency and neglect hearings would not reduce appellate delay.

## 6. Jurisdictional screening and motions

After a party files a notice of appeal, the case moves through a few preliminary stages.

The Clerk of the Court supervises the Court of Appeals clerk's office employees and Motions and Jurisdiction Counsel.<sup>31</sup>

The court employs three staff attorneys as Motions and Jurisdiction Counsel. These attorneys screen new cases for jurisdictional issues,<sup>32</sup> review and process motions, and may issue orders directing the parties to address jurisdictional or other questions. A staff attorney who serves as Counsel to the Chief Judge may review and present emergency motions such as stays or injunctions. Motions and Jurisdiction Counsel may present more complex motions to the chief judge or to the Motions Division for resolution. The Motions Division is a panel of three judges who decide dispositive motions; its membership rotates monthly.

---

<sup>31</sup> The Clerk's office

1. reviews and routes as appropriate all pleadings and filings;
2. issues out all orders and notices;
3. processes referring court records, including review, notice of filing, provides appropriate access to litigants and court staff, and returns records at mandate;
4. calendars and updates cases and case status;
5. issues opinions;
6. mandates cases; and
7. handles all phone calls and inquiries on case status.

<sup>32</sup> See § 19-1-109 (establishing appellate jurisdiction in juvenile law cases).



In dependency and neglect cases during 2020, the Court of Appeals ruled on:

- 425 orders for extension of time to file a record, supplemental record, or brief;
- 595 non-extension orders (motions to dismiss, petitions to rehear a case, stays, supplemental motions, etc.); and
- 66 orders to show cause for jurisdictional issues.

The Workgroup learned that between July 2016 and May 2019 approximately 35% of the records filed in appeals of dependency and neglect cases were incomplete. For many reasons, including improvements in the handling of designation of records and training with the juvenile bar, the number of supplemental record requests in this case class has now decreased to about 27% in fiscal years 2019 and 2020. As noted, when the Court of Appeals receives an incomplete record, a party must file a motion to supplement the record or a motion to settle the record. Both motions cause significant delay. The Workgroup recommends that all counsel confirm that the record is complete and collaborate to resolve perceived problems with the record when it is not complete. This recommendation may be supported by training practitioners on C.A.R. 10(e) to settle the record.

**RECOMMENDATION #9: All attorneys of record on the case review the electronically filed record within seven days of receipt of the record to ensure that all transcripts and filings are included. Prompt filing of a motion to supplement the record can minimize delay in the briefing schedule.**

**RECOMMENDATION #10: All appellate attorneys on a case collaborate and communicate regarding perceived problems with the record. Many motions to settle the record, for example, can be resolved through C.A.R. 10(e) statements of the evidence.**

*a) Motions to supplement the record*

A party may file a motion to supplement the record after the record on appeal is filed “[i]f any material part of the trial court record is omitted or missing from the record by error or accident or is misstated therein.”<sup>33</sup> For appeals involving juvenile courts in which a motion to supplement the record is filed, the case is delayed on average twenty-eight to forty-nine days (not including any delay caused by resetting the briefing schedule after the supplemental record is filed). Thus, decreasing the number of records that require supplementation will improve the overall age of dependency and neglect appeals.

---

<sup>33</sup> C.A.R. 10(f)(2).

**RECOMMENDATION #11: When a party determines an appellate record is incomplete, the party (1) file a motion to supplement the record and (2) simultaneously contact the juvenile court, allowing the supplemental record to be prepared while the Court of Appeals reviews and rules on the motion.**

Technology improvements will help this issue in two ways. First, improving courtroom technology will prevent issues with the accuracy and completeness of records and allow for more timely completion of transcripts. Second, improving the case management and E-filing system so that (1) counsel may easily identify and designate transcripts and (2) trial court appeals clerks can identify all exhibits will decrease the number of supplemental records filed.

***b) Motions to settle the record***

Motions to settle the record are more complicated and rarer, but may cause lengthier delays than motions to supplement the record. “If any difference arises as to whether the record truly discloses what occurred in the juvenile court or a portion of the record is not in the possession of the juvenile court, the difference must be submitted to and settled by the juvenile court.”<sup>34</sup> An order granting a motion to settle the record will cause a stay of the appeal pending resolution in the juvenile court. Great strides have been made by

---

<sup>34</sup> C.A.R. 10(g).

juvenile courts, and far fewer of these issues now occur than when the Workgroup started its review. In fiscal year 2020, the court received nine motions to settle the record in dependency and neglect cases, and no delays over thirty-five days occurred. But it is imperative that the judicial branch continue to work to improve courtroom technology that allows for accurate and timely recording of hearings and trials.

When dealing with issues surrounding juvenile appellate records, everyone involved should remember that it is the obligation of all parties and the courts to ensure the timely resolution of juvenile appeals. A significant delay can be reduced with training, early case review, and collaboration.

## **7. Filing of briefs**

### **a) *Opening Briefs***

The appellant is the party appealing the case. The appellant's opening brief presents written arguments to persuade the judges that the case should be reversed or remanded for a new trial or proceeding. The opening brief must include statements identifying the nature of the case; the relevant facts and procedural history; the ruling, judgment, or order presented for review; preservation and standard of review; and ICWA compliance — where and when the juvenile court made inquiries to determine whether the child is or could be an Indian child.

**b) Answer Briefs**

The appellee is the party responding to the appeal. The appellee's answer brief presents written arguments to persuade the judges that the case should not be reversed or remanded for a new trial or proceeding. The answer brief must include statements addressing whether the appellee agrees with the appellant's statements about preservation, standard of review, and ICWA compliance.

**c) Potential sources of delay related to briefing**

**(1) Extensions to file briefs in dependency and neglect cases**

Counsel may need additional time to file the briefs in dependency and neglect cases. Counsel may request one extension of time of no more than seven days.<sup>35</sup> Although virtually every case in fiscal year 2020 included at least one such extension, the Workgroup determined these requests were not a significant source of delay overall. But the Workgroup learned that the Office of the Child's Representative, the Office of Respondent Parents' Counsel, and city/county attorneys' offices appreciate feedback from the Court of Appeals when individual attorneys request an excessive number of extensions to assist in their oversight of attorney workload.

---

<sup>35</sup> C.A.R. 3.4 (f)(2).

## (2) Extensions to file briefs in adoption cases

The Workgroup learned that because adoption cases are not expressly covered by C.A.R. 3.4, extensions were granted under general civil case guidelines. In response to the Workgroup's recommendation, the Court of Appeals now applies the dependency and neglect extension guidelines to adoption cases.

✓ **EXTENSIONS: The Court of Appeals now applies the limits in C.A.R. 3.4 to extensions for filing briefs in adoption cases.**

## (3) Brief formatting

Briefs must comply with the appellate brief formatting rules found in the Colorado Appellate Rules.<sup>36</sup> Briefs that do not comply may be stricken and counsel ordered to file a compliant amended brief, adding delay. The Court has improved briefing in civil cases through creation of a complete set of guidelines, instructions, forms and form briefs, and sample briefs. A similar set of materials should be created for this specific case class.

**RECOMMENDATION #12: The judicial branch create instructions, forms, and samples for appellate briefs and filings submitted under C.A.R. 3.4.**

---

<sup>36</sup> See C.A.R. 28, 28.1, and 32.

#### (4) Briefing quality

High quality briefs that succinctly and accurately identify the legal and factual issues, relevant law, and applicable standards of review and reversal support expedited appellate decisions in all cases.

To support practitioners, members of the Workgroup held an appellate advocacy training in March 2019 for county attorneys, respondent parents' counsel, guardians ad litem, and judicial officers. The training included sessions on appellate rules and procedures, preserving issues for review, standards of review, standards of reversal, ICWA, appellate writing, oral argument, trending topics, and ethical issues.<sup>37</sup> Feedback about the training was positive, with 79% of respondents rating it excellent and 21% rating it good. Attendees said they appreciated that the training was highly relevant, covered the “nuts and bolts” of appeals, and engaged superb presenters.

✓ **TRAINING: The Workgroup developed and presented an appellate advocacy training for attorneys in child welfare cases.**

Since the training, staff attorneys at the Court of Appeals have noted an improvement in appellate briefing, and legal practitioners continue to request similar trainings. The Workgroup recommends similar trainings in the future.

---

<sup>37</sup> The training materials are available on the Office of the Child's Representative website. See <https://perma.cc/8GY5-WFM4>.

**RECOMMENDATION #13: The Workgroup provide annual live-streamed and recorded training on appellate advocacy for judicial officers, trial attorneys, and appellate attorneys in child welfare cases about issue preservation, standards of review, and standards of reversal governing child welfare cases. For appellate attorneys, include training on the brief requirements under the Colorado Appellate Rules. Provide webinars or podcasts to improve access.**

### **C. Case Assignments**

#### **1. Priority case class**

The legislature has mandated that appeals of all child welfare cases “shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.”<sup>38</sup> The Workgroup assumes this statute applies to the Court of Appeals and Colorado Supreme Court. The Court of Appeals expedites these cases on its docket.

#### **2. Case assignments to staff attorneys**

After a case has been checked to ensure the Court of Appeals has jurisdiction to hear the appeal, any motions have been ruled on, and all the briefs have been filed, the case is ready to be assigned. The Chief Staff Attorney and the Deputy Chief Staff Attorneys review all cases ready for assignment and determine if they will be assigned directly to a division or to a staff attorney.

---

<sup>38</sup> § 19-1-109(1).



Almost all dependency and neglect cases are assigned to staff attorneys who are subject matter experts in juvenile law.<sup>39</sup> Once assigned a case, the staff attorney reviews the briefs and reads the record, conducts research, and prepares a memorandum, which resembles a draft opinion, about the case. The case is then assigned to a division. In fiscal year 2020, staff attorneys drafted almost 300 memorandums in this case class.<sup>40</sup>

**RECOMMENDATION #15: The judicial branch prioritize obtaining additional resources to meet the increasing demands of this case class.**

### **3. Case assignments to judges**

The Court of Appeals consists of twenty-two judges. Each judge hires two chamber staff, usually appellate law clerks, although a judge may hire one administrative assistant instead of an appellate law clerk.<sup>41</sup>

Judges sit in divisions to decide cases. A division is a three-judge panel that serves together for four months.<sup>42</sup> All the divisions function independently from each other, just as federal circuits function in the federal system.

---

<sup>39</sup> As discussed below, the Court of Appeals began assigning some dependency and neglect cases directly to judges to reduce its backlog in 2019. This practice remains available as needed. *See* part III.C.3.b.

<sup>40</sup> The Court of Appeals' fiscal year 2020 began July 1, 2019, and ended June 30, 2020.

<sup>41</sup> Senior judges also work for the court. They sit on cases with the chief judge or substitute for other judges who are recused or otherwise unable to participate on a case. *See* Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

<sup>42</sup> § 13-4-106, C.R.S.

Each division meets about every two weeks to decide orally argued and not orally argued (waived) cases, which are assigned to divisions by the clerk's office. The clerk's office normally assigns seven cases to each division every other week; this includes one case drafted by a staff attorney and six cases assigned directly to judges. Several cases are normally set for oral argument — about 20% of Court of Appeals cases are orally argued. The clerk's office also assigns each division additional staff attorney cases per month (generally three per week, three weeks per month). Each division normally decides these cases on a separate weekly docket.

The most senior judge on the division serves as the presiding judge. Seniority is based on the time the judge has served on the court. After cases are assigned to the division, the presiding judge assigns presumed authorship of opinions, typically on a random basis.

Once a case is assigned, the judge and his, her, or their clerk will read the parties' briefs filed in the case, pertinent law, and the record; conduct independent research; and prepare a draft opinion. The judge will then send the draft to the other judges on division by Friday of the week before the case is set on the division's docket.

The judges decide staff attorney cases in the same manner described above: reading the briefs, pertinent law, and record; conducting independent

research; and then reviewing, editing, or redrafting the staff attorney's memorandum.

All draft opinions are provisional, as is authorship. At the division conference, judges discuss each case set on the docket that week. The draft may become the majority opinion. But it may represent a dissenting view if the other two judges disagree with it. In that case, one of the remaining two division members will author the majority opinion. It is not uncommon for division members to disagree with at least part of the draft; the initial author judge may then prepare one or more revised drafts to find consensus with the other members of the division.

Although judges recognize the importance of deference to earlier Court of Appeals decisions, a subsequent division may view the law differently and issue a conflicting decision. Conflict among Court of Appeals decisions is one reason the Colorado Supreme Court may review a case.<sup>43</sup>

Each month, besides being responsible for their own assigned opinions, each judge must review the briefs, pertinent law, and record for the four or five cases assigned to the other judges on division and for the six staff attorney cases assigned to the division; conduct independent research; discuss the cases with the other judges on division; author dissenting or concurring

---

<sup>43</sup> C.A.R. 49(a)(3).

opinions, if necessary; read other division members' drafts and final opinions; and review all draft opinions proposed for publication by any division.<sup>44</sup>

Each judge also strives to be informed of recent Colorado Supreme Court and United States Supreme Court opinions.

A prior work study concluded that each judge reads about three thousand pages of material per month. Weekend reading is inevitable, and ten- to twelve-hour workdays are not uncommon.

Thus, the workload of court staff and of each judge is significant. In the fiscal year 2020, the Court of Appeals resolved 2481 cases; this included written opinions and dismissals due to settlement or lack of jurisdiction. The judges of the court issued 1717 opinions, requiring each judge to author about eighty opinions. Part of this workload are child welfare cases; the court issued 364 child welfare opinions and dismissed 29 child welfare appeals.

**a) *The special dependency and neglect division***

To help reduce the backlog in 2019, the Workgroup's chair recommended, and the Court of Appeals established, a temporary special dependency and neglect division. This division, comprised of Chief Judge Bernard, Judge Furman, and Senior Judge Casebolt, resolved thirty-two of the

---

<sup>44</sup> See C.A.R. 35(e).

oldest cases. Because the Court of Appeals issued opinions in these cases, this division ended.

***b) Case assignments directly to divisions***

To help reduce backlog, the Chief Staff Attorney assigned some dependency and neglect cases directly to divisions. Typically, assignment to staff attorneys is preferable due to the staff attorneys' expertise and ability to address these expedited cases more quickly and efficiently. But because of the dramatic increase in the number of appeals in this case class, by mid-2019 most staff attorneys working on dependency and neglect cases had an average case load representing six months' work. Between August 2019 and January 2020, the staff attorneys provided training and consultation to clerks and judges, and some dependency and neglect cases were assigned directly to divisions. This resulted in cutting the case load for staff attorneys in half. This practice remains available as needed when case filings are high.

✓ **BACKLOG: The Court of Appeals reduced a backlog of dependency and neglect cases by implementing two temporary measures: (1) a special dependency and neglect division; and (2) direct assignment of dependency and neglect cases to divisions.**

#### 4. Oral arguments

Attorneys for either side may request oral argument.<sup>45</sup> These requests are routinely granted, although the division may deny such a request. The division also may order a case be orally argued, even though a party did not request oral argument.<sup>46</sup>

Before oral argument, each judge usually formulates questions to ask the attorneys. Sometimes, a division will send pre-argument questions to the attorneys.

The appellate courts consistently aim to make oral arguments more accessible to the public. Both the Court of Appeals and Supreme Court live-stream and archive oral arguments. The link to watch the arguments is accessible from the court's homepage.<sup>47</sup> Video files are available on the court's website going back to December of 2014; audio files are available going back to 2005.

The Workgroup did not study the effect of requests for oral arguments on the time to resolve a child welfare appeal but recommends the issue for future study.

---

<sup>45</sup> C.A.R. 34

<sup>46</sup> C.A.R. 34(a)

<sup>47</sup> [https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Oral\\_Arguments/Index.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Oral_Arguments/Index.cfm).

## **5. Division conferences**

Usually immediately after oral arguments, the division meets in “conference” to discuss the argued and waived cases. If the judges on division reach consensus on a case, they confirm authorship, and the case continues towards announcement, with the authoring judge incorporating suggested edits from the other two judges on division. If the judges do not reach consensus, they may discuss the case again, preferably at the next division conference; these cases may require additional research or record review.

## **6. Cases proposed for publication**

During conference, the division also discusses whether a draft opinion merits publication. A case merits publication when the opinion: (1) lays down a new rule of law, alters or modifies an existing rule, or applies an established rule to novel facts; (2) involves a legal issue of continuing public interest; (3) directs attention to the shortcomings of existing common law or statutes; or (4) resolves an apparent conflict of authority.<sup>48</sup> Cases submitted for publication might take longer because they require more extensive research and editing and are subject to additional review before announcement.

## **7. Opinions announced**

The Court of Appeals announces opinions every Thursday. When the court announces opinions, it provides copies of the opinion to all parties, the

---

<sup>48</sup> C.A.R. 35(e).

trial court or agency, the press, and the public. Opinions selected for official publication are given a public domain citation form and published on the Court's website. The Colorado Bar Association also announces published opinions in the Colorado Lawyer.<sup>49</sup>

#### **8. Petitions for rehearing**

After the Court of Appeals announces an opinion, the parties may petition for a rehearing of their case. Petitions for rehearing must state whether the court misapprehended the law or facts.<sup>50</sup> The clerk's office circulates a petition for rehearing to each division member, who reviews it and makes a recommendation. The division may grant the petition and withdraw the opinion, deny the petition, or deny the petition with minor modifications to the opinion.

The Workgroup did not study the effect of petitions for rehearing on the time to resolve a child welfare appeal but recommends the issue for future study.

#### **9. Petitions for writ of certiorari**

Following an adverse judgment in the Court of Appeals, a party may ask the Colorado Supreme Court to review the decision by filing a petition for writ

---

<sup>49</sup> All opinions of the Colorado Court of Appeals are also available on the Colorado Courts Web Page, at <http://www.courts.state.co.us>.

<sup>50</sup> C.A.R. 40.



of certiorari.<sup>51</sup> In dependency and neglect cases, the petition must be filed within twenty-eight days after the Court of Appeals issues an opinion, if no petition for rehearing is filed.<sup>52</sup> If a petition for rehearing is filed and denied, the party must file the petition for writ of certiorari within fourteen days after the Court of Appeals denies the petition for rehearing.<sup>53</sup>

Whether the Colorado Supreme Court elects to review a case on a writ of certiorari is “a matter of sound judicial discretion,” and the court will only grant certiorari “when there are special and important reasons.”<sup>54</sup> The Supreme Court might grant a petition for writ of certiorari if

- the case presents a novel legal issue not yet determined by the supreme court;
- the Court of Appeals decided a substantive question in a way that might conflict with prior supreme court decisions;
- the decision conflicts with a decision from a different division of the Court of Appeals; or
- the decision “so far departed from the accepted and usual course of judicial proceedings” or sanctioned such procedure by the lower

---

<sup>51</sup> See C.A.R. 51(a)

<sup>52</sup> C.A.R. 52(b)(3)

<sup>53</sup> *Id.*

<sup>54</sup> C.A.R. 49

court as to require the supreme court to exercise its power of supervision.<sup>55</sup>

While the Supreme Court considers these reasons in deciding whether to grant a petition, its discretion to grant is not limited to these considerations.

The respondent may file a cross-petition for writ of certiorari and/or a brief opposing the initial petition.<sup>56</sup> In response, the petitioner may file a brief opposing the cross-petition and/or a reply brief to the respondent's opposition brief.<sup>57</sup>

The Workgroup did not study the effect of petitions for certiorari or the grant of such petitions by the Colorado Supreme Court on the time to resolve a child welfare appeal but recommends the issue for future study.

#### **D. Mandate**

The mandate is issued twenty-nine days after entry of the judgment unless a timely petition for rehearing and/or a petition for certiorari review is filed.<sup>58</sup> The Workgroup did not study whether delay in issuing mandates exists but recommends the issue for future study.

---

<sup>55</sup> See C.A.R. 49

<sup>56</sup> C.A.R. 53(b), (c)

<sup>57</sup> C.A.R. 53(c)(3), (d)

<sup>58</sup> C.A.R. 3.4(m)

#### IV. IMPROVING THE QUALITY OF APPELLATE LITIGATION IN CHILD WELFARE CASES

##### **A. The Student Practice Act**

Affording law students opportunities to appear and participate in proceedings before the Colorado Court of Appeals and Colorado Supreme Court will help train the next generation of appellate attorneys and provide needed legal services to vulnerable populations in child welfare cases.

But law students who want appellate externship experiences cannot appear and participate in proceedings before the Colorado Court of Appeals and Colorado Supreme Court. This is because the rule permitting law students to practice does not allow these opportunities. C.R.C.P. 205.7(2)(a)(i), limits law student externs to participating “in any civil proceeding in any municipal, county, or district court (including domestic relations proceedings).”

The Workgroup, therefore, recommends the Supreme Court modify C.R.C.P. 205.7(2)(a)(i) as follows:

“An eligible law student extern, as specified in subsection (2)(b), may appear and participate in any civil proceeding in any municipal, county, or district court (including domestic relations proceedings) OR IN ANY CIVIL PROCEEDING IN THE COURT OF APPEALS OR SUPREME COURT or before any administrative tribunal in Colorado, . . . .”

Alternatively, the Supreme Court consider referring this proposal to the Supreme Court’s Civil Rules Committee.

**RECOMMENDATION #14: The Colorado Supreme Court modify C.R.C.P. 205.7(2)(a)(i) to permit law student externs to appear and participate in any civil proceeding before the Colorado Court of Appeals and Colorado Supreme Court.**

## **B. Colorado's Court Improvement Program**

Colorado's Court Improvement Program (CIP) is a federally funded program to improve the performance of Colorado's courts in child welfare cases. Colorado's CIP, which employs two staff, has served Colorado for many years and is a role model for other states.

A goal of Colorado's CIP has been the development of Best Practices Courts in each judicial district in the state. Model Best Practices Courts have been promoted by the National Association of Juvenile and Family Court Judges to achieve positive outcomes for children, youth, and families in dependency and neglect cases.<sup>59</sup>

### **1. Best Practices Court teams**

Lead juvenile court judges develop Best Practices Courts by including key stakeholders in a strategic planning processes to improve the performance of child welfare cases. These teams develop specific, attainable goals at the local level.<sup>60</sup>

---

<sup>59</sup><https://perma.cc/V5ST-CMHK.d>

<sup>60</sup><https://perma.cc/7DHQ-YRHR>.

Colorado's CIP oversees the Best Practices Court teams. These collaborative teams made up of judicial officers, attorneys, child welfare agency staff, and treatment professionals seek to improve the safety, permanency, and well-being outcomes for the children, youth, and families served by Colorado's courts. Lead dependency and neglect judges oversee these teams.

All twenty-two judicial districts support Best Practices Court teams, and some districts have more than one team.

## 2. **The appellate Best Practices Court team**

The Workgroup is the first Best Practices Court team for appellate courts in the United States. The Workgroup recommends the Chief Justice continue the Workgroup for an additional two years to continue to monitor appellate delay in child welfare cases, develop additional training for appellate practitioners, and provide additional recommendations.

**RECOMMENDATION #16: The Chief Justice authorize the Workgroup for an additional two years to monitor the implementation and results of these recommendations, provide annual training, and study additional areas for improvement.**

## V. CONCLUSION

More study and work is needed in this important area. The Workgroup recommends the Chief Justice of the Colorado Supreme Court continue the Appellate Workgroup for two more years to do the following:

- ◆ Monitor the implementation and results of these recommendations and determine if other areas contribute to appellate delay.
- ◆ Provide annual appellate training on topics such as:
  - appellate rules and procedures;
  - preserving issues for review;
  - standards of review and standards of reversal;
  - the Indian Child Welfare Act;
  - appellate writing;
  - oral argument;
  - trending topics; and
  - ethical issues.
- ◆ Study opportunities to reduce delay in child welfare appeals related to
  - requests for oral arguments;
  - petitions for rehearing;
  - petitions for writ of certiorari or the grant of such petitions by the Colorado Supreme Court; and
  - issuing mandates at the Court of Appeals.

# Appendix:

**CHIEF JUSTICE CHARGE ESTABLISHING CHILD WELFARE  
APPEALS WORKGROUP**