

## 3rd Judicial District

# **PROCEDURES TO BETTER ACHIEVE PERMANENCY PLANNING IN DEPENDENCY AND NEGLECT CASES**

### **Goal**

Chief Justice Directive 98-02 requires districts to work collaboratively with local departments of social services, county attorneys, guardians ad litem, and respondent parents' counsel to develop local policies and procedures which will focus on permanency for children within twelve (12) months of a judicial finding of abuse and neglect or sixty days after the child's removal from home.

### **Overview of Obstacles to Achieving Permanency**

The 3<sup>rd</sup> Judicial District has only five foster care families who are regularly available for foster placements and who reside in the district; three in Las Animas County and two in Huerfano County. Recruitment efforts have been made periodically to find more local foster families, but it remains a tough obstacle to overcome. This hinders progress with treatment plans and permanency planning because families with pending dependency and neglect cases are often separated for longer times and greater distances due to foster placements in communities offering more resources, including Denver, Colorado Springs, and Pueblo. Parties are required at or soon after the shelter hearing to identify names and addresses of relatives for kinship placement study and local kinship placements are made when available. Transportation costs are burdensome on both Respondents and local departments of social services. Local service providers offer education, counseling, family therapy, outpatient drug treatment and education, and life skills. Other services are provided outside the district.

There are few attorneys willing to handle dependency and neglect cases. As of the date of this writing, the district has only two attorneys willing to serve as guardians ad litem. In prior years, more attorneys were willing to serve, but attorneys cite regulatory issues and lack of pay as reasons for declining such appointments. Given the comparatively few attorneys willing to work in this area of the law, obtaining the presence of guardians ad litem and Respondents' attorney's at the shelter hearing is difficult. For the most part, Respondents' counsel are professional, however caseworkers cite a lack of professionalism among several attorneys handling these already emotionally divisive cases.

The District is fortunate to have dedicated directors and caseworkers in the two departments of social services who collaborate with the judicial branch in this and other areas, including the screening of juveniles for utilization of limited detention beds in juvenile delinquency cases. The departments themselves provide many

of the services to the families involved in these cases. However, for more intensive in-the-home services, as an alternative to foster placements, as has been suggested, either more staff would be required or both departments would have to decrease expenditures on foster placements and focus more on providing in-home services. When safety of the children is the overriding concern, the departments understandably first seek out safe foster homes, but given the logistics of many foster placements, this may also hinder reunification of some families.

Some delays in achieving quicker permanency that could be rectified by better case management have been identified by stakeholders, including unreasonable delays by parties in applying for counsel, scheduling timely adjudicatory hearings in some cases, delays in the formulation of some treatment plans, and the lack of meaningful pre-trial conferences.

### **Plan and Practice**

Applications for court appointed counsel should be given by caseworkers to Respondents at the time intervention occurs so that ideally by the shelter hearing the court can make the appointment. Court clerks must insure that applications have been completed before the shelter hearing.

In most cases, when the court is notified that a shelter hearing needs to be scheduled, a Guardian ad litem (GAL) is appointed prior to the shelter hearing. When circumstances permit, the GAL should attend the shelter hearing. Respondents counsel *may* be ordered to appear, if application for same has been timely made, if for no other reason than to make contact with their clients and discuss the case with the Department. If the Department is aware of the likely components of a treatment plan by the shelter hearing, those should be disclosed at the shelter hearing and adopted on a voluntary basis by cooperative parents. If the Department is intent on filing a dependency and neglect petition, it should do so within 10 days or before the next court hearing. The Court should advise parents of their rights, potential consequences of the D&N petition, and permanency planning options at the shelter hearing and set the case for pre-trial conference, further advisement, and plea hearing on the next return date.

Stakeholders have requested the Court to schedule early pre-trial conferences and relatively quick settings of the advisement and plea hearing after the shelter hearing. A return date for appearance of counsel, further advisement, and “plea” may therefore be set within two weeks, but not to exceed 35 days of the shelter hearing. The Department of Social Services should in the interim between intervention and this hearing develop a “presumptive” treatment plan which the parents can voluntarily agree to follow even before adjudication. Even if parents are not ready to agree to adjudication and the presumptive plan, all parties and the GAL will know what the Department will be requesting and Respondents attorneys can better discuss with their clients what the Department is expecting

of them. In all cases the treatment plan should be filed with the court and distributed to counsel and the GAL no later than five days before the return date for advisement and plea. Amendments to the treatment plan may be granted as the case progresses.

Requests for Special Actions, such as amendments to the treatment plan, together with requested appropriate findings regarding “reasonable efforts” are already made in many cases and should routinely be made by caseworkers or counsel to expedite cases. The Request for Special Action should contain a notice that “if no objection is made in writing by any party within five days by filing same with the Court, the Court may grant this request without hearing.” Similarly, all reports from DSS should be filed at least five days prior to any scheduled court hearing.

A Pre-trial conference shall be scheduled for the appearance of all parties, their counsel, the GAL, and caseworkers one hour before the advisement and plea to facilitate adjudication and adoption of the presumptive treatment plan. This will make best use of the time counsel spends in court and eliminate unnecessary continuances to reach an adjudication and disposition. At this conference, the parties should be able to classify the case at issue as one where the case involves severe abuse or more moderate forms of dependency and neglect and proceed to plan accordingly so that realistic goals for permanent placement or return home can be timely achieved.

If after advisement, there is adjudication by stipulation of the parties, then the court will in a combined dispositional hearing order compliance with the presumptive treatment plan or with one modified by agreement of the parties at the pre-trial conference. Combined hearings are already the norm. If there is adjudication at this hearing or the next, then the Court should outline for the parties the goals that must be accomplished by a date certain to insure the children’s permanent return home if that indeed is a realistic goal. If there is no adjudication, then the case shall be set for an Adjudicatory hearing within 60 calendar days of service of the Petition on the Respondents in EPP (children under six years of age) cases and otherwise within 90 days. Discovery requests should be made at this time. Dispositional hearing following contested adjudications must be held within 30 calendar days of adjudication for cases in which any child is under six years of age and otherwise within 45 calendar days of adjudication.

In the event of trial, a trial management order should be prepared by counsel including disclosure of witnesses, exhibits etc and filed with the court by a date certain before the hearing and juror notebooks and instructions must also be submitted by this time. A status conference shall be scheduled prior to any contested adjudicatory hearing. A referral of the case may be made by the Court to the Family Court Facilitator for possible resolution prior to any adjudicatory hearing and subsequent thereto for resolution of disputes over visitation and

other treatment plan issues. All parties and counsel must appear at any scheduled conference with the court facilitator.

Delays in the hearing schedule set forth above should not occur except on a showing of good cause.

Judges, the district administrator, court clerks, and the family court facilitator shall regularly review open case reports to insure timely disposition of cases. Pursuant to Chief Justice Directive, judges will implement these procedures adopted by the district.