

8TH JUDICIAL DISTRICT OF COLORADO
ADMINISTRATIVE ORDER
ADMINISTRATIVE DIRECTIVE 99-102
SUBJECT: District Plan for Handling Dependency and Neglect Cases

TO: Eighth Judicial District Judges, Magistrates, Judicial Administrator, Clerk of Court, Law Enforcement Agencies, Larimer County Department of Social Services, County Attorney, D&N/GAL Contract Attorneys, Bar Association, Larimer County Foster Care Association, and CASA

FROM: Larimer County District Court, Magistrate Mary Jo Berenato.

I. Introduction

The Eighth Judicial District incorporates the requirements of Colorado Statutes, Chief Justice Directives 98-02 and 96-08, the recommendations in the *Child Abuse and Neglect Cases in the Colorado State Courts* report dated June 27, 1996, and the experiences of other jurisdictions in expediting D&N cases in our Eighth District D&N Plan.

Our district court has ongoing informal meetings with the county attorney's office, the Larimer County Department of Social Services (LCDSS), CASA, the guardians' ad litem, respondent parent's counsel and the family court facilitator as necessary. The goal is to achieve a permanent home within 12 months for every child through the early development of treatment plans, early provision of services, and meaningful reviews of the progress toward treatment and permanency goals on a periodic basis.

Our court has taken the following steps to insure this goal:

1. LCDSS sets up a meeting with the parents and other parties at the emergency temporary custody hearing or first court appearance of the parties in order to assess the case and develop a treatment plan. The goal is to achieve early development of treatment plans and provision of services as well as allowing the respondent parents more control and feeling "ownership" of the treatment plan by participating in its development.
2. LCDSS and the county attorney's office work together to identify and notify all necessary parties in order to explore all possible options and insure all necessary parties have notice of the hearings.
3. At the initial emergency temporary custody hearing each party will receive the application for appointment of respondent parent attorneys. Respondent parent attorneys are present and are appointed for financially qualified parents at the emergency temporary custody hearing or, if no emergency temporary custody hearing, at the first court appearance. The parties receive their

Advisement of Rights document at this time. A guardian *ad litem* is present and appointed at the emergency temporary custody hearing or first appearance.

4. The court defines specific objectives and actions for every future hearing.
5. LCDSS arranges treatment plan conferences with all necessary parties present, Family Group Decision Making, and arranges any other collaborative resources.
6. The court may order counsel to attend a pre-trial conference to discuss disputed issues, allowing the parties opportunities to meet to resolve issues consensually in a non-adversarial, problem-solving environment. Agreements are then presented to the court at the next hearing or sooner as needed.
7. The Court may appoint a CASA to work with the families as the court determines as needed or as requested by LCDSS, the Guardian *ad litem* or respondent parent attorneys.
8. The court, LCDSS, the county attorney and Respondent counsel work together to toward permanent placement of the child from the beginning of the case through every stage of the case.
9. The court clerk reviews the open case report each month to insure there is always a future proceeding date set. The court clerk reviews the D&N report monthly for the amount of time elapsed, adjudication date, treatment plan date, permanency plan, good cause extensions of time and whether the case is closed in a timely manner. The goal is for all cases to be closed within one year, not just EPP cases. The county attorney's office is also responsible for reviewing all cases for timeliness and age of case and setting appropriate proceedings.
10. This plan has resulted in the following benefits to all parties involved in the D&N process:
 - A. Early identification of kinship or non-kinship care providers.
 - B. Early identification of a treatment plan with all parties having the opportunity to have input in the treatment plan. Parties may choose to move forward with the treatment plan even before it is formally adopted by the court.
 - C. More efficient docket management and case tracking.
 - D. Greater accountability of all parties involved in the D&N process.

The following sections briefly outline the process for handling Eighth Judicial D&N cases. This is only an overview of the general process and is not a complete outline.

II. Temporary Custody/Advisement Hearing

A. Purpose: To make a determination as to temporary custody and appropriate placement of the child. To ensure that all respondent parents are identified, represented by counsel and understand the D&N process (including potential consequences of the D&N petition and permanency options), and to facilitate early case assessment and provision of services.

B. Process

1. Removal Cases. In cases which are initiated by removal of a child, the Temporary Custody/Advisement hearing will be held within 72 hours of removal of the child (Exclusive of weekends and holidays), unless an earlier hearing is mandated by statute.

All respondent parents will be notified of the Temporary Custody/Advisement hearing by the LCDSS and the assistant county attorney. Efforts will be made to ensure that respondent parents appear at the hearing if at all possible so that the D&N petition can be served, the parties advised, and counsel appointed. Respondent parents' counsel will be available to meet with prospective clients at least 30 minutes prior to the hearing. Applications for Court-Appointed Counsel, Orders Appointing Counsel, Advisement of Rights forms and affidavits regarding putative fathers and potential kinship placements will be completed before or immediately after the hearing.

If the child is removed from the home the parties have the right to have a hearing regarding whether continuation of the child in the home would be contrary to the child's best interests (C.R.S. 19-1-115(6)(a)) and whether reasonable efforts were made by LCDSS to prevent removal or an emergency situation exists requiring temporary removal (C.R.S. 19-1-115 (6)(b)). The court determines whether reasonable efforts have been or will be made to reunify the child and the family or determine that efforts to reunite the family have failed (C.R.S. 19-1-115(6) (c)). The court determines whether procedural safeguards with respect to parental rights have been applied in connection with the removal, a change in placement, and any determination affecting parental visitation (C. R. S. 19-1-115 (6)(d)). The court may enter protective orders as needed including orders regarding temporary custody, visitation, evaluations, release of familial information, and provision of services.

The court will inquire as to identity and location of respondent father(s) or respondent mother(s) if not named in the petition and order amendment of the petition accordingly, where any non-appearing parents may be and the efforts to locate and notify them. The court may authorize service by publication, if necessary. The court inquires as to the applicability of the Indian Child Welfare Act and sets the Adjudicatory hearing and may combine this hearing with the Treatment Plan hearing.

2. In a non-emergency case the case is initiated by the filing of a D&N petition. Advisement hearings are held within 30 days after the petition is filed. The county attorney's office will serve the respondents personally with the summons and petition at least 5 days before the hearing. For out-of-state respondents, service must be by certified mail.

III. Adjudicatory Hearing/Trial

A. Purpose. An Adjudicatory hearing is held within 30 days of the filing of the D&N petition for the admission regarding the petition or to set a contested matter for hearing. In contested matters the parties may participate in Family Group Decision-making, court-ordered Facilitation or other mediation through LCDSS prior to the hearing.

If the case is noncontested the parties may combine the adjudication and disposition at the Adjudicatory hearing. A treatment plan will be filed by LCDSS and served on the parties and counsel at least one week prior to the Adjudicatory hearing.

The court will accept admissions to the petition and may adopt the treatment plan. The court may enter a default judgment as to any non-appearing party who has been served. The court may determine the appropriateness of the placement and whether the child's continuation in or return to the home would be contrary to the child's best interests (C.R.S. 19-1-115(6)(a)) and the reasonable efforts to prevent or eliminate the need for removal or the existence of an emergency situation exists pursuant to C.R.S. 19-1-115(6)(b). The court will determine whether reasonable efforts by LCDSS have been or will be made to reunify the child and the family, or determine that efforts to reunite the family have failed (C.R.S. 19-1-115(6) (c)). The court will determine whether or not procedural safeguards with respect to parental rights have been applied in connection with the removal, a change in placement, and any determination affecting parental visitation (C.R.S. 19-1-115(6)(d)). The court may authorize service by publication where appropriate (default judgment is to be entered at the next scheduled hearing).

IV. Dispositional Hearing: To order the treatment plan and to establish the parties' commitments and abilities to comply with the terms of the treatment plan.

The court may set a Dispositional hearing within 30 days of the Adjudicatory hearing if the treatment plan is not previously agreed to and ordered. The parties may request a hearing on any element of the treatment plan. The court will review the terms of the treatment plan and the parties' willingness to comply with the treatment plan. The court will advise the parties of the potential consequences of not complying with the treatment plan. The court will order the treatment plan or find LCDSS cannot develop an appropriate treatment plan at this time pursuant to C.R.S. 19-3-604(1)(a) or C.R.S.19-3-604(1)(b) and require that a Permanency Planning hearing be set Within 30 days of the finding.

A treatment plan will be prepared by the caseworker, filed with the court, and provided to the parties and counsel at least one week prior to the Dispositional hearing. If the parties disagree with the treatment plan there may additional Family Group Decision Making meetings and/or court-ordered facilitations prior to the hearing. The court will set the next review date and written court report.

V. Reviews

A. Purpose: To review the need for continued placement (if the child has been removed), progress on and modification of the treatment plan, and the continued appropriateness of the permanency goal. In all cases where the child is in an out-of-home placement at the time of the review, a judicial determination of reasonable efforts on the part of LCDSS to prevent out-of-home placement, to reunify the family and to place the child in a timely manner in accordance with the permanent plan must be made.

Following the Dispositional hearing, the court will hold Review hearings at determined intervals or at the request of parties, county attorney or Guardian *ad litem*. The court has the discretion to hold frequent reviews if interpretation of the facts and circumstances of the case merit it. Written court reports are not required for Review hearings. The county attorney's office sends written notice to any party who was not present when a Review hearing was set.

LCDSS files written court reports at regular determined intervals and served on the parties and counsel prior to the due date. The report may include a brief social history (required for first written review only) and placement history, discuss the developments in the case since the last

hearing or review, and address each of the critical review tasks and recommendations for the date and the next written review or Review hearing.

B. Critical Review Tasks

Reviews will determine the appropriateness of the placement and, if the child has been removed from the home whether the child's continuation in or return to the home would be contrary to the child's best interests (C.R.S. 19-1-115(6)(a)), whether reasonable efforts have been made by LCDSS to prevent or eliminate the need for removal or determine that an emergency situation exists which requires immediate temporary removal and that it is reasonable for LCDSS not to make efforts to prevent removal due to the emergency situation (C.R.S. 19-1-115(6)(b)) determine whether LCDSS has made or will make reasonable efforts to reunify the child and the family or determine that efforts to reunite the family have failed (C.R.S. 19-1-115(6)(c)), the application of procedural safeguards with respect to parental rights regarding removal, a change in placement, and any determination affecting parental visitation (C.R.S. 19-1-115(6)(d)), whether reasonable efforts have been made to place a child in a timely manner in accordance with the permanent plan (P.L. 105-89), the continued appropriateness of the permanency goal and treatment plan and review progress on treatment plan goals and the parental involvement and interaction with child.

If the child has been in placement for 15 of the last 22 months, the court reviews the LCDSS report and consider a motion for termination of parental rights. There may be ongoing Family Group Decision Making meetings, court-ordered facilitation or other collaborative efforts. The court will set the next review date.

VI. Permanency Planning Hearing

A. Purpose: A Permanency Planning Hearing may be held to adopt a definitive permanent plan for a child in out-of-home placement and to take significant steps toward implementing the plan.

This hearing is held within 9 months of removal in a non-Expedited Permanency Planning case or within 3 months of the Dispositional hearing in an Expedited Permanency Planning case. If reunification is the permanent goal and the child has not been returned within 6 months of the hearing, a second Permanency Planning hearing will be held at this time. LCDSS files a written proposed permanent plan for the child. LCDSS files and serves their written permanent plan/court report and any proposed amendments to the treatment plan at least one week prior to the Permanency Planning hearing. The Permanency Planning hearing is to make a definitive, long-term decision regarding the permanent placement of the child. Accordingly, the parties should be prepared to take whatever steps are necessary to implement a permanent plan for the child at the Permanency Planning hearing.

The possible outcomes could be reunification or reunification within 6 months, Reunification more than 6 months after the Permanency Planning hearing, termination of parental rights to enable adoption or other permanent plan, relinquishment to enable adoption or other permanent plan, permanent custody, guardianship, independent living or long-term foster care.

B. The court will set any necessary hearings and review dates.

VII. Termination of the Parental-Child Legal Relationship

The court may be required to determine whether there are statutory grounds to sever the parent/child legal relationship and whether termination is in the best interest of the child. The motion may be filed at or before the Permanency Plan hearing and the trial will be held within 90 days of the filing of the motion. Expert reports must be distributed to all parties at least 15 days prior to the termination trial required by statute. Continuances will be granted only upon a finding that manifest injustice will occur in the absence of a continuance. If the child is to remain in placement following the Termination trial, the court will determine whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanent plan (P.L. 105-89).

The court will set the Post-Termination Review hearing for the purpose of reviewing the post-termination placement plan. This hearing will be set no later than 90 days from the Termination trial. The court will determine if the plan is appropriate. The plan will be for adoption, permanent custody, emancipation, independent living, or another goal that meets the needs of the child. If the plan is for the child to remain in placement following the hearing, the court will determine whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanent plan (P.L. 105-89).. The next hearing or written review date will be set if necessary.

When appropriate, the court has the authority to proceed with adoption when all parental rights are terminated or relinquishment occurs. The Adoption hearing permanently places a child with adoptive parents who are assuming all parental rights and responsibilities. The Adoption hearing is held as soon as possible after the child is legally free for adoption.

The Eighth Judicial District grants continuances only when the best interest of the child is served by the granting of a continuance. If the continued case involves children under six at the time the petition was filed, the court is required to make the findings set forth in C.R.S. 19-3-104. The hearing shall be rescheduled within 30 days.

XIII. Conclusion

The Eighth Judicial District Plan for Handling Dependency and Neglect Cases is regularly reviewed and revised and updated. The Plan is informally and formally evaluated for effectiveness based on the plan goals outlined in Section 1, Introduction.