

# District Plan - 13th Judicial District

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## Dependency and Neglect Proceedings

Chief Judge Michael K. Singer

12/1/2017

# **DISTRICT PLAN FOR DEPENDENCY AND NEGLECT CASES**

## **THIRTEENTH JUDICIAL DISTRICT**

(Revised 12/2017)

### **INTRODUCTION**

In compliance with Chief Justice Direction 98-02, the Thirteenth Judicial District hereby adopts the following policies and procedures for Dependency and Neglect Cases (herein “District Plan”). This plan takes into account changes in the Colorado Children’s Code, Colorado Rules of Juvenile Procedure and staffing in this judicial district. The purpose of the District Plan is to expedite the permanent planning and placement for all children subject to dependency and neglect proceedings. The District Plan is designed to ensure that all families receive the services they need in order to achieve a permanent home for every child within twelve (12) months after a child is removed from the family home. Additionally, the District Plan is designed to ensure that the court addresses the issue of permanent placement within ninety (90) days after the adoption of a treatment plan.

The Thirteenth Judicial District encompasses seven (7) counties in the northeast corner of Colorado. These counties are served by seven (7) separate departments of human services, which are governed by their respective boards of county commissioners. The Thirteenth Judicial District has drafted this District Plan after consultation with representatives from the departments of human services, county attorneys, guardians ad litem, respondents parents’ counsel and clerks of the district courts.

To achieve these purposes, the Thirteenth Judicial District adopts certain case processing procedures, including:

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

Additionally, the Thirteenth Judicial District has determined that these cases are managed more efficiently if assigned to the same District Court Judge from the beginning of the case until final resolution, except in the counties where the judges rotate on a semi-annual basis. In the

counties that have only one JV docket per month (Phillips, Sedgwick, Yuma, Kit Carson and Washington), the time limits set forth in the District Plan may need to be extended.

## **DISTRICT PLAN**

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

### **I. Preliminary Protective Hearing/Emergency Hearing (Shelter Hearing)**

A. Purpose: The purpose of the Shelter Hearing is to make findings and enter protective orders regarding the placement of the child(ren). At this hearing, the respondents should be identified and given an opportunity to be represented by counsel. If the video advisement has not been completed prior to this hearing, the respondents should be advised of their rights and the court should explain the procedures that are followed in a dependency and neglect proceeding, including the potential consequences of adjudication. The respondents should also be informed of the permanency options available to the court. The Shelter Hearing should be used to facilitate early case assessment and provision of services.

B. Timing: In cases that are initiated by the removal of a child, the Shelter Hearing must be held within seventy-two (72) hours of removal of the child (exclusive of weekends and court holidays), unless an earlier hearing date is mandated by statute. See C.R.S. §§ 19-3-403(2), (3.5) and 19-3-405. DHS should immediately notify the court of the removal of a child from the family home, so that a Shelter Hearing can be scheduled without delay.

C. Critical Tasks: The following tasks shall be completed before or during the Shelter Hearing:

1. Appointment of Guardian ad Litem.
2. Video advisement of respondents and signing of written advisement.
3. Appointment of respondent parents' counsel.
4. Filing of petition and summons (or within 48 hours thereafter).
5. Adding special respondents.
6. Findings regarding placement, including reasonable efforts to prevent the need for out-of-home placement.
7. Entry of protective orders, including monitored sobriety, evaluations, release of information, completion of relative affidavits (JDF 559), services to be provided to the family, and visitation with the parents, siblings and other persons of importance to the child(ren).

8. For parents alleged to be involved with illegal drug activity, the court may order monitored sobriety and treatment.
9. Diligent inquiry regarding paternity of the child(ren), the whereabouts of non-appearing parents, and efforts of DHS to locate and notify them of Shelter Hearing.
10. Diligent inquiry regarding the applicability of ICWA, including completion of Indian Child Welfare Act Declaration of Non-Indian Heritage (JDF 568) if parents indicate no tribal heritage or affiliation.
11. Diligent inquiry regarding the applicability of Uniform Child Custody Jurisdiction and Enforcement Act (herein "UCCJEA").
12. Diligent inquiry regarding the identity of able and willing relatives with whom the child(ren) could safely be placed on a temporary basis.
13. Set date for adjudicatory hearing within thirty (30) days.

D. Non-Appearing Respondents: If a parental respondent does not appear at the Shelter Hearing, the county attorney shall attempt personal service on the respondent at his or her last known address or seek to serve the respondent by certified mail. See Rule 2.2(b)(1), Colorado Rules of Juvenile Procedure, and C.R.S. §§ 19-3-503(7) and (8). Personal service or service by certified mail should be initiated by the county attorney within forty-eight (48) hours of the Shelter Hearing. When the non-appearing respondent does not reside in Colorado, and his or her whereabouts cannot be determined after due diligence, service may be made by publication pursuant to C.R.C.P. 4(h). A motion for publication and proposed order should be filed by the county attorney within twenty-one (21) days of the Shelter Hearing.

E. Indian Child Welfare Act:

(i) If the child is an "Indian child" under the provisions of the Indian Child Welfare Act (herein "ICWA"), 25 U.S.C. § 1901 *et seq.*, the Shelter Hearing cannot be held until at least ten (10) days after the parent or Indian custodian and the tribe or, if neither can be determined, the Secretary of the Interior, receives notice. 25 U.S.C. § 1912(a).

(ii) If the petition or DHS does not disclose whether the child is an "Indian child," the court shall inquire of the parties at the first hearing whether the child is an Indian child and, if so, whether the parties have complied with the procedural requirements set forth in ICWA. If the child is an Indian child, the court shall determine the identity of the child's tribe, and inquire as to whether notice has been sent by registered mail, return receipt requested, to the appropriate tribal authorities. See C.R.S. §§ 19-1-126(1)(a), (b) and (2).

(iii) Emergency Removal or Placement of Child. An Indian child may be removed from a parent and placed in a foster home or institution under Colorado law in order to prevent “imminent physical damage or harm” to the child. The court shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent “imminent physical damage or harm” to the child and shall expeditiously initiate child custody proceedings, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian. 25 U.S.C. § 1922.

## **II. Pretrial Conference/Adjudicatory Hearing**

A. Purpose: The purpose of the Pretrial Conference/Adjudicatory Hearing is to enter an admission to one of more of the allegations in the petition or to deny the petition and to set the matter for an adjudicatory hearing before the court or a jury.

B. Timing: The Pretrial Conference/Adjudicatory Hearing shall be heard with thirty (30) days of the Shelter Hearing or initial advisement hearing. The hearing may be continued for a non-appearing party if the court determines that he or she has not been served or if his or her absence is otherwise reasonable. The hearing may also be continued if respondent parents’ counsel has not been able to meet with his or her client or if a party does not have counsel present. However, the adjudicatory hearing must be completed within sixty (60) days from the date of service for EPP cases and within ninety (90) days for non-EPP cases, unless the court finds that a continuance is in the best interests of the child(ren).

C. Critical Tasks: The following tasks shall be completed before or during the Pretrial Conference/Adjudicatory Hearing:

1. The Family Services Plan shall be provided to the court and all parties at least seven (7) days prior to this hearing.
2. Advise any party that has not previously been advised of his or her rights.
3. Inquire of parties who have not previously appeared as to paternity, ICWA and UCCJEA (require parent to complete JDF 557).
4. Accept any admission to the petition.
5. Enter default judgment as to any non-appearing party who has been properly served.
6. If the child or children have been removed and placement is continued, the court shall make appropriate findings regarding out-of-home placement and reasonable efforts by DHS.
7. Order service upon all parties who have not been served.

8. Schedule the dispositional hearing not later than thirty (30) days from adjudication.
9. If the allegations in the petition are denied, a trial date will be set. (If a request for a jury trial is not made when the allegations are denied, the right to a jury is deemed waived. C.R.C.J. 4.3(b)).
10. If a trial is scheduled, the court will set deadlines for discovery, endorsement of witnesses and exhibits
11. If a trial is scheduled, the court will set Pretrial Conference/Trial Readiness Conference at least seven (7) days prior to the trial.
12. If the allegations of the petition are not sustained at the adjudicatory trial, the case will be dismissed. The child shall be discharged from any detention or restriction previously ordered; the respondents shall be discharged from any restriction or previous temporary order; and, the court shall inform the respondents that, pursuant to C.R.S. § 19-3-313.5(3)(f), the DHS shall expunge their records and reports for purposes related to employment or background checks. See C.R.S. § 19-3-505(6).
13. If the allegations are sustained, an order of adjudication shall enter.
14. If an order of adjudication enters, schedule a dispositional hearing not later than twenty-eight days thereafter.

D. Combination Adjudication/Disposition: When the respondents are entering an admission to the petition, the DHS is encouraged to have a proposed treatment plan prepared and filed prior to the adjudicatory hearing. If the treatment plan is acceptable to the parties, the dispositional hearing can be conducted at the same time as the adjudicatory hearing.

### **III. Dispositional Hearing**

A. Purpose: To enter a treatment plan that addresses the needs of the family and children and is designed to resolve the issues that resulted in the child(ren) being found to be neglected and dependent.

B. Timing: The Dispositional Hearing shall be conducted within twenty-eight (28) days from the date of adjudication.

C. Critical Tasks: The following tasks shall be completed before or during the Dispositional Hearing:

1. A treatment plan, as part of the Family Services Plan, will be prepared by the DHS and submitted to the court and parties at least seven (7) days prior to the dispositional hearing. The treatment plan will be developed in collaboration with the parents unless they refuse to participate or are otherwise unavailable. The treatment plan shall include a

brief summary of the parents' participation in developing the treatment plan and note any objections that they have to the proposed treatment plan.

2. If the treatment plan has been approved by all of the parties, the court shall enter findings that it is an appropriate treatment plan and order the parties to comply with the plan.

3. If the treatment plan is contested, the court shall hear disputed issues and enter findings as to what should be included in the treatment plan or, if necessary, set the matter for a contested hearing.

4. The court shall advise the respondents of the potential consequences of their failure to comply with the treatment plan, including contempt and termination of their parental rights.

5. The court shall further advise the respondents of the benefits of meaningful compliance with the treatment plan.

6. If a motion for termination of the parent-child relationship based upon an assertion that no reasonable treatment plan can be devised for a respondent has been filed by the DHS, the court must set a hearing to determine whether, by clear and convincing evidence, no appropriate treatment plan can be devised and whether the best interests of the child would be served by a termination of the parent-child relationship. C.R.S. § 19-3-508(1)(e)(I) sets forth the exclusive list the court must follow in determining that an appropriate treatment plan cannot be devised for a specific respondent.

7. If there was a contested adjudicatory trial, or a contested issue regarding the treatment plan, the parties shall be advised by the court that the dispositional order is a final judgment that can be appealed. See C.R.S. § 19-1-109(2)(c).

8. The court shall set a Permanency Planning Hearing within ninety (90) days of the dispositional hearing. If the child is over the age of six at the time the petition is filed, the PPH must take place within twelve (12) months of the *date of removal*. If the child is under the age of six, the PPH must be held within three (3) months after the *dispositional hearing*. See C.R.S. § 19-3-702(1). Although the court is not required to conduct a PPH for children over the age of six within ninety (90) days, the initial PPH for all children should occur within ninety (90) days after the dispositional hearing.

#### **IV. Review Hearings**

##### **A. Purpose:**

1. Review the need for continued out-of-home placement (if the child has been removed) and make findings regarding reasonable efforts to return the child to the family home.

2. Review treatment plan progress and whether treatment plan continues to be appropriate.
3. Review child's placement and assess his or her needs for services.
4. Review visitation schedules and protection orders.
5. Determine appropriateness of permanency goal.
6. Make findings as to whether DHS has made reasonable efforts to finalize the permanency goals.

B. Timing: Following the dispositional hearing, the court will hold review hearings as necessary, generally every sixty (60) to ninety (90) days. If there are any emergency or placement issues that require more frequent reviews, the court may review the case within thirty (30) days. In every case involving out-of-home placement, a review hearing shall be conducted at least every six (6) months.

C. Review Reports: Following the dispositional hearing, a written court report shall be filed by DHS prior to all court proceedings (except pretrial conferences), unless specifically waived by the judge. A Family Services Plan (court report) must be prepared by DHS, filed with the court, and served on the parties at least seven (7) days prior to the hearing. The report should include a brief social history, date of removal, findings of the most recent foster care review, and a summary of the progress, lack of progress or developments in the case since the last review. The report should also include any recommendations of DHS.

D. Critical Tasks: In addition to the matters set forth above, the following actions should be taken at every Review Hearing:

1. If the child has been in placement for fifteen (15) of the previous twenty-two (22) months, the court must consider whether there is a compelling reason for DHS not to file a motion for termination of parental rights. If DHS believes that a motion to terminate should not be filed, the Family Services Plan should include an explanation as to its decision not to proceed with termination.
2. The case shall be set for a review hearing or permanency planning hearing.

## **V. Permanency Planning Hearing**

A. Purpose: The purpose of the Permanency Planning Hearing is to adopt a definitive permanent plan for each child and direct the parties to implement the plan without delay.

B. Timing: In EPP cases, the Permanency Planning Hearing must be held within three (3) months of the dispositional hearing. In Non-EPP cases, both state and federal law provide that the PPH must be held within twelve (12) months of removal of the child from the family home.

However, it shall be the practice of the Thirteenth Judicial District to conduct the initial PPH for all children within three (3) months of the dispositional hearing. If reunification with a parent is the permanency goal and the child has not been returned to a parent within six (6) months of the initial PPH, a second PPH will be conducted at the end of the six (6) month period.

C. Notice: DHS shall give written notice of the PPH to all parties, including any child twelve years of age or older and foster care parents. The notice shall include a statement concerning the proposed permanent plan for each child and set forth the constitutional and legal rights of the child and the child's parents or guardians. A written permanency plan and court report setting forth any proposed amendments to the treatment plan must be filed with the court and served on all parties at least seven (7) days prior to the PPH. See C.R.S. § 19-3-702(2).

D. Critical Tasks: The following tasks should be accomplished at the PPH:

1. The parties should be directed by the court to take whatever actions are necessary in order to accomplish the goals of the permanency plan within a specified time period. The court shall consult with the child in an age-appropriate manner regarding the child's permanency plan. See C.R.S. § 19-3-702(3.7). The parties should be reminded that the following permanency goals could be considered by the court:

- (a) Remain home in cases where the child has not been removed;
- (b) Return home at or before the PPH;
- (c) Return home within six (6) months of the PPH;
- (d) Return home more than six (6) months after the PPH;
- (e) Adoption through relinquishment;
- (f) Adoption by a relative or non-relative following termination of parental rights;
- (g) Allocation of parental rights and responsibilities, or guardianship, to a relative or non-relative; and,
- (h) Other planned permanent living arrangement ("OPPLA"), such as long term foster care.

2. If the permanency plan is not to return home, the court may suspend the parent's treatment plan and modify or suspend visitation.

3. If the child(ren) remain in out-of-home placement, the court shall make appropriate findings regarding placement and whether DHS is making reasonable efforts to eliminate the need for continued out-of-home placement. The court must also make a determination as to whether DHS is making reasonable efforts to finalize the permanency plan.

4. For children with OPPLA permanency plans, the court will make the appropriate findings as set forth in the preceding section and will determine whether the child will remain in placement until emancipation. If the child is to remain in placement until emancipation, the parties should begin conducting emancipation planning conferences outside of court by the child's 16<sup>th</sup> birthday. The emancipation plan shall be included in each report filed by DHS after the child's 16<sup>th</sup> birthday.

5. The court will schedule the next review hearing, or other hearing.

## **VI. Termination of Parent-Child Legal Relationship**

A. Purpose: To obtain judicial determination as to whether DHS can establish, by clear and convincing evidence, the statutory grounds to terminate the parent-child legal relationship and whether termination is in the best interests of the child.

B. Timing: A motion to terminate the parent-child legal relationship may be filed any time after the dispositional hearing. The hearing cannot take place sooner than thirty (30) days after the filing of the motion. See C.R.S. § 19-3-602(1). In EPP cases, the hearing on the motion to terminate must be held within one-hundred and twenty (120) days of the filing of the motion unless good cause is shown and the court finds that the best interests of the child will be served by granting a delay. See C.R.S. §§ 19-3-602(1) and 19-3-104.

C. Notice: All parties, including the GAL, must be given notice of the termination hearing. Additionally, foster care parents, pre-adoptive parents, and relatives with whom the child is placed must be given notice of the termination hearing. See C.R.S. § 19-3-502(7). The person with whom the child is placed, or the GAL, shall provide prior notice to the child of termination hearing.

D. Post-Filing Advisement: After a motion to terminate the parent-child legal relationship has been filed, the court must advise the parents of their constitutional and legal rights, including the right to court-appointed counsel. The parents must also be advised that a grandparent, aunt, uncle, brother or sister of the child must file a request for guardianship and legal custody of the child within twenty (20) days of the filing of the motion. C.R.S. § 19-3-602(2). (As the post-filing advisement may take place more than twenty days after the motion to terminate is filed, it is imperative that counsel for the parents, upon receipt of the motion to terminate, immediately notify the parents of this requirement.)

E. Pretrial: The parents' request for the appointment of an expert witness shall be sent to the Office of Respondent Parent's Counsel within fourteen (14) days of the post-filing advisement. All parties must file witness lists, exhibit lists and expert reports with the court at least fifteen (15) days prior to the termination hearing.

F. Critical Tasks: The following tasks should be accomplished at the Termination Hearing:

1. Continuances will be granted only upon a finding that a manifest injustice will occur in the absence of a continuance and that the best interests of the child will be served by granting the continuance.
2. If the motion to terminate is granted, the petition shall be amended to remove the parents as respondents and they shall not be permitted to appear at any future review hearings.
3. If the child remains in placement following the termination hearing, the court shall determine whether reasonable efforts have been made to find a permanent placement for the child in accordance with the existing permanency plan.
4. If the motion to terminate is denied, the court shall amend the treatment plan and permanency plan to reflect the existing circumstances of the child and family. If the child remains in out-of-home placement, the court shall schedule a permanency planning hearing within thirty (30) days of the termination hearing.
5. If the motion to terminate is granted, the court shall schedule a post-termination review hearing within ninety (90) days of the order terminating the parent-child relationship.

## **VII. Post-Termination Hearing**

A. Purpose: To review the status of the child and progress in finding an adoptive home for the child or other permanent placement and to amend, if necessary, the permanency plan to serve the best interests and needs of the child.

B. Timing: The post-termination hearing shall occur within ninety (90) days of the entry of the order terminating the parent-child legal relationship. Written reports shall be filed by the GAL and DHS. See C.R.S. § 19-3-606(1). The reports shall be served on the parties, excluding the parents whose rights have been terminated, at least seven (7) days prior to the hearing.

D. Critical Tasks: The following tasks should be accomplished at the Post-Termination Hearing:

1. The court shall determine whether the permanency plan continues to be in the best interests of the child. If the permanency plan is adoption by a relative or non-relative, the court shall determine whether DHS is making reasonable efforts to finalize the permanency goal. If adoption is not immediately feasible or appropriate, the court shall provide for alternative long-term placement of the child.

2. If adoption by a relative or non-relative is the permanency plan for the child, a review hearing shall be scheduled within one-hundred and eighty (180) days of the post-termination review hearing. If the child is adopted prior to that hearing, the hearing shall be vacated and the jurisdiction of the juvenile court shall terminate.

3. If the permanency plan for the child is not adoption, a review hearing shall be scheduled within sixty (60) days of the post-termination review hearing. Subsequent review and permanency planning hearings shall be scheduled as appropriate.

### **VIII. Adoption Hearing**

A. Purpose: To provide a permanent home for the child and grant to the adoptive parents all of the rights and responsibilities of a parent pursuant to Colorado law.

B. Timing: The adoption hearing shall be held as soon as possible after the child becomes available for adoption. A child becomes available for adoption twenty-one (21) days after the entry of the decree terminating the parent-child legal relationship unless an appeal is filed. If an appeal is filed, the child is not available for adoption until the final mandate is issued by the appellate court. In cases where the parent has relinquished his or her parental rights, the child is not available for adoption for a period of ninety-one (91) days after the relinquishment order is entered. See C.R.S. § 19-5-104(7)(a).

C. Critical Tasks: The following tasks should be accomplished at the Adoption Hearing:

1. When hearing an adoption case for a child in foster care, the court must confirm that the child is available for adoption. Either the parents have voluntarily relinquished their parental rights to the child or the court has terminated the parent-child legal relationship.

2. Fingerprint based criminal records checks have been completed with regard to the adopting parents and show that they are not ineligible to adopt a child pursuant to the provisions of C.R.S. §§ 19-5-207(2.5)(a) and 19-5-208(5).

3. Determine that all required consents to adoption have been filed.

4. Review any home studies and/or court ordered reports and confirm that the adopting parents are of good moral character and have the ability to support and educate the child.

5. Advise the adopting parent or parents that the adoption is final and cannot be reversed.

6. In cases involving a child with special needs, confirm that the adopting parents have been advised by DHS of the necessary services and special circumstances of the child, the amount of any adoption subsidy, and the services that are available after the adoption.

7. The court shall be responsible for submitting the Report of Adoption to the Bureau of Vital Statistics. The adopting parents or their attorney shall be responsible for obtaining a new Birth Certificate for the child.

**IX. Conclusion:**

A. District Plan: The Court expects all parties and attorneys involved in dependency and neglect proceedings to comply with the terms of the District Plan of the Thirteenth Judicial District. Although not all of the timelines included in the District Plan are identical to those set forth by state or federal law, they are benchmarks established by the Court to serve the best interests of the child and family. The District Plan shall be reviewed periodically and, if necessary, revised to meet the requirements of the Colorado Children’s Code, Colorado Rules of Juvenile Procedure, and any other laws or rules, state or federal, that apply to these proceedings.

THE THIRTEENTH JUDICIAL DISTRICT adopts the foregoing District Plan, which shall apply to all proceedings brought under Title 19, Article 3 (Dependency and Neglect), Colorado Revised Statutes, and replaces any District Plan previously adopted by the Thirteenth Judicial District.

DATED AND SIGNED this 5<sup>th</sup> day of December, 2017, effective December 1, 2017.



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Michael K. Singer  
Chief Judge  
Thirteenth Judicial District