

District Plan for Handling Dependency and Neglect Cases

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**FIRST JUDICIAL DISTRICT
CHIEF JUDGE ORDER 13-4**

SUBJECT: District Plan for Handling Dependency and Neglect Cases

To: First Judicial District Judges and Magistrates, Clerk of Court, State Court Administrator's Office, Jefferson County Attorney, Jefferson County Division of Children, Youth and Families, Dependency and Neglect Contract Attorneys, Guardians *ad Litem*, CASA and Best Practice Court Team members

From: Ann Gail Meinster
Presiding Juvenile Judge

DATE: _____

I. Introduction

The procedure for handling Dependency and Neglect [D&N] cases in Jefferson County is set forth below. This plan 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; the recommendations contained in *Child Abuse and Neglect in the Colorado Courts 1996-2000 – A Reassessment* dated September 2002; and the experiences of other jurisdictions in improving practice in D&N cases. This plan replaces the District Plan for Handling Dependency and Neglect Cases previously adopted.

The following is a statement of philosophy for this district, the implementation of which the Best Practice Courts Team believes will result in improved and expedited outcomes for children and families:

- Making every hearing a meaningful event with defined objectives and/or specific actions to be taken in order to eliminate delay and empower parents to participate in treatment planning and engagement in treatment at the earliest appropriate time.
 - From the court's perspective, a meaningful hearing includes a full, brief update on family progress and clear next steps for the family and

professionals. Each hearing should result in the next hearing date being set within statutory timelines.

- From each subject child's perspective, a meaningful hearing is a hearing during which his or her voice is heard and permanency is addressed. This includes a full, brief update of the entire case, the parents taking responsibility and accountability for engagement in services and treatment, and the Division providing and continuing to provide appropriate referrals and services for the family. The information is relayed in an age-appropriate manner if the child or youth is present.
- From the respondent parents' perspective, parents should have access to counsel and an opportunity to be heard. They should leave court with clear expectations for the next review period and an understanding of the reason for and date of the next hearing. Respondent parents shall be able to rely upon regularly-scheduled parenting times, accountability of the professionals involved in the case and demonstration that reasonable efforts are being made to safely reunify the family as soon as possible or to maintain the children safely in the home.*
- Affording parties opportunities to collaborate and to resolve issues through negotiations at all stages of the case in a non-adversarial, problem-solving environment. This can be achieved in the form of mediation and facilitated meetings. If consensus cannot be achieved, parties shall be afforded a fair hearing by the judicial officer. With any evidentiary hearing or alternative dispute resolution meeting, family and counsel must have sufficient advanced notice to allow for meaningful participation.
- Focusing on returning each child to a safe, permanent home from the beginning of the case, or that each child remains home, and at every stage of the case with a family-focused/child-centered approach tailored to each family.
- Distribution of written court orders to all parties following each hearing. Such orders shall be in clear and concise language that is understandable to parents and will include the next court date. Counsel shall be available to answer any questions their client may have regarding the orders.
- This plan may result in the following benefits to all parties involved in the D&N process:
 - Expedited placement of children in safe and permanent homes.

* Reasonable efforts are defined at C.R.S. §§19-1-103(89) and 19-3-208. In cases where the Indian Child Welfare Act (ICWA) applies, the Division must demonstrate active efforts. See 25 U.S.C. § 1912(d).

- Earlier development of family-specific treatment plans and quicker engagement of parents in their treatment plans.
- Open discussions by parents regarding their treatment progress with their caseworker, attorney, the Guardian *ad Litem* (GAL), and the CASA volunteer.
- Greater understanding by parents regarding the dependency and neglect process and how to navigate the child-welfare and community-support systems for the benefit of their children.
- Greater participation in and commitment to treatment plans by parents who have participated in treatment-plan development.
- Early identification of parents who are not succeeding in their treatment plan and of the need for amended treatment plans or concurrent permanency planning.
- Reduced foster care costs to the parties and the County through reunification and appropriate kinship placement.
- Productive use of professionals' time and allocation of Division resources by offering a variety of settlement opportunities in order to resolve issues, thereby avoiding unnecessarily emotional, difficult or unproductive contested hearings.
- Efficient docket management, case tracking and data management.
- Accountability and an increased level of support and collaboration with all parties involved in the D&N process.
- The opportunity to gather all of a family's support system (personal and professional) into collaborative meetings in order to address children's and families' needs.

II. Continuances. At all stages of the case, continuances are granted only upon the showing of good cause and only when the best interests of the children will be served by granting the continuance. If the continued case involves one or more children who were under the age of six years old at the time the Petition was filed, the court shall make the particular findings set forth in C.R.S. §19-3-104, which provides that a hearing shall be rescheduled within 30 days. If a full hearing cannot be cleared, a status conference shall be held within the required 30 days.

III. Participants to the Proceedings

1. Required participants for all hearings

- i. Judicial Officer
- ii. Court Clerk
- iii. Parents
- iv. Counsel for parents
- v. GAL
- vi. Assistant County Attorney
- vii. Caseworker
- viii. Court reporter or electronic recording device

2. May be necessary or appropriate parties

- ix. Able and willing relatives
- x. Court interpreter
- xi. Tribal representatives
- xii. Special respondents
- xiii. CASA

IV. Participation by Children in the Court Process. C.R.S. §19-3-702(3.7) requires that the court consult with the child in an age-appropriate manner regarding the child's permanency plan.

1. In response to the statutory requirement, and in light of the Section 8.3C.2c Title IV-E publication (see also Social Security Act – section 475(5)(C)(ii)), the Permanency Planning Committee of the Best Practices Team has developed a procedure for permanency planning hearings. The procedure is contained in Appendix A.
 - a. We do not interpret the term “consult” to require a court representative to pose a literal question to a child or to require the physical presence of the child at a permanency planning hearing. However, the child's views on his/her permanency or transition plan must be obtained by the Court for consideration during the hearing. For example, a report to the court in preparation for a permanency planning hearing that clearly identified the child's view regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, CASA volunteer or GAL who verbally reports the child's views to the court could also meet the requirement.
 - b. Information that is provided to the court regarding the child's best interests alone is not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child's views on his/her permanency or transition plan.

- c. At each permanency planning hearing where the child or youth is not present, the judicial officer shall inquire of the caseworker, GAL and/or CASA volunteer as to the child's input on his/her permanency plan. If no one is able to provide the court with that information, the court is responsible for making arrangements to receive that information so as to assure statutory compliance.

V. Verbal Orders

1. Purpose: To provide an *ex parte* process to allow the court to determine whether children should be removed from their home or protective orders entered in order to protect children from possible abuse or neglect pending a hearing at which all parties are provided notice and an opportunity to be heard.
2. Participants: Judicial officers are available 24 hours per day by telephone. Participants include only the judicial officer and county attorney, caseworker, or supervisor.
3. Process/Critical Tasks: The following tasks will be completed by the conclusion of the hearing pursuant to C.R.S. §19-3-405:
 - a. Findings regarding placement, including reasonable efforts to prevent the need for such where the children have been removed from the home or a finding that no reasonable efforts are necessary because of the emergency nature of the situation.
 - b. Entry of protective orders as may be appropriate pursuant to the provisions of C.R.S. §19-3-405(2)(b) if children can be safely maintained in the home with such protection orders.
 - c. Preliminary inquiry regarding the applicability the Indian Child Welfare Act (ICWA).
 - d. Set date and time for hearing within 72 hours of the entry of the order, excluding weekends and holidays.
 - e. Order the notification of parents of the time set for the Temporary Custody Hearing and order for distribution of application for court appointed counsel (Form JDF 203).
 - f. Entry and distribution of written findings and order.
 - g. Notice to CASA of hearing date and time.

VI. Temporary Protective Custody Hearing/Advisement Hearing

1. Purpose: To make findings and enter protective orders regarding placement of the children. To ensure that all respondent parents are identified, given the opportunity to be represented by counsel, and to ensure their understanding of the D&N process, including potential consequences and permanency options. To facilitate early case assessment and provision of services.
2. Process:
 - a. Timing: In cases that are initiated by removal of a child, the Temporary Protective Custody (also called a “TPC” hearing) hearing must be held within 72 hours of removal of the child with a court hold and 48 hours of the removal of the child based on a police hold. See C.R.S. §§ 19-3-403(2) and 19-3-405(4). Timeframes are exclusive of weekends and court holidays.
 - b. Critical Tasks. The following tasks will be completed at or before the Temporary Protective Custody hearing .
 - i. Appointment of a GAL (the role of the GAL is outlined in Appendix D as defined by Chief Justice Directive 04-06);
 - ii. Assurance that respondent parents understand their rights and the potential outcomes of the D&N court process. This will be accomplished by written advisement (on the approved yellow advisement form), but the court should explain the dual purposes of child protection and family preservation as well as impress upon the parents the importance of the timely resolution of the case for the benefit of the children;
 - iii. Appointment of respondent parents' counsel, if eligible for appointment;
 - iv. Filing and service of the Petition in Dependency and Neglect upon all parties who are present. If the Petition in Dependency and Neglect is not filed at the hearing, Petitioner shall file the Petition within 14 days and must serve the respondent parents or the case will be dismissed;
 - v. Addition of any Special Respondents to the case;
 - vi. Findings regarding placement, including reasonable efforts to prevent the need for placement when the children have been removed from

the home or a finding that reasonable efforts were not necessary because of the emergency nature of the case;

- vii. Entry of protective orders as needed, including orders regarding monitored sobriety, evaluations, release of familial information, provision of services, child-centered visitation issues including visitation with parents, siblings, and other persons of importance to the children;
 - viii. C.R.S. §§19-3-207(2) & (2.5) protective orders will automatically enter for all parties;
 - ix. Diligent inquiry regarding the paternity of children, the whereabouts of non-appearing respondent parents and efforts to locate and notify them;
 - x. Diligent and ongoing inquiry regarding the applicability of the ICWA, including the provision, and if possible *completion*, of the purple ICWA advisement form;
 - xi. Order respondent parents to provide information on relatives and other caregivers by filling out and filing of form JDF 559 (the orange form);
 - xii. Entry of orders to expedite the process of identifying able and willing relatives so that kinship placement may be considered and expedited;
 - xiii. Set date for Pretrial Conference within seven to 14 days;
 - xiv. Appointment of a CASA volunteer when appropriate and available;
 - xv. Distribute Petition in Dependency and Neglect, Order Appointing Guardian *ad litem*, Order for Temporary Custody, Order of Protection, blue form of Order, and any other orders to all parties who are present.
- c. Admission. Any parent who wishes to do so at the TPC hearing may make a knowing and voluntary admission to the Petition in Dependency and Neglect upon full advisement. If an adjudication is entered, the Dispositional hearing shall be set within 30 days for all petitions which include a child under the age of 6 years at the time of filing, or within 45 for children 6 years of age and older. See C.R.S. § 19-3-508, C.R.S. § 19-3-505(7)(b).

- d. Visitation/Parenting Time. Except in extraordinary circumstances, where parenting time is ordered at the time of the TPC hearing, it shall be ordered pursuant to the parental contact protocol set forth in Appendix C.
- e. Non-Appearing Respondents. In the event a respondent parent does not appear at the Temporary Protective Custody hearing, the County Attorney shall immediately arrange for personal service or seek to serve by certified mail or publication. Counsel shall be provisionally appointed for any non-appearing respondent parent who is a minor, incarcerated or hospitalized.

VII. Pretrial Conference/Advisement Hearing

- 1. Purpose: To enter a knowing and voluntary admission to one or more of the allegations of the Petition in Dependency and Neglect; or, to deny the Petition and schedule an adjudicatory trial.
- 2. Process:
 - a. Timing. Except in extraordinary circumstances, the Pretrial conference/ advisement hearing shall be heard within seven - 14 days of the TPC hearing.
 - i. The adjudicatory hearing must be completed within 60 days of service of the Petition in Dependency and Neglect in cases governed by the Expedited Procedures for Permanent Placement (EPP) and within 90 days in all other cases.
 - ii. In conformity with C.R.S. §19-3-104 and C.J.D. 96-08, the hearing may be continued for a non-appearing party if the court determines that a party has not been served or if the absence is otherwise reasonable, if counsel has been unsuccessful in meeting with his/her client, or if a party is in need of counsel.
 - b. Critical Tasks. The following actions will be taken at the Pretrial conference/advisement hearing:
 - i. Advise parties of their rights;
 - ii. Accept admissions or denials to the Petition in Dependency and Neglect;
 - iii. Enter default judgment pursuant to C.R.C.P. Rule 55 as to any non-appearing party who has been properly served;
 - iv. If the children have been removed from the home, the court shall make appropriate inquiries and findings regarding placement and whether

reasonable efforts to prevent or eliminate the need for placement have been made;

- v. Order service on any party who has not been served;
- vi. Make initial and/or ongoing inquiries regarding paternity and ICWA and assure the following have become part of the court's file:
 - a) Yellow sheet – written advisement to respondent parents
 - b) Orange sheet – relative affidavit
 - c) Purple sheet – ICWA affidavit
- c. Critical Tasks if the Petition in Dependency and Neglect is admitted.
 - i. An adjudicatory order will enter;
 - ii. The Dispositional/Treatment Plan hearing should be scheduled on the same day whenever possible pursuant to C.R.S. § 19-3-508(1). If it is not possible to hold the Dispositional/Treatment Plan hearing the same day, it shall be scheduled within 30 days for EPP cases and within 45 days for all other cases.
- d. Critical Tasks if the Petition in Dependency and Neglect is denied. If the Petition is denied, the following additional actions will occur:
 - i. An adjudicatory trial date will be set;
 - ii. An Adjudicatory Trial Procedure Order will be entered that includes the following:
 - a) Deadlines for discovery and for endorsement of witnesses and exhibits (the protocol for requesting discover is outlined in Appendix B);
 - b) A date for a case management conference; and
 - c) A date for a status conference.
 - iii. A status conference will be set on the Division 10 docket at least one week prior to the adjudicatory trial. A mandatory case management conference shall be held prior to the status conference. A further pretrial conference hearing may be set upon request of any party.

- iv. If the Petition is admitted prior to the adjudicatory trial, the court will enter an adjudicatory order, and the Dispositional/Treatment Plan hearing shall be held on the same day whenever possible pursuant to C.R.S. § 19-3-508(1). If it is not possible to hold the Dispositional/Treatment Plan hearing on the same day, it should be scheduled within 30 days for EPP cases and within 45 days for all other cases.
- v. If the Petition is not admitted before the trial date, the adjudicatory trial will occur. If the allegations in the Petition in Dependency and Neglect are not sustained at trial, the entire case or specific parties may be dismissed. If the allegations are sustained, the following actions will occur:
 - a) An adjudicatory order will enter;
 - b) The Dispositional/Treatment Plan hearing shall be held on the same day whenever possible pursuant to C.R.S. § 19-3-508(1). If it is not possible to hold the Dispositional/Treatment Plan hearing on the same day, it should be scheduled within 30 days for EPP cases and within 45 days for all other cases.
- e. Alternatives to adjudication include petition for review of need for placement or deferred adjudications pursuant to C.R.S. §19-3-505(5) and informal adjustments pursuant to C.R.S. §19-3-501.

VII. **Dispositional/Treatment Plan Hearing**

- 1. **Purpose.** To enter a treatment plan that addresses the needs of the family and children and is designed to remedy the issues that caused the children to be declared dependent or neglected.
- 2. **Process:**
 - a. **Timing.** The Dispositional/Treatment Plan hearing shall occur within 30 days of the date of the first adjudication in EPP cases and shall occur within 45 days of adjudication in all other cases.
 - b. **Preparation.**
 - i. An individualized treatment plan, designed to meet the specific needs of a specific family, will be prepared by the caseworker, with input from each parent, unless the parent refuses to participate or is unavailable.

- ii. As part of the treatment plan, the caseworker will complete the social history (14 questions) with input from each parent, unless the parent refuses to participate or is unavailable.
 - iii. The treatment plan will contain specific objectives, each listed separately, that need to be completed. Each objective will be specific, measurable, attainable, relevant and time-bound.
 - iv. The treatment plan shall be submitted to the court and counsel five calendar days in advance of hearing.
- c. Critical Tasks. The following actions will be taken at the dispositional hearing:
- i. The court will inquire of the parties if there are any objections to the treatment plan as written.
 - ii. If there are no objections, the court will review the terms of the treatment plan and find that the treatment plan as submitted, or amended, is reasonable, appropriate and capable of success within a reasonable period of time from the child's perspective.
 - 1. The court will advise the respondent parents of the potential consequences of not complying with the treatment plan, including the possibility of termination of parental rights.
 - 2. The court will advise the respondent parents of the benefits to the children and family of meaningful participation in the treatment plan.
 - 3. The court will enter the treatment plan as a court order.
 - 4. The court will set the matter for permanency planning hearing within 90 days of the Dispositional/Treatment Plan hearing, regardless of whether or not the case is an EPP case.
 - iii. If there are objections, the court will advise the parties of their right to have a contested hearing on the matter.
 - 1. If the respondent parent wishes to have a contested hearing, objections will be specifically noted on the record and a contested hearing will be set on the record. Otherwise, respondent parent shall file a written motion outlining the

specific objections and the matter will be set for a contested hearing, on notice.

2. If the parties waive their right to hearing and want to make argument on the issue, the court will hear the disputed issues and make findings and orders adopting or amending the treatment plan.
- iv. If the Division asserts that no reasonable treatment plan is devisable, the court will require the Division to file a written motion and will set an evidentiary hearing on notice to determine, by clear and convincing evidence, whether no appropriate treatment plan can be devised.

VIII. **Review Hearing**

1. Purpose: To review the need for continued placement (if the child has been removed) and make findings about whether reasonable efforts have been made to reunify the family and prevent placement; to review progress on and the need for modification of the treatment plan; to review progress of the children and their well being in placement or at home and assess the need for services to the children; to update and review visitation or parenting time issues, protection orders and the continued appropriateness of the permanency goal; to address areas of concern, crisis or conflict; and to make findings on whether the Division has made reasonable efforts to finalize the permanency goals.
2. Process:
 - a. Periodic Review Hearing. Following the Dispositional Hearing, the court will hold review hearings as necessary or at the request of parties, generally every 30 to 90 days so long as there are no critical or emergent issues that merit more frequent reviews. Under no circumstances shall a child's case be reviewed less frequently than every 180 days, either in person or through routine (non-appearance) review.
 - b. Review Reports. Following Dispositional Hearing, a written family services plan for review is required for all court hearings (except for a pretrial conference) unless specifically waived by the judicial officer in advance.
 - i. A written family services plan court report must be prepared by the caseworker. The caseworker shall submit a draft of the family services plan to his or her supervisor no less than seven days prior to the deadline for filing with the court, and the report will be filed with the

court and served on the parties and counsel five calendar days prior to the court date.

- ii. The report will include a brief statement of how the case was initiated, court history including removal history, an update on children's placement, education, visitation, medical and mental health, and diligent search efforts for parents or relative caregivers, a review of the treatment plan components and compliance, and a review of each of the pertinent actions set forth in section C below.
- c. Critical Tasks. Some or all of the following actions will be taken at every review hearing:
- i. If removal has occurred or placement is continuing, the court will make appropriate findings regarding placement and reasonable efforts to eliminate the need for placement;
 - ii. If removal has occurred or placement is continuing, the court will determine whether reasonable efforts have been made to place a child in a timely manner in accordance with the permanent plan (P.L. 105-89);
 - iii. Determine the continued appropriateness of the permanency goal and target dates;
 - iv. Determine whether the treatment plans require modification in light of additional information or changed circumstances;
 - v. Review progress on treatment plan goals;
 - vi. If the child has been in placement for 15 of the last 22 months, consider whether there are compelling reasons that a motion for termination of parental rights should not be filed;
 - vii. Review a brief case summary of progress and the recommendations set forth by the Division;
 - viii. Set the next review date, or permanency planning hearing, if applicable.

IX. **Permanency Planning Hearing**

1. **Purpose:** To adopt a definitive permanent plan for each child and direct that significant steps be taken to implement the plan. Accordingly, the parties should be

prepared to take whatever steps are necessary to finalize the permanency planning goal by the goal date established by the court.

2. Process:

a. Timing.

- i. In EPP cases, the permanency planning hearing must be held within 90 days of the Dispositional/Treatment Plan hearing. In EPP cases, a child shall be placed in a permanent home no later than 12 months after the original placement out of the home unless the court determines that a placement in a permanent home is not in the best interests of the child at that time.
- ii. In all other cases, the permanency planning hearing must be held within 12 months after the child has been removed from the home.
- iii. Subsequent permanency planning hearings in all cases shall be held no later than every 12 months thereafter while the child remains in out-of-home placement, or more frequently as deemed necessary by the court.

- b. Notice. Written notice of the permanency planning hearing shall include a statement concerning the proposed permanent plan for each child who is placed out of the home. Such notice shall be served on the parties, counsel, relatives and foster parents who have the care of the child. A written permanency plan/court report and any proposed amendments to the treatment plan must be filed by the Division and served on above-listed parties at least five calendar days prior to the permanency planning hearing.

c. Critical Tasks

Mandatory consultation with child. Pursuant to C.R.S. §19-3-702(3.7), the court must consult with the child in an age-appropriate manner to determine the child's wishes regarding the permanency plan. "Age-appropriate" consultation may be accomplished by the child's attendance in court; by *in camera* conference with the court; by face-to-face consultation or observation by the GAL, caseworker and/or CASA volunteer. A record must be made of all *in camera* conferences.

- i. Permanency Goals. The court shall enter a permanency goal as well as a deadline to achieve the goal. The court shall order the Division to make reasonable efforts to finalize the permanency goal by the deadline. Possible permanency goals are (in the order of preference):

1. Remain home;
2. Return home;
3. Adoption by relative or non-relative;
4. Allocation of parental rights and responsibilities to an appropriate relative or non-relative;
5. Guardianship to an appropriate relative or non-relative;
6. Other planned permanent living arrangement (OPPLA) through long-term foster care;
7. Other planned permanent living arrangement (OPPLA) through emancipation.

- d. Findings. If the child is placed out of the home, the court shall make appropriate findings regarding placement and whether reasonable efforts to eliminate the need for placement have occurred. If supported by the evidence, the court must find that the Division continues to make efforts to finalize the permanency plan. The court must be provided with documentation of a compelling reason for establishing a permanency plan with the goal other than reunification, adoption or legal guardianship.
- e. Concurrent Planning. C.R.S. §19-3-508(7) specifically authorizes efforts to place a child for adoption or with a legal guardian or custodian to be made concurrently with reasonable efforts to preserve and reunify the family.
- f. Set Hearing. The court will set the next hearing or review date within 180 days, either in person or through routine (non-appearance) review.

X. **Termination of the Parental-Child Legal Relationship**

1. **Purpose:** To obtain a judicial finding as to whether there are statutory grounds to sever the parent/child legal relationship and whether termination of the parent/child legal relationship is in the best interests of the child.
2. **Process:**
 - a. Timing.
 - i. The motion to terminate parental rights may be filed at any time following the Dispositional/Treatment Plan hearing.
 - ii. The termination motion shall be filed at least 30 days prior to the scheduled hearing pursuant to C.R.S. §19-3-602(1).

- iii. Termination hearings will be set within 120 days of the filing of a termination motion unless good cause exists to set beyond said timeframe.
- iv. After a motion to terminate parental rights is filed, the court must advise parents of their rights. In termination actions, parents have a number of rights:
 - 1. Right to counsel
 - 2. Right to court-appointed counsel if the parent is indigent
 - 3. Right to a GAL if the parent is a minor or deemed incompetent
 - 4. Right to a court-appointed independent expert, if indigent
 - 5. Right to a hearing before a judge
 - 6. Right to cross-examine witnesses
 - 7. Right to testify on his or her own behalf
 - 8. Right to subpoena witnesses to testify for the parent
 - 9. Right to burden of proof on the movant
 - 10. Right to proof by clear and convincing evidence
 - 11. Right to appeal
- v. The motion for appointment of an expert witness must be filed within ten days after the motion to terminate parental rights is filed. If a parent-child interactional is also requested, the motion must include the GAL's position;
- vi. Expert reports must be distributed to all parties at least 15 days prior to the termination trial, as required by C.R.S. §19-3-607.

3. Critical tasks:

- a. The court will determine whether the statutory criteria for terminating the parent/child legal relationship have been met pursuant to C.R.S. §19-3-604. If ICWA applies, certain findings must be made beyond a reasonable doubt.
- b. If the court grants the motion to terminate parental rights, a post-termination hearing must be scheduled within 90 days pursuant to C.R.S. §19-3-606(1).
- c. If the court denies the motion, the Division will be ordered to continue making reasonable efforts to reunify the family.
- d. The County Attorney's Office shall complete the proposed termination of parental rights within 14 days of the hearing.

- e. Respondents have five days to file a motion for judicial review from the magistrate's findings, or 21 days from the date the termination order is signed to file a notice of appeal to the Colorado Court of Appeals if the judge enters the ruling on the termination motion.

XI. **Post-Termination Review Hearing**

1. **Purpose**: To review the status and progress of the child and to review and amend, if necessary, the permanent plan in order to serve the best interests and needs of the child.
2. **Process**
 - a. **Timing**. The post-termination review hearing, either in person or through routine (non-appearance) review, shall occur within 90 days of the order of termination of parental rights. Post-termination reports shall be filed by the Division and GAL pursuant to C.R.S. §19-3-606.
 - b. These reports shall be served on the remaining parties and counsel at least five calendar days prior to the hearing.
 - c. The frequency of subsequent reviews or permanency planning hearings shall be set based upon the facts and circumstances of each case but in no event shall a subsequent review, either in person or through routine (non-appearance) review, be set further than 180 days from the post-termination review.
 - d. **Findings**. The court will determine if the permanency plan and goal date remain appropriate and whether reasonable efforts have been made to finalize the permanency goal by the goal date. If no adoption has occurred within a reasonable period of time and the court determines that adoption is not feasible or appropriate, the court may order that a plan be made immediately for an alternative long-term placement of the child;
 - e. **Setting**. A review hearing, either in person or through routine (non-appearance) review, will be set within 180 days until the child has been adopted or achieved permanency and the case is dismissed.

XII. **Adoption Hearing**

1. **Purpose**: To provide a permanent legal home for the child that will serve the child's best interest and grant to the adoptive parents all of the rights and responsibilities of a parent pursuant to statute.

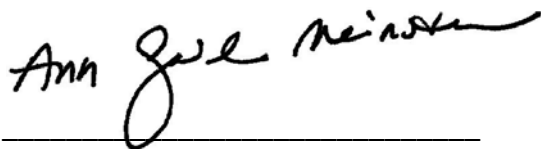
2. Process:

- a. **Timing.** The adoption hearing shall be held as soon as possible after the child becomes legally-free for adoption. In the case of an order entered by a District Court Magistrate, if no motion for review is filed, the child is legally-free for adoption 15 days after the entry of a written decree of termination of the parent-child relationship. If a motion for review is filed, the child is not free until a final ruling from the reviewing District Court Judge. In the case of an order entered by a District Court Judge, if no notice of appeal is filed, the child is free for adoption 22 days after the entry of a written decree of termination of the parent-child relationship or an order affirming the order of a magistrate that terminates the parent-child relationship. If an appeal is filed, the child is not legally free until a final mandate is issued by the appellate court. In cases where a relinquishment petition is granted, the child is not available for adoption until the relinquishing parent fails to file a motion to set the final order of relinquishment aside within 45 days after an uncontested relinquishment order is entered.
- b. **Findings.** When hearing an adoption petition for a child who is freed for adoption the court will determine that:
 - i. Either parental rights have been voluntarily relinquished or that the parent-child relationship has been involuntarily terminated and the appeal process is complete;
 - ii. Fingerprint-based criminal records checks of all adopting parents have been completed and show that the adopting parent is 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).
 - iii. All required consents to adoption are provided and are genuine;
 - iv. Home studies and/or court-ordered reports are properly reviewed and indicate that the adopting parents are of good moral character and have the ability to support and educate the child;
 - v. Adoptive parents understand that adoption is permanent and irreversible;
 - vi. In cases involving children with special needs, adopting parents have been advised of all the necessary services and special circumstances, including the adequacy of adoption subsidies, and an awareness of services and assistance that is available after the adoption;

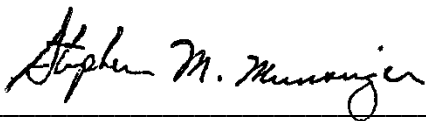
- vii. The adoption will serve the best interests of the child.
- c. Report of Adoption. The Report of Adoption shall be issued by the clerk to the Bureau of Vital Statistics.

XIII. **Conclusion**

The Court expects all parties and professionals in Dependency and Neglect cases to comply with the terms of this District Plan for handling Dependency and Neglect Cases. Not all timelines outlined in this plan are statutorily required. However, they are benchmarks established for the Juvenile Court of this District, are in the best interests of children and families, and are expected to be successfully attained. This Plan's effectiveness will be formally evaluated annually, or more frequently as needed, based upon the goals outlined in the Introduction. Any comments or suggestions should be addressed, in writing, to the Juvenile Judge's Division staff.



Ann Gail Meinster
Presiding Juvenile Judge
First Judicial District



Stephen M. Munsinger
Chief Judge
First Judicial District



Marianne Marshall Tims
District Court Magistrate



PRESIDING JUVENILE JUDGE ORDER 2013-2
STATE OF COLORADO
FIRST JUDICIAL DISTRICT

ORDER

WHEREAS THE PERMANENCY COMMITTEE OF THE 1ST JUDICIAL DISTRICT BEST PRACTICE TEAM IDENTIFIED A NEED TO ESTABLISH A PROTOCOL TO ENCOURAGE YOUTH TO APPEAR IN COURT;

WHEREAS §19-3-702(3.7) C.R.S. MANDATES THAT “THE COURT CONDUCTING THE PERMANENCY HEARING SHALL CONSULT WITH THE CHILD; IN AN AGE-APPROPRIATE MANNER REGARDING THE CHILD’S PERMANENCY PLAN”;

WHEREAS THE PERMANENCY COMMITTEE REVIEWED LITERATURE AND POLICY AND DETERMINED TO ADOPT A PROTOCOL THAT IS CONSISTENT WITH BEST PRACTICE AS DETERMINED BY SUCH ORGANIZATIONS AS THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (NCJFCJ);

WHEREAS THE NCJFCJ HAS ADOPTED A POLICY THAT CHILDREN OF ALL AGES SHOULD COME TO COURT UNLESS IT IS DECIDED BY THE JUDICIAL OFFICER BASED ON INFORMATION PROVIDED BY CASE PARTICIPANTS THAT IT IS NOT SAFE OR APPROPRIATE FOR THE CHILD TO COME TO COURT;

IT IS HEREBY RESOLVED THAT:

Guardian *ad Litem*s (GALs) shall meet with their client prior to the Dispositional Hearing and/or Permanency Planning hearings in order to prepare the child/youth for court and also assess whether the youth’s participation is in his or her best interests;

Children/youth may also be considered for participation in other hearings and proceedings including Allocation of Parental Responsibilities hearings and Case Management Conferences when appropriate.

There is no minimum age for participation. The presumption will be that the child/youth will be allowed and encouraged to come to court. This presumption can be rebutted by the caseworker or the GAL and may include, but is not limited to, such reasons as young age of the child/youth, mental state of the child/youth, developmental disability of the

child/youth, or preference on the child's/youth's part to participate in an alternative manner.

GALs and caseworkers will work together to ensure that the children/youth know they have a right to be heard by the court. Children/youth will be told that they have several options for communication, including direct court attendance, letter, fax, or email to the court, or having the GAL speak on their behalf. In the case where the child/youth wants to speak to the judge, the GAL shall file a motion to that effect or provide notice on the record. The conversation shall take place on the record. The judicial officer shall provide a summary of the conversation on the record or in writing.

If the GAL and caseworker disagree on the issue of whether a child/youth should attend a hearing, the GAL will make the final decision.

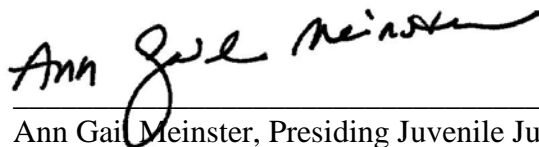
If a child/youth does not participate in a treatment plan or permanency planning hearing, the Court will inquire as to whether the child/youth was consulted and what his/her position is. The GAL will address the child's/youth's position in a written or oral report.

The GAL and the caseworker shall be responsible for working with the treatment team to arrange for the child's/youth's transportation. CASA volunteers may be considered for transportation, even in cases where no CASA is assigned to the case.

CASA volunteers may assist with children/youth waiting for their hearings. Cases where a child/youth is present will have priority in being heard. The order of priority in calling cases will be: incarcerated, interpreter, child/youth, all other cases.

Finally, as this is a statutory requirement, it necessitates ongoing communication about issues regarding this protocol that may arise in the future. It is the expectation of the Court that all stakeholders shall continue to monitor and adapt to the changing needs of our community and the children and families we serve.

DONE AND SIGNED on this 23rd day of July, 2013.



Ann Gail Meinster, Presiding Juvenile Judge
First Judicial District

Appendix B
Discovery Protocol

This section is still being developed and part of this section is being developed by the Legal Issues Committee.

Appendix C

Visitation/Parenting Time Protocol

When children are placed out of the home, regular visitation between children and their parents is an essential part of maintaining and/or building a healthy relationship among family members. Visitation between children and their parents falls along a continuum from unsupervised visits as the least restrictive to therapeutic visits as the most restrictive. It is important that the appropriate type of visitation plan is implemented with each individual family to ensure an ongoing relationship between children and their parents that is healthy and positive.

Decisions made regarding the length, frequency, and type of visitation will be made based on a variety of factors, including but not limited to, the children's physical, emotional, and developmental needs, the children's reactions to visits, the availability of parents for visitation, and compliance with the treatment plan, especially with demonstration of sobriety.

It is expected that visitation plans will change over time, depending on the progress of both parents and children toward reunification and permanency. As families need more or less structure and/or intervention, the level of visitation will change.

Description and Criteria for Visitation Types:

Unsupervised Visits: These are visits where no one from JCDCYF, or appointed by JCDCYF, is observing the visit. This is an opportunity to find out how the parent(s) and child/children interact and function without external controls and with unstructured time. Unsupervised visits are based on one or more the following:

- Parents are able to provide a safe environment (physically and emotionally) during a visit
- Child/children have a functional, safe relationship with parent(s)
- Parent(s) are able to respond to the child/children's needs and provide appropriate interaction
- Off-site and day/overnight home visits go smoothly and continue to do so as length of visitation time increases
- Parent(s) are able to redirect and manage child/children's behavior most of the time
- Parent(s) respond to and/or follow through with suggestions for improvement of parent(s)' relationship with their child/children
- Visits are not traumatic for parent or child/children
- Parents demonstrate they are able to ask to help

Monitored Visits: These are visits where a representative from JCDCYF, or someone appointed by JCDCYF, is available and periodically observes the scheduled visit to provide some structure and support for parent(s) and child/children during the visit. For monitored visitation, parent(s) have demonstrated appropriate interaction with child/children during visits at the JCDCYF office or other identified setting. Some concerns may remain, for instance, that parent(s) might allow contact with other people not approved by JCDCYF or have the child/children in inappropriate

situations if completely unsupervised. Monitored visits are based on one or more of the following:

- Minimal safety concerns (physically and/or psychologically) are present for parent(s) and child/children
- Child/children have a functional, safe relationship with parent(s)
- Parent(s) are able, during the majority of the visit, to respond to the child/children's needs and appropriately interact
- Some concerns remain regarding off-site visits
- Parent(s) have some difficulty with parenting skills and may need some support to redirect and manage child/children's behavior
- Parent(s) may have some difficulty responding to and/or following through with suggestions for improvement of their relationship with their child/children
- Visits are minimally stressful/emotionally distressing for parents and/or children

Visits supervised by kin: The relative who has placement of the child/ren or another associated adult or friend approved by JCDCYF and the GAL is observing and intervening if necessary throughout the visit. The guidelines for these visits include:

- The friend/relative agrees to be physically present for the entire scheduled parenting time.
- The friend/ relative agrees to cancel the parenting time if the parent(s) present with any indication (i.e. smells like alcohol, bloodshot eyes, dilated eyes, slurring words, jittery, unusual or unsafe behavior) that (s)he is under the influence of alcohol or another drug. If parenting time is cancelled for the above reasons, the caseworker and the Guardian *ad litem* will be notified immediately.
- The friend/relative agrees to cancel the parenting time if the parent(s) use any physical discipline or force, if (s)he speaks negatively about any of the other involved parties, if s(he) talks about details of the case, or if s(he) refers to the child in negative terms. If parenting time is cancelled for the above reasons, the caseworker and the Guardian *ad litem* will be notified immediately.
- The friend/relative will report information regarding the parenting time (location of parenting time, time and duration of parenting time, activities completed during parenting time, observations of child(ren)) to the assigned caseworker and Guardian *ad litem*.
- Any other guidelines specific to the case.

Supervised Visits: These are visits where a JCDCYF representative or someone appointed by JCDCYF is observing and intervening throughout the visit. The person supervising the visit will spend time with parent(s) establishing goals for the visit, coaching the parent(s) during the visit, and giving the parent(s) feedback at the conclusion of the visit. The person supervising the visit will focus on strengths and will work with the parent(s) on the specific parenting skills needing improvement. Supervised visitation is based on one or more of the following:

- Significant safety (physical and/or psychological) concerns may be present for parents and/or child/children

- Child/children may not have a functional, safe relationship with parent(s)
- Parent(s) may have difficulty responding to the child/children's needs and appropriately interacting
- Significant concerns may be present regarding off-site visits
- Parent(s) have difficulty with parenting skills and need more frequent support to redirect and manage child/children's behavior
- Parents may have difficulty responding to, and/or following through with, suggestions for improvement of their relationship with their child/children
- Visits may be stressful/emotionally distressing for parents and/or child/children

Therapeutic Visits: Typically before therapeutic visitation begins, other interventions that have previously been attempted and have not resulted in sufficient improvement in the parent-child/children interaction. Prior to therapeutic visits beginning, a clinical therapist will meet individually with the parent(s) and the child/children at least one time to assess the readiness of the family members to engage in therapeutic visitation. If one or more family members are not ready to engage in therapeutic visits, the clinical therapist may continue to work with the parent(s) and the child/children on an individual basis to ready them for the visitation. A clinical therapist is present throughout the visit and may consistently intervene according to the recommendations of the court ordered treatment plan and the clinical treatment plan regarding visitation. The therapist may set specific goals with the parent(s) and may practice skills with the parents prior to having the parent(s) and child/children together in the same room. The clinical therapist will make recommendations regarding frequency and duration of the visits on an ongoing basis. The therapist may process the visit with the parent(s) and/or child/children after the visit. The therapeutic intervention will be focused on behaviors that the parent needs to modify or change to improve the concerns listed below:

- Significant safety concerns (physical and/or psychological) are present for parent(s) and child/children
- Child/children do not have a functional, safe relationship with parent(s)
- Parent(s) have great difficulty responding to the child/children's needs and appropriately interacting
- Parent(s) have difficulty responding to, and following through with, suggestions for improvement of their interaction with their child/children
- Visits are stressful/emotionally distressing for parent(s) and/or child/children
- Because of the essential characteristics of therapeutic visits, they would not be paired with monitored or unsupervised visits. If monitored or unsupervised visits are appropriate, then additional parent/child interventions would be provided through family therapy.
- Parent(s) and/or child(ren's) individual physical and/or mental health issues may inhibit a safe functional relationship. Therefore some individual therapeutic interventions may be used in addition to the therapeutic visit time.
- Off site visits are generally not considered when issues of safety, substance abuse, or significant mental health are present. Therapeutic visits may be considered to occur off

site on a case by case basis when clinically appropriate and approved by the therapist and/or supervisor, within input of the ongoing caseworker and Guardian *ad litem*.

Family Therapy: Family therapy is not a type of visitation. Family therapy is a form of psychotherapy that includes family members to help families deal with issues that interfere with the functioning of family and/or the functioning of the home environment. Family therapy typically aims to improve communication, relationships, and/or the structure of the family.

Process for visitation schedule to be established:

In **all** cases where children are not residing with a parent, JCDCYF or its appointed representative shall conduct a visitation assessment to determine the proper visitation schedule. This visitation assessment shall be conducted through observation of 2-4 visits with the family and through completion of the Visitation Assessment and Progress tool which objectively measures strengths and problems in parenting skills and relationships within the family. This assessment will be conducted to determine the appropriate duration and frequency of visits as well as the correct level of intervention.

The ongoing caseworker shall make contact with the family, either in person or by phone, within 24 business hours of the TPC hearing to schedule visitation. The ongoing caseworker will make a referral to the case aide supervisor or the outside agency supervising the visitation within 48 hours of the TPC hearing.

The visitation assessment shall be completed within 30 days of the referral date and contain recommendations to the caseworker about the level of intervention, the duration, and the frequency of visits. The caseworker will consider these recommendations in light of other circumstances in the case, including compliance with the treatment plan by parents, especially related to demonstration of sobriety, as well as the individual needs of the children.

During the assessment period, visitation shall occur on a regular basis for all families. If a case aide or outside agency is not available to immediately begin the visitation, it is expected that the caseworker assigned to the case will ensure that visitation is occurring. During the assessment period, it is expected that all visitation will begin on a supervised basis at JCDCYF or by its appointed representative on the following schedule. This schedule may be modified to meet the individual needs of the children and families.

Age of children*	Frequency of visitation	Duration of visits
0 - 2 years	3 times per week	1.5 – 2.0 hours per visit
2 years – 4 years	2 times per week	1.5 hours per visit
School aged children	1 time per week	1.0 hours per week

*When there is a sibling group of various aged children placed together, the visitation schedule will be based on the youngest child’s age.

The recommendations obtained from the visitation assessment and the recommendations of the caseworker will be shared with the parties and the court. Expansion of visitation may occur

June 10, 2013

at the discretion of the caseworker and Guardian *ad litem* unless there are specific court orders prohibiting the expansion.

If the visitation assessment tool recommends a decrease in visitation or an increase in the level of intervention, the change in visitation will only occur upon agreement of all attorneys in the case or through court order.

Updated February 22, 2013

Appendix D

Role of the Guardian *ad Litem*

CHIEF JUSTICE DIRECTIVE 04-06
Revised December, 2011
SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE
COURT APPOINTMENTS THROUGH THE
OFFICE OF THE CHILD'S REPRESENTATIVE

The following policy is adopted to assist the administration of justice through the best interest appointment and training of Guardians *ad Litem* (GALs), attorney Child and Family Investigators and Child's Representatives appointed on behalf of minors/children (under age 18). Non-attorney Child and Family Investigators, adult GAL appointments and any other juvenile attorney client appointments fall under the provisions of Chief Justice Directive 04-05.

I. Authorities

- A. Article 91 of Title 13 established the Office of the Child's Representative (OCR) and the various statutory requirements of the OCR.
- B. The OCR shall be responsible for the following:
 - Provision of (GAL) services in dependency and neglect proceedings under Title 19.
 - Provision of GAL services for a respondent parent in dependency and neglect proceedings under Title 19 when that parent is a minor.
 - Provision of GAL services in delinquency matters under Title 19.
 - Provision of GAL services in adoption proceedings under Title 19 when one or more parties qualify as indigent.
 - Provision of GAL services for a child charged or prosecuted as an adult pursuant to Section 19-2-517, C.R.S. or Section 19-2-518, C.R.S.
 - Provision of GAL services in paternity and support matters brought under Title 19 when one or more parties qualify as indigent.
 - Provision of GAL services to minors in alcohol or drug abuse proceedings under Title 25.

- Provision of GAL services to minors in mental health proceedings under Title 27.
 - Provision of GAL services to minors in probate proceedings under Title 15 when the parties are indigent.
 - Provision of GAL services to minors involved in truancy proceedings under Titles 19 and 22.
 - Provision of Child's Representative services or attorney Child and Family Investigator services in domestic relations cases under Title 14, when one or more parties qualify as indigent.
 - Provision of services in any other GAL, Child's Representative or attorney Child and Family Investigator appointments where authorized, by statute or inherent authority, to act in or in representation of the best interests of a minor.
- C. State funds are appropriated to the OCR to fund all statutorily authorized appointments, costs associated therewith and the various responsibilities that fall under the purview of that office pursuant to Section 13-91-102(2), C.R.S.

II. OCR Authority and Responsibilities

- A. The OCR's authority and responsibilities include, but are not limited to: ensure and enhance competent representation of a child's best interests in a cost effective manner, which includes training and monitoring of services rendered; the exclusive authority and discretion to select and contract with attorneys to provide state-paid GAL, Child's Representative and attorney Child and Family Investigator services, including the authority to reject attorneys for any reason; the authority to terminate, at will, contracts and existing court appointments as determined by the OCR; and the responsibility to provide oversight of and accountability for state-paid GAL, Child's Representative and attorney Child and Family Investigator services for the benefit of Colorado's children, including investigation and resolution of complaints regarding attorneys who contract with the OCR.
- B. The OCR shall maintain and provide to the courts, on an ongoing basis, a list of qualified attorneys to whom appointments may be given. The courts shall appoint from this list. It is within the OCR's sole discretion to determine which attorneys are placed on the appointment list. A court is not required to use all attorneys on the list but only those it chooses to appoint. The OCR will not process payment for services of attorneys with whom the OCR does not have a contract and who are not on the OCR list. Should any unusual, exceptional or

emergency circumstances present the need for the appointment of an attorney not listed as an OCR-qualified attorney, the court shall contact the OCR for approval prior to the appointment of that attorney. The OCR shall provide a prompt response to the court's request.

- III. Authority and Requirement for Appointments of GALs, Child's Representatives and Attorney Child and Family Investigators through the OCR
- A. A GAL shall be appointed for a child in a dependency and neglect action pursuant to Title 19. The GAL's appointment shall continue until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order.
 - B. Pursuant to Title 19, a GAL may be appointed in a delinquency proceeding if: no parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S. appears at the first or subsequent hearing; the Court finds a conflict of interest between the child and the parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S.; or the court finds that a GAL appointment will serve the best interests of a child. Such appointment shall continue if a case is transferred to adult criminal court under Title 19.
 - C. Pursuant to Title 19, the court, in its discretion, may appoint a GAL in any direct file of charges against a juvenile in adult criminal court.
 - D. Pursuant to Title 19, a GAL may be appointed, unless the child is already represented by defense counsel, in truancy proceedings under Title 22. Pursuant to Title 19, a court may appoint both counsel and a GAL for the child if the court finds that such appointment is in the best interests of the child.
 - E. A Child's Representative or attorney Child and Family Investigator may be appointed in a domestic relations case pursuant to Title 14.
 - F. A GAL may be appointed for a minor in formal proceedings involving guardianship or conservatorship of a minor; trusts or estates of decedents, minors and protected persons; and in judicially supervised settlements pursuant to Title 15 if the court determines that a need for such representation exists.
 - G. A GAL shall be appointed in a mental health proceeding pursuant to Title 27 for any child under age 15 who is a ward of the Department of Human Services or for any minor under 15 who objects to his or her hospitalization.
 - H. If necessary to serve a child's best interests, a GAL may be appointed for an infant or other minor who does not have a representative and who is a party to a civil suit.

- I. A GAL may be appointed for a child in a paternity action pursuant to Title 19.
 - J. A GAL may be appointed for a minor upon the filing of a petition for involuntary commitment of alcoholics or drug abusers if the court deems the minor's presence in court may be injurious to him or her pursuant to Title 25.
 - K. Pursuant to Title 19, a GAL for a minor may be appointed in an adoption proceeding. Pursuant to Title 19, a GAL for a minor may also be appointed in a proceeding concerning the relinquishment of the minor if the court finds that there is a conflict of interest between the child and the parents, guardian or legal custodian; the court finds that such appointment would be in the best interests of the child; or the court determines that the child is twelve years of age or older and that the welfare of the child mandates the appointment.
 - L. Pursuant to Title 12, a GAL may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act pursuant to C.R.S. §12-37.5-107(2)(b) and Chapter 23.5 of the Colorado Rules of Civil Procedure ("Rules of Procedure for Judicial Bypass of Parental Notification Requirements").
- IV. Allocation of Cost and Guidelines for Payment by the OCR
- A. Allocation of Costs—Requirement of Indigency Finding
 - 1. An indigency determination is not required for state payment of GAL services in matters other than these specific cases:
 - a. The State, through the OCR, shall bear the costs for the services of an attorney Child and Family Investigator or a Child's Representative appointed pursuant to Section 14-10-116.5, C.R.S. or Section 14-10-116, C.R.S., respectively, only if one or more of the parties responsible for the costs are deemed to be indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under either Section 14-10-116.5, C.R.S., or Section 14-10-116, C.R.S., respectively, which specify that the parties are responsible for all costs unless there is a specific finding of indigency.
 - b. The State, through the OCR, shall bear the costs for GAL services in paternity and support matters under Article 4 of Title 19 only if one or more of the parties responsible for the costs are deemed to be indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 19-4-117, C.R.S., which specifies that the court shall order reasonable fees of the GAL to be paid by the parties.

c. The State, through the OCR, shall bear the costs for GAL services in adoption and relinquishment proceedings only when the party(ies) responsible for the costs is deemed to be indigent. The State is precluded from paying for services and any costs associated with GAL services for non-indigent parties under Section 19-5-103, C.R.S., which specifies that the court shall order reasonable fees to be paid by the relinquishing parent(s).

d. The State, through the OCR, shall bear the costs for GAL services provided to a minor under Title 15 (probate, guardianship and conservatorship) and other civil cases only when the party(ies) ordered to be responsible for the costs or the minor's estate is deemed to be indigent.

2. When indigency is required for court-appointed representation at state expense, the responsible party(ies) must complete, or have completed on their behalf, application form JDF 208 ("Application for Public Defender, Court-Appointed Counsel, or Guardian ad Litem") signed under oath, before an appointment may be considered. An indigent person is one whose financial circumstances fall within the fiscal standards set forth by the Colorado Supreme Court through Chief Justice Directive (See Attachment A). A court shall not order representation to be at state expense absent the completion of form JDF 208, a finding of indigency and an order of the court. If one party is indigent, the State, through the OCR, will pay half of the state-set hourly rate.

B. Guidelines for Payment by the OCR

1. Claims for payment of appointee fees and expenses shall be submitted by the appointee directly to the OCR, not the appointing court, in accordance with the OCR's policies and procedures.
2. The maximum total fees per appointment for all OCR appointments and the procedures for approval of excess fees shall be as set forth by the OCR.
3. Attorneys shall maintain records of all work performed relating to court appointments and shall make all such records available to the OCR and/or to the court for inspection, audit and evaluation in such form and manner as the OCR or court may require, subject to the attorney work product doctrine and any other applicable privileges.

V. Duties of Attorneys Appointed as GALs, Child's Representatives, and Attorney Child and Family Investigators

- A. Training
 - 1. Attorneys appointed as GALs, Child's Representatives or attorney Child and Family Investigators shall possess the knowledge, expertise and training necessary to perform the court appointment.
 - 2. In addition, GALs, Child's Representatives, and attorney Child and Family Investigators shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney's knowledge of the issues in best interest representation. These requirements should be met prior to attorney's first appointment and per legal education reporting period. The attorney shall provide the OCR with proof of compliance with this requirement with his/her application to provide attorney services or contract renewal for the OCR.
- B. All attorneys appointed as GALs or Child's Representatives shall be subject to all of the rules and standards of the legal profession. The unique statutory responsibilities of a GAL and a Child's Representative do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the "client" of a GAL or a Child's Representative is the best interests of the child. The ethical obligations of the GAL or Child's Representative, under the Colorado Rules of Professional Conduct, flow from this unique definition of "client." Because of this unique relationship, an attorney's obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child's best interests. A determination by the GAL or the Child's Representative of a child's best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child's position regarding the disposition of the matter before the court. A GAL or a Child's Representative must also explain to the child the limitations on confidentiality.
- C. The attorney appointed as a GAL or a Child's Representative shall diligently take steps that s/he deems necessary to represent and protect the best interests of the child, under the terms and conditions of the order of appointment, including any specific duties set forth in that the appointment order or in any subsequent order. If the appointee finds it necessary and in the best interests of the child, the appointee may request that the court expand the terms of the appointment and scope of the duties.
- D. A GAL in a dependency and neglect case shall specifically:

1. Attend all court hearings and provide accurate and current information directly to the court. *Commentary: In exceptional circumstances another qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court.*) This shall include a statement of the child's position, when ascertainable based on the child's developmental level, regarding the disposition of the matters addressed at the hearing. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.
2. At the court's direction and in compliance with Section 19-3-606(1), C.R.S., file written or oral report(s) with the court and all other parties.
3. Take actions within the scope of his or her statutory authority and follow the ethical obligations necessary to represent the best interests of the child. *Commentary: The GAL has the right to and should actively participate and be included in all aspects of litigation including but not limited to discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals, except as limited by applicable law.*
4. Conduct an independent investigation in a timely manner which shall include at a minimum:
 - a. Personally interviewing the child (if appropriate to the child's developmental level) and meeting with and observing the child in his or her placement as soon as is reasonable, but, in no event, later than 30 days following the GAL's appointment;
 - b. Personally meeting with and observe the child's interaction with the parents, proposed custodians or foster parents including kinship care providers; *Commentary: The GAL shall meet with the parents, proposed custodians, foster parents or kinship care providers who are providing ongoing care for the child and observe the child in that home. This requirement neither mandates nor is fulfilled by a GAL's meeting with the care providers and observing the child in a temporary intake placement service, respite care or juvenile detention holding facility, unless that is the only opportunity to observe the child.*
 - c. Reviewing court files and relevant records, reports and documents;
 - d. Interviewing the respondent parents, with the consent of counsel;

- e. Interviewing other people involved in the child's life, including: foster parents; caseworkers; CASA volunteers; relatives; and school personnel, therapists and any other persons or professionals necessary to assess and serve the child's best interests.
- f. Confirm that the county department's investigation has included a search for any prospective kinship, placement and/or adoption or potential tribal affiliations, or personally conduct such investigation, in the event these attempts to reunify fail. This part of the investigation should be conducted during the initial stages of the case.
- g. When appropriate, visiting the home from which the child was removed.

Additional Commentary: The GAL's initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to serving the child's best interests and advancing permanency for the child. An effective initial investigation allows the GAL to make recommendations early on in a case which will: implement services that will advance the goals of the case and the best interests of the child with the least delay possible; reduce the risk of harm that involvement in the dependency and neglect system may present to the well being of the child; reduce the risk of disruption in the child's placement and potential harm from the child from such disruption; and preserve relationships significant to the child, such as sibling relationships. Hence, it is expected that the initial duties described in this subsection shall be completed within 45 days of the GAL's appointment, with the exception of the in-placement interview/observation, which shall occur within 30 days of the appointment. The duties described in sections V.D.4.e and V.D.4.f may be performed by a qualified person other than the appointee under the supervision of the appointed GAL.

- 5. Continue to perform an ongoing investigation as necessary to represent the best interests of the child for the duration of the case unless relieved of such duty by the court. The GAL's ongoing investigation shall include, but shall not be limited to:
 - a. If the child's placement is changed, the GAL shall personally meet with and observe the child in each new home or placement of the child, as soon as practicable after the child's entry into the placement.
Commentary: Continuing contact and ongoing investigation constitute important components of the GAL's role. Additionally, because each disruption in the child's placement presents new risks of harm and is potentially detrimental to the child's emotional and psychological well being, it is critical that the GAL meet with and observe the child in each new placement to assess the appropriateness, risks and potential

permanency of that placement, as part of the GAL's ongoing investigation. This in-placement meeting/observation shall ideally occur no later than 30 days after the child's entry into the new placement. When circumstances make it impracticable for a GAL to visit a child within 30 days of a child's entry into a new placement, the GAL may send a properly trained representative to visit the child in the placement within 30 days of the placement, but the GAL must follow up with his or her own visit within a reasonable time thereafter.

- b. Maintaining contact and ongoing communication with the child, foster parents, caseworker, CASA and any other parties, persons or professionals necessary to ensure that the child's best interests are continually met;
 - c. Other applicable duties listed above in section V.(C.3).
 - 6. In cases in which the parents or child are living or placed more than 100 miles outside of the jurisdiction of the court, the requirements to personally meet with and interview the person or child are waived. However, to the extent possible, the appointee shall endeavor to see the child in his or her extended placement and the OCR will pay reasonable costs associated with meeting these obligations.
 - 7. All GALs in Dependency and Neglect proceedings shall submit a standard affidavit of compliance to the OCR by May 30 of each year for appointments made in the previous contract year. For any cases in which the GAL has not complied with the above requirements, a standard exception form shall be attached to the affidavit. The standard affidavit of compliance and exception form shall be developed by the OCR and made available to all GALs. The current form is shown in Attachment B.
- E. An individual appointed as an attorney Child and Family Investigator pursuant to Section 14-10-116.5, C.R.S., is an investigative arm of the court and shall follow the specific terms of the order of appointment, which includes filing a written report with the court, but which does not include the duties described in section V.B. Attorney Child and Family Investigators are also subject to the Rules of Professional Conduct, the Child and Family Investigator standards set forth in Chief Justice Directive 04-08, as well as other existing or subsequent Chief Justice Directives or standards applicable to Child and Family Investigators.
- F. An attorney appointed as a GAL or Child's Representative in all other proceedings, including juvenile delinquency, parental responsibility, paternity, relinquishment, probate, mental health and truancy cases, shall perform all duties as directed by the court, as set forth

by statute and as required by the Rules of Professional Conduct as described in section V.B. VI.
Duties of Judges and Magistrates

- A. Judges and magistrates shall ensure that GALs, Child's Representatives and attorney Child and Family Investigators involved with cases under their jurisdiction are representing the best interests of children/minors.
- B. In providing this oversight, judges and magistrates shall:
 - 1. Routinely monitor compliance with this directive and promptly notify the OCR of failures of GALs, Child's Representatives and attorney Child and Family Investigators to comply with this Chief Justice Directive and other Chief Justice Directives in existence or subsequently adopted, including Chief Justice Directive 04-08, which sets forth the standards for Child and Family Investigator.;

Commentary: The complaint and notice procedure is set forth in section VII.B, footnote 1. A child whose best interests are being represented by counsel in dependency and neglect and other proceedings is in a particularly vulnerable position s/he will unlikely appear in court regularly and may find it difficult to express concerns or problems that s/he is experiencing with the attorney who has been appointed to represent his or her best interests. For these reasons, judges should take an active role in monitoring the attorneys who represent the best interests of children. Often the judge is the only individual in the position to become aware of less than adequate representation or non-compliance with this Chief Justice Directive. Judges should consider such practices as inquiring at each court date as to the last contact that the GAL or Child's Representative has had with the child, as well as asking any other questions the judge believes is necessary and appropriate to ensure that the child's best interests are receiving quality representation.

- 2. Provide guidance and clarify the expectations of the court concerning GALs, Child's Representatives and attorney Child and Family Investigators upon their appointment, throughout the proceedings and through other appropriate mechanisms;
- 3. Hold periodic meetings with all practicing GALs, Child's Representatives and attorney Child and Family Investigators the court deems necessary to ensure adequate representation of the best interests of children or minor wards; and
- 4. As explained in section V.B, hold GALs and Child's Representatives to the same standards and expectations imposed by the Colorado Rules of

Professional Conduct on every attorney who is licensed to practice law in Colorado and report any violations. Any report should also include notice to the OCR of such report or concern so that the OCR may use this information to protect existing or other children's best interests from inadequate representation.

- C. Implement procedures and practices that enable GALs and Child's Representatives to comply with this Chief Justice Directive. Commentary: Examples of such procedures and practices include entering orders authorizing GALs and Child's Representatives to access to all relevant case information and checking the availability of the GAL or Child's Representative when scheduling hearings.
- VII. Procedures for Complaints against GAL, Child's Representative, and Attorney Child and Family Investigator through Contracts with the Office of the Child's Representative.
- A. For all court-appointed GALs, attorney Child and Family Investigators and Child's Representatives, complaints concerning alleged violations of the Colorado Rules of Professional Conduct shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel and reported, if possible, to the OCR so that OCR may be able to consider this information when deciding whether to continue to contract with the attorney, either at the time of the complaint or in the future.
 - B. All complaints regarding the performance of any state-paid GAL, attorney Child and Family Investigator or Child's Representative who contracts with the OCR shall be submitted to the OCR in writing, unless the complainant is a judicial officer or court staff.* The OCR shall investigate the matter and take action necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to: placing the attorney on probationary status with regard to his or her contract with the OCR; suspending or terminating the attorney's contract with the OCR; terminating the attorney's appointment on an active case[†]; and/or taking remedial action to improve the quality of the

* If an issue arises concerning an attorney's ability to competently or adequately represent a child's best interest in any particular case, the court shall immediately contact the OCR. The OCR must respond forthwith, giving immediate consideration and resolution regarding the complaint, which may include termination of contract, removal from the case at issue, and/or removal from the OCR approved list. In addressing the complaint, the OCR will give serious consideration to the judicial officer's recommendations as to how the termination of an appointment or any other action taken by the OCR may impact the best interests of the child in the course of a particular case. This complaint process in no way interferes with the court's inherent powers to impose sanctions, exercise its powers of contempt, and/or report any violations of the Rules of Professional Conduct to the Supreme Court Attorney Regulation Office.

[†] The OCR will remove an attorney from an open case only under extenuating circumstances. With input from the court and only if warranted under the most exceptional circumstances, will the OCR consider removing an attorney

attorney's work. At the conclusion of the investigation, the OCR shall issue a written report of its action to the attorney, the complainant and other parties determined by the OCR to be in need of the complaint information, and the OCR may redact the written report to protect the confidentiality of persons when the OCR deems such redaction advisable. This paragraph does not preclude OCR's authority to terminate a contract at will.

- C. The OCR is required to report any violations of the Colorado Rules of Professional Conduct that it becomes aware of during its investigation of a complaint to the Colorado Supreme Court Office of Attorney Regulation Counsel.

VIII. Sanctions

- A. All contracts with the OCR for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Chief Justice Directive may result in OCR terminating the contract, removing the attorney from the OCR appointment list, and terminating the appointment.
- B. Judges and magistrates shall notify appointees that acceptance of the appointment requires compliance with this Chief Justice Directive, and that failure to comply will result in timely notification to the OCR and may result in the OCR terminating the contract, removing the attorney from the OCR appointment list, and terminating the appointment as set forth section VIII.A.

Effective May 1, 2004, CJD 97-02 is REPEALED and REPLACED by this CJD 04-06 and CJD 04-05.*

CJD 04-06 is revised and adopted effective July 1, 2006.

CJD 04-06 is revised and adopted effective January 1, 2012.

Done at Denver, Colorado, this 20th day of December, 2011.

Michael L. Bender, Chief Justice

/s/

from an existing and ongoing appointment. The OCR fully understands and appreciates the serious consequences that may result from removing an attorney from an existing case. It can disrupt the continuity of the case, interrupt and delay the court process, extend the length of the case and ultimately may not be in the best interests of the child. As such, only after serious consideration will the OCR remove an attorney from a case.

* Chief Justice Directive 04-05 is titled "Appointing and Payment Procedures for Court Appointed Counsel for Children and Indigent Persons in Titles 14, 15, 19 (Dependency and Neglect Only), 22, 25, 27, and Guardians ad Litem, Non-Attorney Child and Family Investigators and Court Visitors Paid by the State Court Administrator's Office."