

ORDER REGARDING  
DEPENDENCY AND  
NEGLECT PROCEDURE



CHIEF JUDGE  
ADMINISTRATIVE ORDER  
**2006-01**  
**As amended 4-17-17 and**  
**10-30-17**

In compliance with Chief Justice Directive 98-02, the Twelfth Judicial District adopted policies and procedures for Dependency and Neglect cases on October 26, 1998. These were modified to take into account changes in staffing, procedures and law in 2006 and again on April 17, 2017. And the Court again modifies these policies and procedures at this time for the same purpose. The goals of this plan are to comply with best practices, to assure the safety of children and to strengthen families as mandated by statute and caselaw. The District's particular concern is to ensure that families receive the services they need to achieve a permanent home for every child involved in a D & N action within 12 months of a judicial finding of abuse and neglect and to prevent avoidable placement disruptions by assuring adequate communication with and support to kinship and foster homes. In addition, the District wants to ensure that the Court has initially addressed the issue of permanent placement no later than ninety days after a child is removed from the home.

The Twelfth Judicial District encompasses six counties and five separate departments of social services. The District has drafted this updated plan after consultation with the 12<sup>th</sup> Judicial District's Best Practice Court team. This team includes representatives from all of the counties, including county attorneys, members of the Departments of Social/Human Services, service providers, respondent parent counsel and GALs (Guardians *ad litem*).

To fulfill its purposes and achieve its goals the District has put in place certain case processing procedures including:

- "Front-loading" by 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 consensually in a non- adversarial problem-solving environment
- Focusing on permanency from the beginning and at every stage of a case.

In addition, the District has determined that efficient management of some case-processing tasks requires centralizing these tasks by assigning responsibility for them to the specialized staff within the 12<sup>th</sup> Judicial District.

*District Plan*

Following is a list of major case events together with a discussion of the purpose of each event and the process the Court will follow:

I. TEMPORARY CUSTODY/ADVISEMENT HEARING

(Detention or Shelter Hearing and Advisement of Respondent Parents' Rights)

A. Purposes: To decide whether a child needs to be removed from the home, to determine who or what entity will have temporary custody of the child and what is an appropriate placement for the child, to ensure that the Department has identified all respondent parents, that they are represented by counsel and that they understand the D & N process, and to make sure the Department appropriately assesses the case and provides appropriate services as early as possible in the process.

B. Process:

1. Timing:

- a. Removal Cases. When the Department initiates the case by removing the child, the Court must hold the Temporary Custody/Advisement hearing within 72 hours of the child's removal (exclusive of weekends and holidays), unless an earlier hearing is mandated by statute.
- b. Non-removal Cases: When the Department initiates the case by filing a D&N petition, the Court will hold the advisement hearing on the next motion day of the assigned judge. The Department will serve the respondent parents personally with the summons and petition at least 5 days before the hearing.

2. Shelter Hearing Protocol: Before the Temporary Custody/Advisement Hearing in every case, the Department will follow the procedure outlined in the District's Shelter hearing check list, See Appendix A.

3. Before a Temporary Custody Hearing where the Department is asking the Court to remove a child from the home, the (a) Department of Human Services or Social Services and (b) Court staff will compete the following tasks:

a. Department of Human/Social Services will:

- i. Review and follow the Shelter Hearing Protocol.
- ii. When it notifies the respondent parents of its intention to remove the child(ren) or of the date and time of the temporary custody hearing, the Department will provide the respondent parents with applications for court-appointed counsel.
- iii. Inform respondent parents to appear in court at least one-half hour prior to the

scheduled time for the Temporary Custody hearing so they may watch the advisement video, meet with their attorney and discuss relative options and mitigating the Department's safety concerns prior to the hearing.

- iv. Provide a copy of the completed Safety Assessment, and the Risk Assessment if available, to the court, counsel and unrepresented parents. If the Risk Assessment is not available prior to the Temporary Custody Hearing, the Department shall provide a copy to the court, counsel and unrepresented parents as soon as it is available.

b. Court Staff will:

- a. Review and follow the Shelter Hearing Protocol.
- b. Notify the Department of the appointed GAL and RPC;
- c. Prepare the form order appointing the GAL and RPC to the case.

4. At the Temporary Custody/Advisement Hearing, the Court will:

- a. Appoint counsel for eligible respondent parents if that has not already happened.
- b. Appoint a GAL if that has not already happened.
- c. Require each respondent parent to complete JDF 559 "Affidavit and Advisement Concerning Child's Potential Placement."
- d. Advise the respondents concerning their rights, potential consequences of the D & N petition and permanency options.
- e. Determine the need for continued placement if removal has occurred and inquire as to potential relative placements and what investigations the Department is making. The Court may authorize a change of placement to a relative prior to the next court hearing if the Department and the GAL agree.
- f. Enter orders concerning temporary custody, visitation, evaluations, release of family information and provision of services.
- g. Inquire as to the identity and location of respondent father(s) if not named in the petition and require the Department to amend the petition accordingly.
- h. Inquire into the whereabouts of non-appearing parents and the efforts made to locate and notify them.
- i. Authorize service by publication if appropriate.
- j. Inquire whether the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901, *et seq.* See C.R.S. § 19-1-126(2). applies:
  - i. An "Indian child" per ICWA is "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. §1903(4); Final Rule C.F.R. § 23.2.
  - ii. The court should indicate to the parents that if their child is eligible to be a member of a tribe that there may be additional services and support. The court will ask each participant:
    - a. Has anyone in your family ever lived on tribal land?
    - b. Has anyone in your family ever participated in tribal events?
    - c. Has anyone in your family ever received services from a tribal

- office/agency or the Federal Indian Health Service?
  - d. Has anyone in your family ever received benefits from a tribe?
  - iii. The court will instruct the parties that they must inform the court if they subsequently receive information that the child is an Indian child.
  - iv. The court will treat the child as an Indian child if there is a reason to know child is Indian child unless and until it is determined on the record that the child is not an “Indian child.” Rule 25 C.F.R. § 23.107(b)(2).
  - k. If ICWA applies, Court will only order emergency removal of child from his parent or Indian custodian on a finding that the emergency removal or placement is necessary “to prevent imminent physical damage or harm to the child.” 25 U.S.C. § 1922.
  - l. Set a date for entry of admission or denial.
  - m. Ask if a Family Engagement Meeting has occurred and whether the Department has prepared a Risk Statement as a result of that meeting. If no Family Engagement Meeting has occurred, the court will require the Department to convene such a meeting prior to the next court date. The Department must include the GAL, or if the GAL is unavailable, someone to represent the child(ren)’s point of view, at the Family Engagement Meeting. If the Department has not yet prepared a Risk Statement (which is a concise statement of the safety and risk concerns that justified the removal of the child(ren) from the home), the Court will order that the Department prepare and include a Risk Statement in the next court report
5. Non-Appearing Respondents: If a respondent parent has not been served and does not appear at the Temporary Custody/Advisement Hearing, the Court will set the non-appearing respondent's advisement for the next hearing. The Department will serve a notice of hearing and the D & N petition on the non- appearing respondent parent before the next hearing. If the Department wants to serve a respondent by publication, the Department will file a verified motion for service by publication before the next hearing.

## II. PRE-TRIAL HEARINGS/REVIEW

- A. Purpose: To assure timely process, review out-of-home placement and order interim treatment opportunities.
- B. Process:
  - 1. The Court will assure all parents have been identified and served.
  - 2. The Court will review whether the parents have completed and filed the Relative Affidavit.
  - 3. The Court will review the appropriateness of placement(s) and the efforts of the Department to reunify children with family. The Court will:
    - a. If the child(ren) are placed out of the home, the Court will ask the Department what efforts the Department has made to diligently search for relative or kin-like

- placements for the child(ren).
  - b. Determine if fingerprint background checks of relative/kin providers occurred.
  - c. Determine if placement is meeting child's needs.
  - d. Determine if the placement is receiving services necessary to the well-being of the child(ren).
  - e. Review whether safety reasons for removal still exist, *i.e.* has the safety concern that prompted removal been mitigated? If placing the child(ren) with the parent(s) would no longer cause danger to the child, the Court must discuss with the Department how the child(ren) can be returned to the home
  - f. Make reasonable efforts findings if such are supported by evidence.
4. If ICWA applies or may apply and this is the first hearing, the court shall inquire of the parties whether the child is an Indian child and, if so, whether the parties have complied with the procedural requirements set forth in the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq. *See* § 19-1-126(2), C.R.S.
- a. An "Indian child" per ICWA is "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. §1903(4); Final Rule C.F.R. § 23.2.
  - b. —The court should indicate to the parents that if their child is eligible to be a member of a tribe that there may be additional services and support. The court will ask each participant:
    - i. Has anyone in your family ever lived on tribal land?
    - ii. Has anyone in your family ever participated in tribal events?
    - iii. Has anyone in your family ever received services from a tribal office/agency or the Federal Indian Health Service?
    - iv. Has anyone in your family ever received benefits from a tribe?
  - c. The court will instruct the parties that they must inform the court if they subsequently receive information that the child is an Indian child.
  - d. The court will treat the child as an Indian child if there is a reason to know child is Indian child unless and until it is determined on the record that the child is not an "Indian child." Rule 25 C.F.R. § 23.107(b)(2)
  - e. At each hearing after the temporary shelter hearing and prior to the adjudicatory hearing, the court must again determine whether the emergency removal and placement of the child remains necessary to prevent imminent physical damage or harm to the Indian child. Final Rule 25 C.F.R. 23.113(3), 2016 Guidelines C.3. Emergency removal/placement must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.
- C. Next Steps: At pre-trial hearings/review, the court should do the following if it has not done so already:
- 1. Determine whether any respondent wishes a trial by jury.
  - 2. Set a jury review, if appropriate, and make a finding that the review is an essential part of the trial, requiring the presence of the respondent(s), and that the jury will be waived if the respondent(s) fail to appear at the jury review.

3. Set trial date within 60 days after the petition was served on the parents for an EPP case and within 90 days for a non-EPP case.

### III. JURY-REVIEW HEARING

1. Purpose: To determine whether a jury will be impaneled and enter an appropriate Trial Management Order.
2. Process:
  - a. Timing: The jury review will occur at the time the Court sets. A jury review is optional.
  - b. At the Jury Review, the Court will
    - i. Determine whether the respondent(s) has waived the right to a jury trial. If the respondent(s) does not appear the court will deem the request for jury waived and proceed to a court trial on the designated date. Counsel may proceed at trial even without their client(s) present. In such a situation, the attorney should refer to Colorado Formal Ethics Opinion 114 “Responsibilities of Respondent Parents’ Attorneys in Dependency and Neglect Proceedings” for guidance on how to proceed. This opinion is available on-line at:  
[http://www.cobar.org/Portals/COBAR/repository/ethicsOpinions/FormalEthicsOpinion\\_114\\_2011.pdf](http://www.cobar.org/Portals/COBAR/repository/ethicsOpinions/FormalEthicsOpinion_114_2011.pdf).
    - ii. Issue an appropriate Trial Management order if necessary and not already entered.

### IV. ADJUDICATORY HEARING (OR TRIAL)

- A. Purpose: To determine whether the respondent will enter admission or denial to the Petition, or to obtain a judicial determination whether the Department has proved of the allegations in the Petition.
- B. Process:
  1. Timing: The Court will hold an adjudicatory hearing within 60 days of service of the petition on the parents for an EPP case and 90 days for a non-EPP case.
  2. Admission: The Court will take the following actions at the Adjudicatory Hearing if the respondent(s) is/are admitting the petition (in whole or part):
    - a. The Court determines what section(s) of the Petition the respondent is admitting.
    - b. The Court ensures each respondent understands the potential consequences of an admission and the rights he or she is giving up by making an admission.
    - c. When the respondents will be entering an admission, the parties are encouraged to combine the adjudication and disposition at the Adjudicatory Hearing. (The Department is *strongly* encouraged to have a proposed treatment plan prepared for

- the Adjudicatory Hearing. *See* Section V, *infra*, for Dispositional Hearing.)
- d. If disposition cannot occur at the same time as admission, then the Court will set the matter for a Dispositional Hearing within 30 days for EPP cases and 45 days for non-EPP cases.
  - e. The Court will review the appropriateness of placement(s) and evaluate the efforts of the Department in reunifying the children with the family unless the Court adopts a Disposition for the children other than reunification with their parent(s) or previous custodian(s).

3. At the adjudicatory hearing, the Court will follow these procedures:

- a. Default: The court may enter default judgment against a respondent when the respondent has failed to defend. *See* C.R.C.P. 55. This may be the case when:
  - i. The respondent has been properly served and has not appeared.
  - ii. In other circumstances when the Court makes the legal determination that the respondent parent has failed to defend.

If the Department seeks a default judgment, the Department must file a written motion, *see* C.R.C.P. 121(c), § 1-14(1), and provide written notice at least 7 days before the hearing to parties who have appeared in the case, *see* C.R.C.P. 55(b).

If the Court enters a default judgment against a party but cannot enter a disposition at the time of default, then the Court will set the matter for a Dispositional Hearing within 30 days for EPP cases and 45 days for non-EPP cases.

- b. Jury Trial: If the trial is to a jury, the Court will follow these procedures:
  - i. The jury will consist of six residents of the county of venue.
  - ii. Each party — namely, each respondent, the GAL, and the county attorney — is entitled to three peremptory challenges unless the parties agree to share peremptory challenges or agree to a lesser number of peremptory challenges.

If the matter is set for a jury trial but the respondent(s) do not appear on the morning of trial, the Court will deem that the respondent(s) has/have waived the right to a jury trial and the trial will proceed as a court trial.

- c. The burden of proof at an adjudicatory trial is by a preponderance of the evidence. This is the same burden of proof if the child has been identified as an Indian child and the ICWA applies because an adjudicatory hearing is not a child-custody proceeding. *People in Interest of L.L.*, 2017 COA 38, ¶53 (March 23, 2017).

4. The next steps after Adjudication: The next steps will depend on whether the jury (or court) finds in favor of the Department or the Respondent(s):

- a. If the jury or court finds in favor of the Department as to one, several or all of the respondents, the court will adjudicate the child(ren) as dependent or neglected and

will set the matter for Dispositional Hearing within 30 days for EPP cases and 45 days for non-EPP cases. The Court will review the appropriateness of placement(s) and evaluate the efforts of the Department to reunify the children with the family.

- b. If the jury or court finds in favor of all of the respondent(s), the Court will dismiss the case and temporary custody orders will also be dismissed.

## V. DISPOSITIONAL HEARING

A. Purpose: To adopt a treatment plan appropriate to address the reasons for the filing of the D&N Petition and to determine the appropriate goal for the placement of the children.

B. Process:

1. Timing: The Court will hold a Dispositional Hearing within 30 days of adjudication in EPP cases and within 45 days of adjudication in non-EPP cases.
2. If ICWA applies and if the Department is seeking an order placing (or keeping) the child in foster care, the Department must provide notice to the parent, the Indian Custodian and the Tribe so that notice is RECEIVED at least 10 days prior to the date of the dispositional hearing. 25 U.S.C. § 1912(a); Rule 25 C.F. R. § 23.112; 2016 Guidelines D.7.
3. The Department's Caseworker will prepare a treatment plan and will file it with the Court one week (7 days) before the Dispositional Hearing. The Department's Caseworker will develop the treatment plan in collaboration with the parents with, to the extent possible, equal input from parents. The Department's Caseworker will also consult with the child, when appropriate, and with service providers, when available. If a parent is not available, the Caseworker will develop a treatment plan using the best available information.
4. At the Dispositional Hearing, the Court will
  - a. Determine whether any party claims that no treatment plan can be devised and, if so, address the claim as follows:
    - i. If no party contests the claim, the Court will review the statutory criteria and make appropriate findings by clear and convincing evidence. C.R.S. § 19-3-508(1)(e)(I) provides the following bases for a finding that no treatment plan can be devised:
      - a. "because the child has been abandoned as set forth in section 19-3-604(1)(a) and the parent(s) cannot be located;" or
      - b. "because the child has been adjudicated as neglected or dependent based upon section 19-3-102(2) [parent has subjected another child "to an identifiable pattern of habitual abuse" and a court in another proceeding where the parent was a respondent has adjudicated another child to be neglected or dependent "based upon allegations of sexual or physical

abuse” or “a court of competent jurisdiction has determined that such parent’s, guardian’s, or legal custodian’s abuse or neglect has caused the death of another child;’ and the pattern of habitual abuse and the type of abuse for which the parent has been found responsible “pose a current threat” to the child who is the subject of the current dependency and neglect action]; or

- c. Because the parents are unfit pursuant to C.R.S. § 19-3-604(1)(b) due to:
    1. “Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child;
    2. A single incident resulting in serious bodily injury or disfigurement of the child;
    3. Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected, or” in an EPP case “the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected AND the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;
    4. Serious bodily injury or death of a sibling due to proven parental abuse or neglect;
    5. An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;
    6. An identifiable pattern of sexual abuse of the child; or
    7. The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent.”
  - ii. If the Court finds that no appropriate treatment plan can be devised, the Court will set a show cause hearing to determine whether the Department should file a motion for termination of parental rights.
  - iii. If one or more parties contest the claim, the court either will immediately hear evidence on the disputed issues or will set a contested hearing to take place as soon as possible.
- b. Review the terms of the treatment plan, determine whether any party objects to it, and address the treatment plan as follows:
    - i. If the parties do not contest the treatment plan and if the Court finds that the plan is reasonable and appropriate, the Court will adopt the treatment plan with modifications if necessary.
    - ii. If one or more parties contest the treatment plan, the Court either will immediately hear evidence on the disputed issues or will set a contested

hearing to take place as soon as possible. If the Court sets a contested hearing, the Court will order the parties to implement any undisputed portions of the treatment plan pending the hearing. The Court may also order that the parties engage in some form of settlement conference before setting a hearing on the appropriateness of a proposed treatment plan.

- c. Advise the respondents of the potential consequences of not complying with the treatment plan, including termination of parental rights.
- d. If the child has been removed, determine the appropriate placement for the child as follows:
  - i. If the permanency goal for the child(ren) is reunification with a parent or the parents, the Court will indicate this on the record and it will be reflected in the written order. If the parents are not living together, the Court will outline the role that each parent will play under the reunification plan as well as requirements and proposed timelines for reunification.
  - ii. If the permanency goal for the child(ren) is not reunification, the court will make findings supporting this determination and order an alternative permanency plan.
  - iii. If ICWA applies, the Court will not order a foster care placement unless:
    - a. The Department demonstrates the need for such a placement by **clear and convincing** evidence;
    - b. The Department has presented testimony of a Qualified Expert Witness<sup>1</sup> on this issue; and
    - c. The Court finds that if the child remains in or returns to the custody of the child's parent or Indian custodian will **likely result in serious emotional or physical damage** to the child. 25 U.S.C. § 1912(e); AND
    - d. The Department shows and the Court finds that **active efforts**<sup>2</sup> have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d).
    - e. Specifically, the Department must present evidence to establish a causal relationship between the particular conditions in the home (e.g. poverty, isolation, crowded or inadequate housing, substance abuse, nonconforming social behavior) and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child.

---

<sup>1</sup> A Qualified Expert Witness is defined by federal regulations as one who is qualified to testify regarding whether the child's continued custody by the parent is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. 25 C.F.R. § 23.122, *see also* 2016 BIA Guidelines G.2. The social worker regularly assigned to the case does not qualify as a Qualified Expert Witness. 25 C.F.R. § 23.122(c).

<sup>2</sup> Active efforts are defined by regulation as affirmative, active, thorough and timely efforts intended to maintain or reunite an Indian child with his/her family and must be documented in detail in the record. 2016 Guidelines L.1; 25 C.F.R. § 23.120. Active efforts include a comprehensive assessment of the Indian child's family circumstances, inviting representatives of the Indian child's Tribe to participate in providing support & services and case events and offering and employing all available & culturally appropriate family preservation strategies. *See* 25 C.F.R. § 23.2 (1)-(11). Note that the active efforts standard requires more than the reasonable efforts standard. *People in Interest of A.R.*, 2012 COA 195M, § 29, 310 P.3d 1007.

Final Rule 25 C.F.R. § 23.121(c) & (d).

5. Next Steps: If the child is in an out-of-home or relative placement, the Court will set a Permanency Planning Hearing within 90 days of the dispositional hearing in an EPP case or within 6 months in a non-EPP case.

VI. POST ADJUDICATION REVIEW HEARING

- A. Purpose: To review progress on the treatment plan; to review the need to modify the treatment plan; to review the need for continued placement if the child has been removed and to review the continued appropriateness of the permanency goal.
- B. Process:
  1. Timing: The court will hold review hearings as necessary and at least every 90 days.
  2. Before each review hearing, the Department shall prepare a written report before each review hearing.
    - a. The Department's Caseworker shall file the report with the Court and serve it on all other parties *at least five days* prior to the review hearing.
    - b. The written report should include the Risk Statement prepared at the Family Engagement Meeting, a history of the child(ren)'s placements, a discussion of the current placement situation and needs, an outline of developments in the case since the last hearing or review, including both those developments which show improvement and those developments which raise new safety and risk concerns, the parties' progress on the treatment plan, the parents' participation in visitation and interaction with the child, a statement of the current permanency plan and the continued appropriateness of the permanency goal. The Department will provide a copy of any updated safety or risk assessments with the report.
  3. At each review hearing, the Court will
    - a. Consider the continued need for placement, the continued appropriateness of the placement, whether the placement can benefit from services to meet the needs of the children;
    - b. Make appropriate findings (e.g., regarding placement, reasonable efforts, etc.) if placement will continue;
    - c. Consider the continued appropriateness of the permanency goal;
    - d. Consider whether the treatment plan or proposed services should be modified because of changed circumstances or additional information;
    - e. Assess the parents' progress on the treatment plan goals and parental involvement with the child;
    - f. Evaluate whether the safety issues which resulted in removal still exist;
    - g. If the child has been in placement for 15 of the last 22 months, the court will consider whether to order the Department to show cause as to why a motion for termination of parental rights has not been filed;

- h. Review the need to schedule a Permanency Planning Hearing. The Court must hold a Permanency Planning Hearing every six months when a child is placed outside the home.
- i. If ICWA applies and the child is placed in foster care, the Court will review the placement and determine whether **active efforts**<sup>3</sup> have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d).

## VII. PERMANENCY PLANNING HEARING C.R.S. § 19-3-702

A. Purpose: To develop a plan which gives the child the best chance for permanency. If the child is in the home, this section is not applicable.

B. Process:

1. Timing:

- a. In an EPP case where the child has been removed from the home, the Court will hold a Permanency Planning Hearing within three months of the dispositional hearing.
- b. In a non-EPP case, the Court will hold a Permanency Planning Hearing within twelve months of the removal of the child.
- c. If the permanency goal is reunification and if the child has not been returned within six months of the first Permanency Planning Hearing, a second Permanency Planning Hearing will be held at that time.

2. At least one week before the hearing, the Department will file with the Court and serve on the parties and counsel a written Permanency Plan, containing the information required by statute and clarifying the proposed permanent plan for the child and including any proposed amendments to the treatment plan.

3. The Department and/or GAL should ensure that the child is present for the permanency planning hearing unless the child is very young (five years or under) or there is a therapeutic reason that the child should not be present. If the child is not present for the hearing, the Court should make a record of the reason(s) why not.

4. At the Permanency Planning Hearing, the parties should be prepared to take whatever steps are necessary to implement the permanency plan the Court approves. The possible outcomes of a Permanency Planning Hearing include:

---

<sup>3</sup> Active efforts are defined by regulation as affirmative, active, thorough and timely efforts intended to maintain or reunite an Indian child with his/her family and must be documented in detail in the record. 2016 Guidelines L.1; 25 C.F.R. § 23.120. Active efforts include a comprehensive assessment of the Indian child's family circumstances, inviting representatives of the Indian child's Tribe to participate in providing support & services and case events and offering and employing all available & culturally appropriate family preservation strategies. See 25 C.F.R. § 23.2 (1)-(11). Note that the active efforts standard requires more than the reasonable efforts standard. *People in Interest of A.R.*, 2012 COA 195M, § 29, 310 P.3d 1007.

- a. Reunification at or before the Permanency Planning Hearing.
- b. Reunification on a date certain beyond the Permanency Planning Hearing (*not* to exceed 6 months from the date of the Permanency Planning Hearing). The Court must find that the parents have made significant progress on the treatment plan, that there is a substantial probability that the child will be returned home within 6 months, and that reunification is in the best interest of the child. The Court will adopt amendments to the treatment plan, as necessary. The Court will set another review at the time the child should be returned home. If the child is not returned home by the scheduled date, the Court will adopt an amended permanency plan at the review hearing.
- c. Reunification more than 6 months after the Permanency Planning Hearing.
- d. Termination of Parental Rights to Enable Adoption or Other Permanent Plan.
- e. Relinquishment to Enable Adoption or Other Permanent Plan.
- f. Permanent Custody, Guardianship or Allocation of Parental Responsibilities.
- g. Independent Living.
- h. Long Term Foster Care or Other Out-of-Home Placement Arrangement.

5. If ICWA applies, the Court will not order a foster care placement unless:

- a. The Department demonstrates the need for such a placement by **clear and convincing** evidence;
- b. The Department has presented testimony of a Qualified Expert Witness<sup>4</sup> on this issue; and
- c. The Court finds that if the child remains in or returns to the custody of the child's parent or Indian custodian will **likely result in serious emotional or physical damage** to the child. 25 U.S.C. § 1912(e); AND
- d. The Department shows and the Court finds that **active efforts**<sup>5</sup> have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d).
- e. Specifically, the Department must present evidence to establish a causal relationship between the particular conditions in the home (e.g. poverty, isolation, crowded or inadequate housing, substance abuse, nonconforming social behavior) and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child. Final Rule 25 C.F.R. § 23.121(c) & (d).

6. At the Permanency Planning Hearing, the Court will determine the long-term placement of the

---

<sup>4</sup> A Qualified Expert Witness is defined by federal regulations as one who is qualified to testify regarding whether the child's continued custody by the parent is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. 25 C.F.R. § 23.122, *see also* 2016 BIA Guidelines G.2. The social worker regularly assigned to the case does not qualify as a Qualified Expert Witness. 25 C.F.R. § 23.122(c).

<sup>5</sup> Active efforts are defined by regulation as affirmative, active, thorough and timely efforts intended to maintain or reunite an Indian child with his/her family and must be documented in detail in the record. 2016 Guidelines L.1; 25 C.F.R. § 23.120. Active efforts include a comprehensive assessment of the Indian child's family circumstances, inviting representatives of the Indian child's Tribe to participate in providing support & services and case events and offering and employing all available & culturally appropriate family preservation strategies. *See* 25 C.F.R. § 23.2 (1)-(11). Note that the active efforts standard requires more than the reasonable efforts standard. *People in Interest of A.R.*, 2012 COA 195M, § 29, 310 P.3d 1007.

child. The Court will also take the following actions:

- a. If the permanent plan is that the child will not return home, the Court may suspend the parents' treatment plan and modify or suspend visitation as appropriate.
- b. If the out-of-home placement will continue, the Court will make appropriate findings concerning placement, reasonable efforts, etc.
- c. The Department or the GAL must provide the Court "documentation of a compelling reason for establishing a permanency plan with a goal other than reunification, adoption, or legal guardianship." C.R.S. § 19-3-702(4).
- d. If the permanent plan for the child is emancipation, the Court will require the Department to provide an update to the Court on emancipation services being provided to prepare the child to emancipate.
- e. The Court will set a review hearing.

#### VIII. TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP.

A. Purpose: To obtain a judicial finding whether there are statutory grounds to sever the parent/child legal relationship and whether termination is in the best interests of the child.

B. Process:

1. Timing: The Department or the GAL may file the motion to terminate parental rights at any time following the Dispositional Hearing. The Court will set the hearing no earlier than 30 days and no later than 120 days after the filing of the motion. The hearing may be set more than 120 days after the filing of the motion if the Court finds good cause to do so.
2. If ICWA applies the Department must give a new ICWA notice to the Tribe and Parent and they must RECEIVE the notice at least 10 days prior to the date of the TPR hearing. Final Rule 25 C.F.R. § 23.11(a).
3. Expert Witnesses:

If a party intends to call an expert witness, then the expert's report must be distributed to all parties at least 15 days before the termination trial.

4. Motions for Summary Judgment must be filed not less than 30 days prior to the termination trial. The Respondent will file a Response within 15 days of the Motion. No Replies will be permitted.
5. At the Termination Hearing parties are to rely on reports already on file with the Court and admissible under C.R.S. §19-3-604(3). Witnesses may be called as necessary to supplement the report, but the witness need not repeat the contents of the report. Any reports a party intends to use at the termination hearing that have not already been filed will be filed no later than 30 days prior to trial.
  - a. Any party desiring to cross-examine the author of any such report shall file a

request to produce the author for such examination, C.R.S. § 19-3-604(3), not less than 25 days before hearing. The proponent of the report shall be responsible for securing the attendance of the witness. The Court reserves ruling on the admissibility of such reports. Admissibility of the witness's testimony under *People v. Shreck*, 22 P.3d 68 (Colo. 2001) shall be raised by motion in limine filed not less than 15 days before hearing; other issues of admissibility under C.R.S. § 19-3-604(3) shall also be raised at the same time.

- b. The Court will grant a motion to continue the termination hearing only upon a finding that manifest injustice will occur if the continuance is not granted.
  - c. If a child remains in placement following the termination trial, the Court will determine whether the Department has made reasonable efforts to place the child in a permanent placement in a timely manner according to the permanency plan.
  - d. If the Court grants the motion to terminate the parent-child legal relationship, the Court will set a post-termination review hearing to adopt a post-termination placement plan within 90 days of the termination order.
6. If ICWA Applies the Court will not terminate the parental rights of the parent or Indian custodian unless the evidence, including testimony of qualified expert witnesses, beyond a reasonable doubt supports a finding that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f). The Department must prove both of the following by proof beyond a reasonable doubt:
- A. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful. 25 U.S.C. § 1912(d) AND
  - B. A causal relationship exists between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding. 25 C.F.R. § 23.121(c).

#### IX. POST-TERMINATION/POST-RELINQUISHMENT REVIEW HEARING:

- A. Purpose: To review and, if necessary, amend the post-termination/post-relinquishment permanent placement plan to best serve the interests and needs of the child, and to review the child's placement and determine any placement needs.
- B. Process:
  1. Timing: This hearing is to be held within 90 days of the order terminating the parent-child legal relationship.
  2. Before the hearing, the Department and the GAL will file a written report setting forth the permanent placement plan for the child, the child's needs and any services that might be provided to the placement family to anticipate future needs the child and placement family may have.
  3. At the hearing, the Court will

- a. Determine if the plan is appropriate.
- b. If the child will remain in placement after the hearing, make findings about whether the Department has made reasonable efforts to place the child in a permanent home in a timely manner.
- c. Set another review date.

#### X. ADOPTION HEARING:

A. Purpose: After all parental rights are terminated or after the parents have relinquished their rights, and if appropriate, the Court will proceed to adoption. At the Adoption Hearing, the child is permanently placed with adoptive parents who assume all parental rights and responsibilities.

B. Process:

1. Timing: The Court will hold an Adoption Hearing as soon as possible after the child becomes free for adoption. If the respondent parents do not appeal the Court's order terminating parental rights, the child is available for adoption 21 days after entry of the written termination order. If the respondent parents appeal the Court's termination order, the child is available for adoption after the appellate court issues the final mandate. If the parents relinquish their parental rights, the child is available for adoption 90 days after the relinquishment order enters. In addition, however, the child must have been placed in the adoptive home for at least 6 months before the adoptive parents may adopt the child.
2. At the Adoption Hearing, the Court will:
  - a. Determine that the parents have relinquished their parental rights or that the Court has terminated them and the appeal process is complete.
  - b. Determine that the Department or GAL have provided all required consents.
  - c. Review any home-study or other Court-ordered report.
  - d. Explain to the adoptive parents that adoption is permanent and irreversible.
  - e. In cases involving children with special needs, be sure that the parents have been fully advised of all necessary services and special circumstances surrounding the child, review the adequacy of any adoption subsidies, and be sure the adoptive parents are aware of services and assistance that will be available to them after the adoption.
  - f. Generally the Court will issue the adoption decree at the hearing.

#### XI. CONTINUANCES

It is the policy of the District Judges of the Twelfth Judicial District that continuances of hearings in D & N cases will only be granted when there is an emergency or when granting the continuance will be in the best interests of the child.

XII. REVISIONS

The District will review this plan periodically and revise it as necessary.

SO ORDERED this \_30th\_\_ day of October 2017.

BY THE COURT:



---

Pattie P. Swift, Chief Judge

# APPENDIX A

## 12<sup>TH</sup> JUDICIAL DISTRICT

### SHELTER HEARING –FIRST APPEARANCE CHECKLIST

#### STEP 1: INITIAL FILING

X	PLEADINGS/ACTIONS	ADDITIONAL INFORMATION
	<p>County attorney initiates a new D &amp; N by emailing a request for either a temporary shelter hearing or a first appearance to both the D&amp;N Clerk’s email address (<a href="mailto:erin.holloway@judicial.state.co.us">erin.holloway@judicial.state.co.us</a>) and the generic Court Clerk email. If the County Attorney is requesting a Shelter Hearing or is seeking emergency protective orders without removal, the County Attorney must include, in the email, any times the County Attorney and case worker can NOT be available for a hearing. If the D &amp; N Clerk will be out of the office, she will use the out-of-office function in Outlook to provide instructions to the County Attorney to contact the appropriate Court Clerk’s Office to set up the Shelter Hearing.</p> <p>D&amp;N clerk contacts assigned judge – or as needed, an alternative judicial officer. Determines with judge the date, time and location of hearing; determines availability of courtroom; sends confirmation of date and location of hearing to Clerk, Judicial Officer, County Attorney and GAL (if known).</p>	<p>When County Attorney is requesting a first appearance on a new case without removal and does not need an emergency shelter hearing or emergency protective orders, the D&amp;N Clerk will respond as soon as possible to the County Attorney with a court date for the first appearance.</p> <p>When the County Attorney is requesting a temporary shelter hearing or a first appearance where the judge will issue emergency protective orders, the D&amp;N Clerk will contact the Clerk’s Office of the county of venue to arrange the hearing. If the D &amp; N Clerk is out of the office, the Clerk of Court or designee, will complete the duties of the D &amp; N Clerk as listed here and below.</p>
	<p>County attorney files Petition for D&amp;N/Out of Home Placement, proposed Summons, Notice of Shelter Hearing (if applicable), Motion for Permission to File, and related Report to Court including a <b>Cover Sheet</b> for the Report (see attached Exhibit 1) by emailing them to the generic Court Clerk email and cc’ing them to the D&amp;N Clerk. (Note: appearance time for parties and counsel should be at least 30 minutes before hearing)</p>	<p>D&amp;N Clerk issues Summons for date of Shelter Hearing or First appearance. Secures judge’s signature on any protective orders requested, service by email or by hand of all related pleadings to county attorney for service on parties; courtesy copies to GAL and RPC (if known).</p>

#### STEP 2: PRE-HEARING

	<p>County attorney will assure inquiries are made re: non-custodial parents, as well as maternal &amp; paternal relatives (at minimum all grandparents); will provide Notice of Shelter Hearing to all parents who can be found, as well as other identified care providers and extended family members</p>	<p>As parents are located, county attorney will keep D&amp;N Clerk updated re need for Respondent Parent counsel; D&amp;N Clerk will contact attorneys on county Respondent Parent list to be present, if they wish to be considered for needed appointments at time of hearing; D&amp;N Clerk will locate GAL from county specific list, using priority of appointment, to be present in person or by phone at hearing</p>
	<p>By time of Shelter Hearing, the Department shall have completed basic requirements for hearing.</p>	<p>1) American Indian/Alaska Native Indian Child Welfare Act (ICWA) inquiry;                  2) Safety &amp; Risk assessment (if available) or an outline of safety and risk issue will be included in court report;                  3) Proposed placement info and recommendations.</p>

### STEP 3: AT & AFTER HEARING

X	PLEADINGS/ACTIONS	ADDITIONAL INFORMATION
	<p>D&amp;N Clerk: will make arrangement beforehand for when parties arrive (30 minutes prior to actual hearing time), arrange for Parent Advisements (video and signed Acknowledgements of Advisement), give them blue books, application for court-appointed counsel and relative affidavit</p> <p>ALL COUNSEL: As time allows, counsel &amp; parties will hold pre-hearing consultations re</p> <ul style="list-style-type: none"> <li>-placement options – begin work on relative affidavit</li> <li>-availability of safety plans to eliminate need for OHP</li> <li>-immediate treatment needs and available resources</li> <li>-immediate medical needs of children (scheduled appts.)</li> </ul>	<p>As available, D&amp;N clerk may:</p> <ol style="list-style-type: none"> <li>1) Oversee FAMJIS Management Reports (monthly)               <ol style="list-style-type: none"> <li>a) resolve any concerns regarding possible issues with the case</li> <li>b) distribute reports to Judge and Court Clerks quarterly</li> </ol> </li> <li>2) Track that Respondent Parent counsel submit and distribute completed Relative Affidavits</li> <li>3) Track ICWA compliance.</li> </ol>
	<p>Judge-Final confirmation of GAL and Respondent Parent counsel appointments -Only after parties have completed and submitted applications for court-appointed counsel.</p> <p>Judge- Note service by appearance on record and address service on non-appearing parties. Identify fathers.</p> <p>Judge –Insure respondents have seen video and signed advisement/or are advised. Advise Special Respondents and address adding Special Respondent care-givers by asking names and addresses, order fingerprints in 10 days.</p> <p>Judge- Order completion of Relative affidavit</p> <p>Judge- Make ICWA inquiry and Finding. If children are removed, make reasonable efforts analysis and appropriate findings. Make visitation orders. Order development of a plan which might allow children returned home if complied with.</p>	<p>Applications for Court-appointed Counsel completed by parties &amp; eligibility signed off on by court clerk or other designated investigator; acceptance of appointments by respective counsel.</p> <p>Clerks enter special respondents as parties to case.</p>
	<p>Court will issue verbal Orders regarding Temporary Placement, Safety Plan and set next Court date.</p> <p>Proposed Order will be prepared by county attorney and sent to all counsel by email and judge <u>but not clerk</u>.</p>	<p>Judges send signed order to generic Court Clerk email with a cc: to the D&amp;N clerk. Judicial Assistant covering the generic Court Clerk email with serve the signed Order to counsel, with county attorney to provide all non-email service</p>
	<p>Motions to be filed by appropriate counsel for additional proposed Orders</p>	<p>Orders to issue as needed (i.e. Transport, Special Respondents, etc.)</p>
	<p>Complete Relative Affidavits &amp; Advisements not already completed at time of hearing</p>	<p>D&amp;N clerk to track that Respondent Parent counsel submit and distribute completed Relative Affidavits within one (1) week of Shelter Hearing and distribute the affidavit to all counsel. (late advisements?)</p>

**EXHIBIT 1**

Case Number: \_\_\_\_\_

**COURT COVER SHEET**

Hearing Held: \_\_\_\_\_

Mother: \_\_\_\_\_ Served (RSDN): \_\_\_\_\_ CAC Attorney: \_\_\_\_\_

Father: \_\_\_\_\_ Served (RSDN): \_\_\_\_\_ CAC Attorney: \_\_\_\_\_

SR: \_\_\_\_\_

Children: \_\_\_\_\_ GAL: \_\_\_\_\_

- Applicable---ICWA determination made
- N/A-----ICWA determination made

Completed Affidavit re: relative received from:

ADMISSION/DEFAULT:

Mother: \_\_\_\_\_ -  no fault

1. Father: \_\_\_\_\_ -  no fault

DENIAL ENTERED: Mother: \_\_\_\_\_ Father: \_\_\_\_\_

CONTINUED ADJUDICATION

Granted on: \_\_\_\_\_ (date)

DISPOSITION-TREATMENT PLAN:

Mother: \_\_\_\_\_ 1. Father: \_\_\_\_\_

OUT-OF-HOME PLACEMENT

Date of Initial Removal: \_\_\_\_\_

Permanency Hearings Last: \_\_\_\_\_ Next: \_\_\_\_\_

Legal Custody with: \_\_\_\_\_

Physical Custody with: \_\_\_\_\_

- EPP Case
- Relatives have been notified.

CURRENT HEARING:

- Removal hearing
- Dispositional Hearing
- Out of Home placement review
- Hearing on Default/Summary Judgment motion
- Permanency Planning Hearing
- Entry of Admission or Denial
- Trial Setting
- Treatment plan review
- Status Conference
- Post-termination placement review

ACTION REQUESTED:

- Out of home placement
- Protective orders
- Close/dismiss case
- Adoption of Treatment plan/amended treatment plan
- Reasonable efforts finding regarding reunification of child/ren with parent(s)
- Reasonable efforts to finalize permanency.
- Default/Summary Judgment order against  mother  father
- Return child/ren to  mother  father
- Adoption of permanency plan