



STATE OF COLORADO JUDICIAL DEPARTMENT

COLORADO COURT IMPROVEMENT PROGRAM  
RESPONDENT PARENTS' COUNSEL TASK FORCE  
STATEWIDE NEEDS ASSESSMENT: FINAL REPORT

MARCH 2007

SUBMITTED BY  
NATIONAL CENTER FOR STATE COURTS  
DANIEL J. HALL, VICE PRESIDENT  
COURT CONSULTING SERVICES  
707 SEVENTEENTH STREET, SUITE 2900  
DENVER, COLORADO 80202-3429

IN PARTNERSHIP WITH  
THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES



AND  
THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



© 2007

THE STATE OF COLORADO JUDICIAL DEPARTMENT,  
THE NATIONAL CENTER FOR STATE COURTS,  
THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES,  
THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

This document has been prepared under an agreement (fully executed on June 9, 2006) between the State of Colorado Judicial Department and the National Center for State Courts. The points of view and opinions offered in this *Statewide Needs Assessment Report* are those of the project consultants and researchers and do not necessarily represent the official policies or position of the State of Colorado Judicial Department, the National Center for State Courts, the National Council of Juvenile and Family Court Judges, or the National Association of Counsel for Children.

Online legal research provided by LexisNexis.





THE COLORADO RESPONDENT PARENTS' COUNSEL TASK FORCE MEMBERS

DR. KAREN BEYE-SOCIAL SERVICES	TIM KERNS, RPC
DR. SUSAN BLUMBERG-ACF	PETER KOELLING, STAFF, STATE COURT ADMINISTRATOR'S OFFICE
MAGISTRATE PALMER BOYETTE	REPRESENTATIVE LARRY LISTON
JUDGE CHARLES BUSS	JUDGE ROBERT LOWENBACH
DEBRA CAMPEAU, MANAGING ATTORNEY, OFFICE OF THE GUARDIAN AD LITEM IN EL PASO COUNTY	REPRESENTATIVE ANNE MCGIHON
JUDGE CHRISTINE CHAUCHE	JUDGE CHRIS MELONAKIS
SHERI DANZ, STAFF, STATE COURT ADMINISTRATOR'S OFFICE	JUDGE KAREN METZGER (CHAIR)
ALICIA DAVIS, STAFF, STATE COURT ADMINISTRATOR'S OFFICE	DAVIDE MIGLIACCIO, RPC
BILL DELISIO, STAFF, STATE COURT ADMINISTRATOR'S OFFICE	JUDGE LAEL MONTGOMERY
LAURA EIBSEN, COUNTY ATTORNEY	CAROLYN PELLOUX, RPC
SARAH EHRLICH, STAFF ATTORNEY, OFFICE OF THE CHILD'S REPRESENTATIVE	MIKE SATIN, RPC
PROFESSOR COLENE FLYNN-ROBINSON, UNIVERSITY OF COLORADO SCHOOL OF LAW	THERESA SPAHN, EXECUTIVE DIRECTOR, OFFICE OF THE CHILD'S REPRESENTATIVE
ANNE FOX, COURT OF APPEALS	LEIGH TAYLOR, RPC
PAM GAGEL, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, UNIVERSITY OF DENVER	MELINDA TAYLOR, COURT ADMINISTRATOR
DEBRA GANS, RPC	MAGISTRATE DINSMORE TUTTLE
TONI GRAY, COUNTY ATTORNEY	ANNE VITEK, RPC
LYNNE HUFNAGEL, PRIVATE ATTORNEY	STANLEE WEST-WATT, RPC
PROFESSOR CLARE HUNTINGTON, UNIVERSITY OF COLORADO SCHOOL OF LAW	CONSUELO WILLIAMS, RPC
JIM HUSTAD, FAMILY COURT FACILITATOR	

RESPONDENT PARENTS' COUNSEL STATEWIDE NEEDS ASSESSMENT PROJECT TEAM



THE NATIONAL CENTER FOR STATE COURTS

DAWN MARIE RUBIO, J.D. ....PROJECT DIRECTOR  
NCSC-PRINCIPAL COURT MANAGEMENT CONSULTANT

MARY DURKIN, M.A. ....QUALITATIVE RESEARCH LEAD  
NCSC-INDEPENDENT CONSULTANT

MARY BETH KIRVEN, J.D. .... ON-SITE RESEARCHER  
NCSC-COURT MANAGEMENT CONSULTANT

MICHAEL MURPHY, M.S. .... ON-SITE RESEARCHER  
NCSC-PROJECT ANALYST



THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

SOPHIA GATOWSKI, PH.D. ....RESEARCH AND METHODOLOGY LEAD  
NCJFCJ-ASSISTANT DIRECTOR-PPCD

MIMARI HALL, M.A. ....DATA ANALYSES  
NCJFCJ-RESEARCH ASSISTANT-PPCD

JOSHUA PADILLA, M.A. .... ON-SITE RESEARCHER/DATA ANALYSES  
NCJFCJ-RESEARCH ASSISTANT-PPCD

ALICIA SUMMERS, M.A. .... ON-SITE RESEARCHER/DATA ANALYSES  
NCJFCJ-RESEARCH ASSISTANT-PPCD



THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

MARVIN VENTRELL, J.D. ....RPC PERFORMANCE LEAD  
NACC-PRESIDENT AND CEO

AMANDA GEORGE DONNELLY, J.D. .... ON-SITE RESEARCHER/RPC PERFORMANCE  
NACC-STAFF ATTORNEY

## TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	i
I. INTRODUCTION TO THE PURPOSE AND SCOPE OF THE STATEWIDE NEEDS ASSESSMENT.....	1
II. CONTEXT AND OVERVIEW OF RESPONDENT PARENT REPRESENTATION .....	3
A. THE DEPENDENCY COURT SYSTEM.....	3
B. LEGAL REPRESENTATION IN DEPENDENCY CASES.....	4
C. RESPONDENT PARENTS’ COUNSEL REPRESENTATION .....	6
III. STATEWIDE NEEDS ASSESSMENT METHODOLOGY AND ANALYSES .....	8
A. PROJECT SITE SELECTION.....	8
B. DATA COLLECTION METHODS AND DATA SOURCES.....	8
C. RESPONDENT PARENTS’ COUNSEL PRACTICE AND COMPARISONS TO NATIONAL STANDARDS .....	15
D. STATE COMPARISONS .....	17
E. HUMAN SUBJECT PROTECTION AND CONFIDENTIALITY.....	17
F. ABOUT THE STATEWIDE NEEDS ASSESSMENT REPORT.....	18
IV. ROLES AND RESPONSIBILITIES .....	19
A. INTERVIEWS AND FOCUS GROUPS.....	19
B. STATE COMPARISONS .....	20
C. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	20
V. TRAINING .....	22
A. NATIONAL STANDARDS.....	22
B. STATE COMPARISONS .....	23
C. INTERVIEWS AND FOCUS GROUPS.....	23
D. RPC SURVEY AND STAKEHOLDER SURVEY .....	24
E. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	25
VI. WRITTEN STANDARDS OF PRACTICE.....	27
A. INTERVIEWS AND FOCUS GROUPS.....	27
B. COLORADO DRAFT GUIDELINES FOR RESPONDENT PARENTS’ COUNSEL .....	27
C. STATE COMPARISONS .....	28
D. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	28
VII. CASELOAD AND WORKLOAD.....	30
A. NATIONAL STANDARDS.....	30
B. INTERVIEWS AND FOCUS GROUPS.....	30
C. RPC SURVEY AND STAKEHOLDER SURVEY .....	31
D. STATE COMPARISONS .....	31
E. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	32
VIII. COMPENSATION STRUCTURE .....	34
A. NATIONAL STANDARDS.....	34
B. INTERVIEWS AND FOCUS GROUPS.....	34
C. RPC SURVEY.....	36
D. STATE COMPARISONS .....	36
E. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	37

IX.	RECRUITMENT .....	39
	A. NATIONAL STANDARDS.....	39
	B. INTERVIEWS AND FOCUS GROUPS.....	39
	C. RPC SURVEY AND STAKEHOLDER SURVEY .....	40
	D. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	40
X.	TURNOVER .....	42
	A. NATIONAL STANDARDS.....	42
	B. INTERVIEWS AND FOCUS GROUPS.....	42
	C. RPC SURVEY AND CASE FILE REVIEW .....	42
	D. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	43
XI.	RESOURCES.....	44
	A. NATIONAL STANDARDS.....	44
	B. INTERVIEWS AND FOCUS GROUPS.....	44
	C. RPC SURVEY.....	45
	D. STATE COMPARISONS .....	45
	E. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	45
XII.	CONTRACTING AND OVERSIGHT.....	48
	A. INTERVIEWS AND FOCUS GROUPS.....	48
	B. STATE COMPARISONS .....	49
	C. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	49
XIII.	APPOINTMENT, APPEARANCES, AND CONTINUANCES.....	51
	A. NATIONAL STANDARDS.....	51
	B. INTERVIEWS AND FOCUS GROUPS.....	52
	C. RPC SURVEY, STAKEHOLDER, CASE FILE REVIEW, AND COURT OBSERVATION.....	53
	D. SUMMARY, CONCLUSION, AND RECOMMENDATION.....	55
XIV.	PROFESSIONALISM, LEGAL REPRESENTATION, AND PERFORMANCE .....	57
	A. OVERVIEW AND GENERAL PERCEPTIONS .....	57
	B. PROFESSIONALISM.....	58
	C. PREPARATION .....	60
	D. CLIENT ADVOCACY .....	62
	E. COMMUNICATION WITH PARTIES AND THE CLIENT .....	66
	F. SKILLS.....	69
XV.	BEST PRACTICES, BARRIERS, AND OPPORTUNITIES FOR IMPROVEMENT.....	72
	A. BEST PRACTICES .....	72
	B. BARRIERS .....	73
	C. OPPORTUNITIES FOR IMPROVEMENT .....	74
XVI.	CONCLUDING REMARKS AND SUMMARY OF RECOMMENDATIONS .....	75

## LIST OF APPENDICES

APPENDIX A – NCSC NATIONAL PARENT COUNSEL INFORMATION COMPENDIUM, JULY 2006	
APPENDIX B – ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES	
APPENDIX C – COLORADO RESPONDENT PARENTS’ COUNSEL CONTRACT FOR SERVICES-FY 2007	
APPENDIX D – CASE FILE REVIEW DATA REPORT	
APPENDIX E – COURT OBSERVATION DATA REPORT	
APPENDIX F – STATEWIDE RESPONDENT PARENTS’ COUNSEL SURVEY DATA REPORT	
APPENDIX G – STATEWIDE STAKEHOLDER SURVEY DATA REPORT	
APPENDIX H – STATEWIDE MANAGEMENT INFORMATION SYSTEM DATA REPORT	

## LIST OF TABLES

TABLE 1. NUMBER OF CASE FILINGS AND OUT-OF-HOME PLACEMENT CASES: FISCAL YEAR 2005 – RPC NEEDS ASSESSMENT PROJECT SITES .....	10
TABLE 2. INTERVIEW AND FOCUS GROUP PARTICIPANTS.....	12
TABLE 3. CASE FILE REVIEW SAMPLE SIZE AND SAMPLE CODED.....	13
TABLE 4. CASE FILE REVIEW INSTRUMENT INFORMATION CATEGORIES .....	14

## LIST OF FIGURES

FIGURE 1. RESPONDENT PARENTS’ COUNSEL STATEWIDE NEEDS ASSESSMENT PROJECT SITES .....	9
--	---

## GLOSSARY OF ACRONYMS

ADOPTION AND SAFE FAMILIES ACT, PUBLIC LAW 105-89.....	ASFA
AMERICAN BAR ASSOCIATION .....	ABA
ASSISTANT COUNTY ATTORNEY.....	ACA
CHILD ABUSE PREVENTION AND TREATMENT ACT, PUBLIC LAW 93-247.....	CAPTA
COURT APPOINTED SPECIAL ADVOCATES.....	CASA
COURT IMPROVEMENT PROGRAM .....	CIP
DEPARTMENT OF HUMAN SERVICES .....	DHS
EXPEDITED PERMANENCY PLANNING .....	EPP
FAMILY COURT FACILITATOR .....	FCF
GUARDIAN AD LITEM .....	GAL
MANAGEMENT INFORMATION SYSTEM.....	MIS
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN .....	NACC
NATIONAL CENTER FOR STATE COURTS .....	NCSC
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES.....	NCJFCJ
OFFICE OF THE CHILD REPRESENTATIVE.....	OCR
RESPONDENT PARENTS’ COUNSEL .....	RPC
STATE COURT ADMINISTRATOR’S OFFICE.....	SCAO

## ACKNOWLEDGEMENTS

The National Center for State Courts, the National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children RPC Statewide Needs Assessment Project Team would like to thank the many organizations and individuals to whom we owe a debt of gratitude.

First and foremost, we must acknowledge the efforts of the Respondent Parents' Counsel Task Force and, especially, the members of the Statewide Needs Assessment Sub Committee: Judge Karen Metzger, Magistrate Dinsmore Tuttle, Melinda Taylor, and Stanlee West-Watt. Thank you for your guidance, wisdom, and feedback during the needs assessment process.

To the many dependency and neglect professionals with whom we spoke, and/or completed the stakeholder survey, thank you for your participation. The list of professionals includes: judges and magistrates; family court facilitators; county attorneys; guardians *ad litem*; DHS social workers and supervisors; service providers; and court appointed special advocates. Many thanks to the respondent parents' counsel with whom we spoke, observed, and completed the RPC survey. Thank you for your time and candor. We enjoyed your company and the opportunity to engage you on the very important issues surrounding the work that you do on behalf of parents.

NCSC, NCJFCJ, and NACC would also like to express our sincere appreciation to the individuals in the project sites who assisted with the logistics of file review and court observation, and the scheduling of interviews and focus groups: Denver County-Barbara Bosley, Family Court Facilitator; El Paso County-Judge Theresa Cisneros and Jim Hustad, Family Court Facilitator; Teller County-Judge Tom Kennedy; and Weld County- Judge Robert Lowenbach; Danna Nelson, Court Clerk; and Christy Dodd, Executive Director, *A Kid's Place*. Without your generous assistance, the multiple data collection activities in each of your sites would not have flowed as well. Thank you for your patience, hospitality, and graciousness.

Finally, the NCSC, NCJFCJ, and NACC project team is especially indebted to Sheri Danz, Alicia Davis and Bill DeLisio of the Family Issues Unit of the State Court Administrator's Office. Thank you, Sheri, Alicia, and Bill for your assistance at all levels on this needs assessment project. We enjoyed working with you and hope our paths cross again in the future.

## INTRODUCTION

Respondent Parents' Counsel play a critical role in achieving good outcomes for children involved in dependency and neglect proceedings by protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate. In recognition of the need for quality representation of parents, efforts are underway locally and nationally to enhance and optimize respondent parent counsel (RPC) practice and thereby improve outcomes for children and families.<sup>1</sup> Colorado is involved in these efforts. The Respondent Parents' Counsel Task Force Statewide Needs Assessment is intended to inform Colorado's efforts to promote quality representation for parents in dependency and neglect proceedings.

## COLORADO RESPONDENT PARENTS' COUNSEL TASK FORCE AND OBJECTIVES OF NEEDS ASSESSMENT

In 2005, the Colorado Supreme Court created the *Respondent Parents' Counsel Task Force*, a group of child welfare professionals and academics, to review the issues facing respondent parents' counsel and to make recommendations to the Supreme Court and the Colorado Legislature. The mission of the Respondent Parents' Counsel Task Force is

*...to improve the well-being of Colorado's children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.<sup>2</sup>*

An imperative objective identified by the Task Force is the need to pursue additional and equitable funding for respondent parents' counsel (RPC) compensation. The Task Force has articulated four main performance areas: (1) Advocacy for RPC Resources; (2) Specific Training for RPC; (3) Researching and Defining Structural Outcomes; and (4) Guidelines and Practice Standards, which will ultimately inform and enhance the likelihood for the successful achievement of improved compensation.

In furtherance of these performance areas, the Task Force determined that a needs assessment will assist in defining the greatest needs for attorneys and the objectives for the structural outcomes, as well as providing baseline data for any efforts of reform. The secondary purpose of the needs assessment is to identify the impediments to effective representation of families. This includes a specific examination of training, compensation, caseload, resources, service delivery and court and attorney practices and comparison of current RPC practice to widely accepted models of practice.

In 2006, the state of Colorado Judicial Department, through its State Court Administrator's Office (SCAO) contracted with the National Center for State Courts (NCSC), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the National Association of Counsel for Children (NACC), to review and

---

<sup>1</sup> This includes the promulgation of national standards for attorneys representing parent in child welfare proceedings. See ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006) (NACC Endorsed 2006). In 2004, the Pew Commission on Children in Foster Care published findings and recommendations that called on states to promote children's interests by ensuring that both children and their parents have a direct voice in court and effective representation, The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care* (2004). The National Council of Juvenile and Family Court Judges recommends that all parties have competent representation at every critical state of the proceedings. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, 1995).

<sup>2</sup> Respondent Parents' Counsel Task Force, *Action Plan*, Sponsored by the Colorado Court Improvement Program in Collaboration with the Supreme Court Standing Committee on Family Issues, Updated April 2006.

analyze current RPC practices across the state of Colorado and to identify the impediments to effective representation of families in child dependency and neglect cases.

## METHODOLOGY

The NCSC/NCJFCJ/NACC project team examined the issues facing respondent parents' counsel using multiple data sources and both qualitative and quantitative methods. The methodological model adopted for this needs assessment included selection of specific project sites for intensive data collection, as well as a web-based survey designed to capture a statewide perspective from RPC and other stakeholders.

Selection of project sites was made after consultation with the Respondent Parents' Counsel Task Force. Sites were also selected to represent a variety of racial, economic, educational and population characteristics, as well as differing caseloads. The three project sites included: the Second Judicial District (Denver County); the Fourth Judicial District (El Paso and Teller County); and the Nineteenth Judicial District (Weld County). Specifically, the following data sources informed this needs assessment study:

- Statewide and online (web-based) survey of dependency and neglect system stakeholders [118 responses] and RPCs [44 responses]
- Semi-structured in-person interviews and focus groups with system stakeholders [96 participants] and respondent parents' counsel [15 participants] in project sites
- Analysis of court records [404 court files]
- Structured observation of dependency and neglect case hearing practice [151 hearings]
- Analysis of management information systems (MIS) data where available

## SUMMARY OF FINDINGS

From the data collection and analysis, several themes emerged. Of particular significance are the findings concerning barriers to effective RPC performance.

### *BARRIERS TO EFFECTIVE RPC PERFORMANCE*

*Stakeholders and RPCs cited a number of challenges or impediments to effective representation of respondent parents:*

- *High caseloads: Many participants believe that RPC caseloads are generally too high and that the number of cases that attorneys accept prevents them from meeting with clients outside of court and working the cases in a proactive manner.*
- *Compensation: Many faulted the compensation system which, in their view, requires attorneys to accept a large number of appointments in order to sustain a practice in this area. Others believed the compensation system, both the amount of pay and the flat-fee structure, discouraged attorneys from entering and staying in this area of practice.*
- *Lack of support services and resources: There are insufficient resources for RPC to conduct an independent investigation to competently challenge the child welfare agency's position, including the ability to procure expert witness services. RPCs do not have ready access to the support services and other resources that could help them manage their caseloads and deliver a higher level of representation.*
- *Training: Another significant area of concern was the lack of practical and RPC role-specific training and education. Of particular concern was the need for training on litigation skills.*

- *Lack of services: Although a lack of services for clients was not described as a major impediment to effective representation, not all participants were satisfied with the number and range of services available in their jurisdiction, especially in the area of mental health.*
- *Discovery issues: RPC noted that treatment plans, status reports, court orders, and other documents are not always prepared and distributed in a timely manner. This in turn limits the time they have to review these materials with their client and to respond.*

In addition to findings regarding barriers to effective performance, findings were made regarding RPC performance and the administration of RPC services.

- *Roles and Responsibilities—Duties of counsel flow from role and role dictates tasks. Colorado RPC practice does not indicate a significant problem regarding counsels' understanding of their role.*
- *Written Standards of Practice—Currently, only the Agreement for Services articulates specific requirements for RPC practice. Like many other states across the country that have promulgated or are developing standards for RPC practice, Colorado is in the process of vetting a draft set of guidelines for review and commentary. The draft guidelines are expected to be finalized in April 2007.*
- *Caseload and Workload—While stakeholders believe that more RPC are needed to provide quality representation, RPC report that having to take on other cases makes it difficult to focus on the complex RPC practice. RPC report that they would prefer to have higher level caseloads consisting entirely or primarily of enough RPC appointments to be able to practice as an RPC full time. There is some divergence as to which direction RPC practice should go—more attorneys to meet the demand, or a slight increase in attorneys but have those attorneys focused primarily on RPC practice.*
- *Recruitment—The current recruitment process appears limited in breadth and reach. The focus group and survey data suggest that the court should take more active efforts in the recruitment process. Additionally, the process for the recruitment of RPCs must be widened in order to increase the likelihood for highly-qualified and diverse candidates.*
- *Turnover—RPC claim a low turnover rate, while stakeholders have the impression that RPC turn over more frequently. Overall, it appears that it is typical for one RPC to represent a parent throughout the duration of the case statewide, contrary to the perception of the stakeholders. Yet, of the sites studied, Denver County appears to be the location most afflicted by RPC turnover, and may require active steps to increase the rate at which parents are represented by one counsel for the duration of the case.*
- *Contracting and Oversight—By necessity, there are some local efforts to provide oversight of RPC performance; the strongest of which is the RPC contract renewal process. Avenues to provide parents the opportunity to make complaints or file grievances with the trial court are not often utilized because of fear, lack of awareness of a complaint process, or limited abilities. There is little to no oversight of RPC practice, training, and Agreement compliance at the state level. Performance provisions of the Agreement are not systematically reviewed or audited.*
- *Appointment—Participants in the stakeholder focus group strongly believe that appointing parents' counsel early in the case contributes to timeliness and due process. The data also suggest that there is timely appointment of counsel and that counsel are being appointed early on in cases. Ensuring timely*

*appointment of counsel on a statewide basis will not only ensure the rights of the parents are upheld at each stage of the case process; it will also facilitate timely adjudication of cases.*

- *Continuances—From the collective data sources, it appears that the Colorado dependency and neglect court system does make efforts to avoid continuances. Overall, it appears that continuances are relatively infrequent. Yet when they do occur, they are more than likely to be requested by the RPC.*
- *Professionalism—Project researchers consistently found that Colorado RPC comport themselves professionally.*
- *Preparation—Colorado RPC preparation is generally adequate, given limited time and resources. However, it is notable that stakeholders perceive RPC to only “sometimes” discuss issues with their clients prior to court proceedings, and this perception appears to be confirmed by RPC’s reports that they meet with the majority of clients just before hearings.*
- *Client Advocacy—An analysis of the data revealed a complex scenario. While, stakeholder surveys reported that RPCs are very active, the data from the case file review suggests only few written motions are filed. As case files only contain written motions, it seems that RPC are making oral motions in court or decisions within a “team,” as opposed to traditional written motions. There is room for improvement, as RPCs can and should, in some circumstances, file more motions to expedite the case by alerting the court to issues as soon as they arise (for example, filing written visitation motions and motions to return the child).*
- *Communication with Client—The primary, and often repeated, complaint about RPC voiced across project sites is that they do not appear to meet with clients outside of court hearings. RPCs reported that they did meet with clients outside of court, but noted that some clients did not keep appointments or attempted to contact them at odd hours.*
- *Skills—Court observers found that RPC take their function seriously and work hard for their clients. Deficiencies were noted primarily in the area of trial skills. Stakeholders, who observe RPC performance more frequently and under typical circumstances, are critical of the skill level of RPC practicing in the Colorado dependency and neglect courts. RPC themselves actively requested training in the area of trial skills.*

#### SUMMARY OF RECOMMENDATIONS

The NCSC/NCJFCJ/NACC project team made fifteen global recommendations addressing attorney performance and systemic change. These recommendations are based on measured deficiencies in current practice and systems.

- *RPC Role Clarity and Definition—Attorneys retaining contracts must make clear that the RPC is the attorney for the parent(s), bound by the traditional rules of attorney-client competence, loyalty, and confidentiality, for example. This is true regardless of the source or adequacy of attorney compensation. The duty to the parent client must be communicated to and understood by the client, court, and all parties.*
- *Training—Respondent Parents’ Counsel should have the opportunity for and be required to receive training in dependency practice prior to eligibility for cases and throughout the course of taking cases, in dependency law and procedure, trial advocacy, alternative dispute resolution, child maltreatment and*

development, physical and mental health, substance abuse, permanency, family dynamics, and available services for parents in the community.

- *Standards of Practice*—Standards of practice (and guidelines to a far lesser degree) define and encourage proficient practices among professionals. The dependency court system should adopt mandatory standards of practice creating a practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable. Such standards should be consistent with existing national dependency practice standards and guidelines including the 2006 ABA Standards for Representation of Respondent Parents.
- *Caseload and Workload*—Attorneys should have reasonable and appropriate caseloads which allow enough case focus for the development of expertise, which in turn promotes proficiency.
- *Compensation*—Attorneys must be compensated adequately for cases that allow for lower caseloads. Attorneys should receive compensation at least competitive with agency and public defender counsel wages. Appropriate and competitive compensation must become a component of RPC representation.
- *Recruitment*—Proficient representation requires recruitment of competent counsel. The dependency court system should develop and follow a recruitment system which targets recruiting and hiring practice focused on hiring highly qualified candidates.
- *Turnover*—Respondents' representation suffers from lack of continuity of counsel. The system should track counsel case continuity and turnover and communicate with the RPC bar to understand and promote success and address failures.
- *Resources*—Counsel should have and utilize resources necessary for effective advocacy including office research and preparation tools and case and expert consultation services throughout all stages of dependency and neglect cases.
- *Contracting and Oversight*—The RPC contract should be clear and concise. It should thoroughly outline the role and responsibility of counsel as well as direct counsel to appropriate authority for best practices. Additionally, quality attorney oversight is essential to proficient practice. New attorneys should be mentored by experienced highly proficient practitioners. Staffed RPC offices with full-time dependency counsel including managers and supervisors should be explored where feasible. In other instances, a centralized authority should conduct oversight.
- *Appointment, Appearances, and Continuance*—Counsel for parents should be appointed and must appear at the earliest possible opportunity. The administrative judge of each court should be required to develop, in collaboration with other judges, and with magistrates, prosecuting attorneys, agency attorneys, and the local bar, a written continuance policy designed to minimize unneeded continuances.
- *Professionalism and Protocol*—Attorneys should act and be treated as professionals. This includes professional dress and demeanor before the court, client, and community. Formality in the dependency court should be encouraged by the court and followed by counsel.
- *Case Preparation*—Proficient practice requires extensive preparation. Attorneys should take and be given the time to prepare their cases. Such preparation includes case analysis, preparation of case legal theory and persuasive theme, active participation in every stage of the proceeding, thorough investigation including full interviews with witnesses, and obtaining and reviewing of all relevant pleadings and documents including agency records.
- *Knowledge and Utilization of Community Services and Utilization of Tools*—Attorneys should have knowledge of and advocate for services available and appropriate for their clients and their clients' children. Attorneys should know and utilize legal resources and remedies available to their clients, including discovery, motions, objections, trial briefs, writs, and appeals. They should also have

a full understanding of dependency law and procedure, trial advocacy, child maltreatment and development, medicine, mental health, and family dynamics.

- *Client and Party Communication*—Successful representation is contingent upon a meaningful relationship with the client. Such a relationship cannot be built with casual and infrequent client contact. Attorneys should meet with clients meaningfully in advance of proceedings and throughout the case, counsel clients as to legal options given the universe of likely outcomes, and represent the client's directives and interests. Attorneys should have and take the time to prepare clients for proceedings and to communicate with opposing counsel.
- *Courtroom/Trial Skills*—The traditional art of trial advocacy including, direct and cross exam, opening statements, closing arguments, objections, and evidentiary foundations is critical to the dependency court process. Attorneys should acquire and use these skills.

#### CONCLUDING REMARKS

Protecting parental rights and serving the family interest as directed by the parent client is the charge and duty of the respondent parent attorney. In order for such legal service to be delivered, however, we must have an administrative and court system that promotes high quality RPC practice, populated by proficient legal counsel. This study assessed that system and counsel performance within it.

Based on the data received, it is the conclusion of the project team that the practice of law representing parents in Colorado dependency cases is typically adequate but rarely proficient. It is our further assessment that the cause of sub proficient practice is not unwillingness of counsel to provide proficient service but rather the existence of practice, administration, and court systems which discourage optimal practice.

This assessment is not an indictment of the attorneys who work in the system. It is our general assessment that RPCs do well given limited resources and opportunity. Nonetheless, we believe counsel can and should improve performance. Likewise, this is not an indictment of system personnel who administer the system. It is a call to system workers and policy makers to reform an imperfect system which will promote proficient practice.

Improvement of RPC practice and representation of parents will require the collaboration and coordination of multiple branches of government, agencies, and people. The needs assessment sets forth implementation strategies to further each of the recommendations. Several of the strategies focus on the responsibilities of the Colorado Judicial Department, such as requiring RPC to obtain training in relevant law prior to accepting appointments, creating expert banks for RPC, and calendaring dockets to facilitate communication with clients. Other strategies will require the support of the broader legal and child welfare community, as well as the legislative branch. Examples of such strategies include clarifying policies to allow for the appointment of experts and investigators early on upfront in cases; increasing compensation for RPC and implementing hourly pay; promulgating and enforcing standards for RPC; promoting specialization in this area of the law; and exploring models for oversight of RPC. These efforts will likely promote quality representation for parents and good outcomes for Colorado families and children.

## SECTION I. INTRODUCTION TO THE PURPOSE AND SCOPE OF THE NEEDS ASSESSMENT

The state of Colorado has enjoyed a long history of support for the efforts and initiatives designed to strengthen the court's role in child dependency and neglect cases. These include: the establishment of the Office of the Child Representative; the promulgation of case management guidelines for the processing of child dependency and neglect cases; the creation and location of a family court facilitator position within each judicial district; the enhancement of automated information systems and data transfer between the court and the child welfare agency; the expedition of child welfare appeals; and the development of the Family Issues Unit of the Colorado State Court Administrator's Office. Attention in Colorado has now turned to the representation of parents in dependency and neglect proceedings. As indicated in Section II of this *Needs Assessment Report*, the heightened emphasis on parent representation is a recent phenomenon in the child welfare arena. Efforts are underway locally and nationally to enhance and optimize Respondent Parents' Counsel (RPC) practice and thereby improve outcomes for children and families.

In 2005, the Colorado Supreme Court created the *Respondent Parents' Counsel Task Force*, a group of child welfare professionals, which includes district and appellate court judges, magistrates, child welfare agency directors and providers, respondent parents' counsel, guardians *ad litem*, county attorneys, family court facilitators, and law school academics, to review the issues facing respondent parents' counsel and to make recommendations to the Supreme Court and the Colorado Legislature. This initiative is sponsored by the Colorado Court Improvement Program, with the assistance of the Colorado Standing Committee on Family Issues. The Task Force is staffed by the State of Colorado Judicial Department, through its State Court Administrator's Office, Family Issues Unit, Division of Planning and Analysis.

The mission of the Respondent Parents' Counsel Task Force is

*...to improve the well-being of Colorado's children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.<sup>3</sup>*

An imperative objective identified by the Task Force is the need to pursue additional and equitable funding for respondent parents' counsel (RPC) compensation. The Task Force, however, has articulated four main performance areas: (1) Advocacy for RPC Resources; (2) Specific Training for RPC; (3) Researching and Defining Structural Outcomes; and (4) Guidelines and Practice Standards, which will ultimately inform and enhance the likelihood for the successful achievement of improved compensation.

In furtherance of these performance areas, the Task Force identified that a "needs assessment" will assist in defining the "greatest needs for attorneys and the objectives for the structural outcomes and will provide baseline data."<sup>4</sup> The secondary purpose of the needs assessment is to identify the impediments to effective representation of families, including service delivery and existing court and attorney practices through comparison of current practice of RPC to widely accepted models of practice.

In 2006, the state of Colorado Judicial Department, through its State Court Administrator's Office (SCAO) contracted with the National Center for State Courts (NCSC), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the National Association of Counsel for Children (NACC), to review and

---

<sup>3</sup> Respondent Parents' Counsel Task Force, *Action Plan*, Sponsored by the Colorado Court Improvement Program in Collaboration with the Supreme Court Standing Committee on Family Issues, Updated April 2006.

<sup>4</sup> Respondent Parents' Counsel Task Force, *Action Plan*, Sponsored by the Colorado Court Improvement Program in Collaboration with the Supreme Court Standing Committee on Family Issues, Updated April 2006.

analyze current RPC practices across the state of Colorado and to identify the impediments to effective representation of families in child dependency and neglect cases.

The needs assessment discussed herein focuses on service delivery and practice issues and includes specific examination of factors such as training, compensation, caseload, and available resources. Additionally, the *Statewide Needs Assessment Report* identifies the impediments to effective representation of families, including service delivery and existing court and attorney practices through comparison of current practice of respondent parents' counsel to widely accepted best practice models, including:

- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006) (NACC Endorsed 2006)
- The American Bar Association (ABA) Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys<sup>5</sup>
- The National Council of Juvenile and Family Court Judges' *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*<sup>6</sup>
- Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases;<sup>7</sup> specifically the applicable due process measures addressing legal counsel for parents
- The ABA (and ABA/NACC Revised) Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases
- ABA Standards of Practice for Lawyers Representing Child Welfare Agencies (2004) (NACC Endorsed 2005)
- NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001)
- NACC Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases (2006)
- Adoption 2002: The President's Initiative on Adoption and Foster Care/Guidelines for Public Policy and State Legislation Governing Permanence for Children (HHS Children's Bureau 1999)

Finally, the findings and recommendations herein are based on valid and reliable qualitative and quantitative information that is representative of the variations in practice that exist statewide, reflects the perceptions and viewpoints of all key stakeholders, and is based on a sound research methodology. The needs assessment and the resulting *Statewide Needs Assessment Report* and recommendations will be used to inform the work of the Respondent Parents' Counsel Task Force as it examines the issues facing respondent parents' counsel and as it formulates recommendations for the Colorado Supreme Court and the Legislature.

---

<sup>5</sup> American Bar Association, Center on Children and the Law, 2000.

<sup>6</sup> National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, 1995).

<sup>7</sup> ABA Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges (Spring 2004) Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases.

[http://www.ncsconline.org/WC/Publications/Res\\_CtPerS\\_TCPS\\_PackGde4-04Pub.pdf](http://www.ncsconline.org/WC/Publications/Res_CtPerS_TCPS_PackGde4-04Pub.pdf).

## SECTION II. CONTEXT AND OVERVIEW OF RESPONDENT PARENT REPRESENTATION

### A. The Dependency Court System

The Abuse, Neglect, and Dependency (Dependency) Court system and the representation of parties in it is a relatively recent development in American and Colorado Law. Although our Juvenile Courts are now a century old, the Dependency component of the court as it exists today is much younger.<sup>8</sup> Dependency Court proceedings are the outgrowth of the child protection movement of the 1960s and 1970s. That social movement was fueled largely by the medical and mental health professions' then recent recognition of the existence and considerable magnitude of child abuse and neglect.<sup>9</sup>

Colorado played a central role in this history. It was Dr. C. Henry Kempe and his colleagues at the University of Colorado who pioneered the medical science of child maltreatment. In 1962, Dr. Kempe and colleagues published the landmark article "The Battered Child Syndrome" in the *Journal of the American Medical Association*. In the article, Kempe summarized his research findings that significant numbers of children, far beyond previous estimates, were victims of child abuse and neglect.<sup>10</sup> Kempe established the medical diagnosis of Battered Child which is a condition of repeated abuse victimization and resulting harm. From this, Battered Child Syndrome would later become a recognized legal syndrome in the law of evidence.<sup>11</sup>

In response to this work, state legislatures and Congress began to act to protect children. While the existing Juvenile Court had generalized authority to take jurisdiction of abused and dependent children, such was not the focus of the court. Juvenile Courts were focused on delinquent activity. Yet, reports of child maltreatment were now coming in greater numbers, largely due to the advent of mandatory child abuse reporting laws.<sup>12</sup> Colorado adopted one of the nation's first mandatory reporting laws in 1963.<sup>13</sup>

Then, in 1974, Congress adopted the Child Abuse Prevention and Treatment Act (CAPTA).<sup>14</sup> CAPTA provided valuable funding to states that agreed to build child protection systems, including Dependency Courts, in conformity with federal regulations. States responded and before long, every jurisdiction including Colorado had a CAPTA influenced Dependency Court. Among the requirements of CAPTA was the appointment of a representative to protect the best interests of the child.<sup>15</sup> Colorado would be among the

<sup>8</sup> The first juvenile court was opened in Cook County, Illinois in 1899. The Denver Juvenile Court, which opened in 1903, is generally thought to be the second although Denver's Judge Benjamin Lindsey was operating an informal tribunal for juveniles before that. For more on the history of the juvenile court, see Sanford Fox, *A Contribution to the History of the American Juvenile Court*, 49 JUV. AND FAM. CT. J., 7 (Fall 1998); and Marvin Ventrell, *Evolution of the Dependency Component of the Juvenile Court*, 49 JUV. AND FAM. CT. J. 17 (Fall 1998).

<sup>9</sup> CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 135-38 (Marvin Ventrell & Donald N. Duquette eds., 2005).

<sup>10</sup> C. Henry Kempe et al., *The Battered Child Syndrome*, 181 JAMA 17 (1962).

<sup>11</sup> *People v. Jackson*, 18 Cal. App. 3d 504, 506-508 (1971); *Estelle v. McGuire*, 502 U.S. 62 (1991).

<sup>12</sup> The most recent data indicates that nationally 3 million children were alleged to have been abused or neglected and received investigations or assessments by state and local CPS agencies. In Colorado, a total of 120,518 referrals were made to child protection agencies during 2004. For more statistics on child maltreatment, see U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD MALTREATMENT 2004 (2006).

<sup>13</sup> Act of May 3, 1963, ch. 77, 1963 Sess. Laws 225 (codified at COLO. REV. STAT. § 19-3-304 (2005)).

<sup>14</sup> 42 U.S.C. § 5101 *et seq.* (1974). (CAPTA has been amended and reauthorized and is currently part of the Keeping Children and Families Safe Act of 2003 Public Law 108-36).

<sup>15</sup> 42 U.S.C. § 5106a (b)(2)(A)(xiii) (1974).

national leaders in requiring that such a representative be a licensed attorney.<sup>16</sup> CAPTA did not and still does not contain a similar provision requiring representation of parents.

The early CAPTA courts were focused almost exclusively on child safety with little consideration, critics argued, for the impact of removal on the child and the family. The most difficult social and political issue was the state's basic authority to intervene in the family in the first place. The goal was largely to "save the child" and it was not uncommon for child protection workers to adopt the position that "the apple doesn't fall very far from the tree." In other words, family preservation and reunification were not guideposts in the early CAPTA days.

In response to criticism of the early CAPTA courts, child welfare legislation began to include "reasonable efforts" policies in the late 1970s. In 1980, Congress passed The Adoption Assistance and Child Welfare Act.<sup>17</sup> Public Law 96-272, as it was most often called, placed a high value on family integrity and the value of the family, however imperfect, to the child. The act made federal foster care funding dependent on states making reasonable efforts and providing family services in order to avoid removal and promote reunification of the child with the family.

Despite best efforts, the child protection system became overburdened in the 1980s. Under-resourced systems struggled to serve children and families and our foster care population grew to half a million children in temporary care.<sup>18</sup> Some critics believed this was in large part due to the emphasis on family preservation. Critics felt that a family preservation policy failed to move children toward permanence because it focused on long term family services which too often failed to produce either reunification or termination. It was argued that the pendulum had swung too far in the direction of family preservation at too high a cost to the child.

By the year 2000, there was considerable agreement in the child protection system that "foster care drift," as it became known, was harming children and that the system needed improvements to move children toward permanent placements much more quickly. Permanence, therefore, became the system focus and projects including Adoption 2002: The President's Initiative on Adoption and Foster Care<sup>19</sup> were undertaken to promote timely permanent placements for children. Then, in 1997 Congress Passed the Adoption and Safe Families Act of 1997 (ASFA).<sup>20</sup> The act included provisions for legal representation, state funding of child welfare and adoption, and state performance requirements. In general, ASFA is intended to promote primacy of child safety and timely decisions while clarifying "reasonable efforts" and continuing family preservation.<sup>21</sup> ASFA also includes continuation funding for court improvement. ASFA is thought by many to represent a balance between child saving and family preservation.

## B. Legal Representation in Dependency Cases

High quality representation of all parties in Dependency proceedings is necessary to produce good outcomes for children and families.<sup>22</sup> It is axiomatic that justice flows best from a system where competing

---

<sup>16</sup> COLO. REV. STAT. § 13-91-103(4).

<sup>17</sup> 42 U.S.C. § 620 *et. seq.* (1980).

<sup>18</sup> DONALD N. DUQUETTE & MARK HARDIN, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN I-7 (Department of Health and Human Services, ed. 1999).

<sup>19</sup> *Id.*

<sup>20</sup> 42 U.S.C. § 671 (1997).

<sup>21</sup> 42 U.S.C. § 671 (1997); Marvin Ventrell, *Foster Care & Adoption Reform Legislation: Implementing the Adoption & Safe Families Act of 1997*, 14 ST. JOHN'S L. REV. 433 (Summer 2000).

<sup>22</sup> UNIFORM REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND CUSTODY PROCEEDINGS ACT (2006), [http://www.law.upenn.edu/bl/ulc/RARCCDA/2006annualmeeting\\_approvedtext.htm](http://www.law.upenn.edu/bl/ulc/RARCCDA/2006annualmeeting_approvedtext.htm).

interests are represented by competent and zealous legal counsel. Likewise, good settlements and mediated results in lieu of adversarial proceedings are greatly benefited by quality legal representation. In the end, courts' decisions are only as good as the information upon which they are based and it is legal counsel who is ultimately responsible for collecting, preparing, and delivering that information.

Historically there has been a recognized deficiency in the quality of legal representation in dependency cases.<sup>23</sup> This is attributable to a variety of factors including unclear role definition, lack of standards of practice, low expectations, high caseloads, inadequate compensation, inadequate resources, and the misguided view that attorneys working in these cases are relieved of the traditional rigors of the practice of law. Additionally, as the dependency system developed, volunteers or pro bono counsel (rather than professional counsel with training and expertise in the area) frequently served as counsel.

Fortunately, this condition is improving as courts and policymakers have come to recognize the importance of legal counsel within the system's goal to achieve safety, permanence, and well-being for children. Numerous authorities including the U.S. Department of Health and Human Services Children's Bureau, American Bar Association, National Council for Juvenile and Family Court Judges, and the National Association of Counsel for Children have stated their support for well trained and well resourced legal counsel.<sup>24</sup> Likewise, in 2004, the Pew Commission on Children in Foster Care published findings and recommendations that called on states to promote children's interests by ensuring that both children and their parents have a direct voice in court and effective representation.<sup>25</sup> Also in 2004, the American Bar Association recognized Child Welfare Law (representation of parties in abuse, neglect, and dependency cases) as a formal legal specialty in which an attorney may obtain certification as a specialist.<sup>26</sup> The NACC currently certifies attorneys as Child Welfare Law Specialists (the CWLS credential) in California, Michigan, New Mexico, and Tennessee. NACC is in the process of expanding the program to additional states and is in discussion with Colorado officials.

With quality legal representation as a stated system objective, a number of projects have been undertaken to create enhanced practice. Much of the work in the area has focused on the representation of children, as this was considered the least developed area. Agency Counsel, representing the government or department of social services, has also received some attention. Only recently though, has respondent parents' counsel begun to receive the attention it deserves. This pattern is partly reflected in the sequence of the adoption of standards of practice as follows:

- ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996)
- ABA (NACC Revised) Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1999)
- NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001)
- ABA Standard of Practice for Lawyers Child Welfare Agencies (2004) (NACC Endorsed 2005)

---

<sup>23</sup> DONALD N. DUQUETTE & MARK HARDIN, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN VII-1 (Department of Health and Human Services, ed. 1999); AMERICAN BAR ASSOCIATION, AMERICA'S CHILDREN *STILL AT RISK* 199-210 (2001).

<sup>24</sup> AMERICAN BAR ASSOCIATION, AMERICA'S CHILDREN *STILL AT RISK* 199-210 (2001); NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE, Technical Assistance Bulletin, March 1998, Vol. II, No. 2 at 14-15, 85-99; NACC Policy Agenda (2001), [http://www.naccchildlaw.org/policy/policy\\_agenda.html](http://www.naccchildlaw.org/policy/policy_agenda.html).

<sup>25</sup> THE PEW COMMISSION ON CHILDREN IN FOSTER CARE, *FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE* (2004).

<sup>26</sup> For more information on Child Welfare Attorney Specialty certification, see: <http://www.naccchildlaw.org/training/certification.html>.

- National Conference of Commissioners on Uniform State Laws Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act (2006)
- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006) (NACC Endorsed 2006)

### C. Respondent Parents' Counsel Representation

Counsel for respondent parents play a critically important role in the Dependency Court system. Foremost among their duties is the protection of the constitutionally proscribed parent-child legal relationship which is subject to being severed in dependency cases. At the same time, respondent parents' counsel give voice and dignity to the respondents in the system. Yet they are typically underpaid, under-resourced, carry high caseloads, and are sometimes disrespected as being on "the wrong side" in a system designed to protect and serve children. This is unfortunate and needs to change.

The importance of the parent-child legal relationship has long been recognized in our law. A series of U.S. Supreme Court cases from the first half of the 20<sup>th</sup> Century form the constitutional parameters for the relationship between states, parents, and children.<sup>27</sup> It is now well established that parents have a due process liberty interest in the care, custody, and control of their children. States can only infringe on this right for compelling reasons and may not terminate the parent/child relationship without clear and convincing evidence at a minimum.<sup>28</sup>

The Court has not gone so far, however, as to constitutionally mandate legal counsel for parents in dependency cases. Rather, the U.S. Supreme Court held in *Lassiter v. Department of Social Services* that parents do not have an absolute constitutional due process right to court appointed counsel in termination of parental rights cases, although the right may be attached depending on the facts of the case.<sup>29</sup> In its opinion, however, the Court urged state courts to appoint counsel to parents in all dependency and neglect proceedings, including termination of parental rights proceedings.<sup>30</sup>

Many states followed suit, and at least 39 states now mandate appointment of counsel in termination proceedings.<sup>31</sup> State law varies regarding the stage and scope of appointment as well as requisite training for respondent parents' counsel.<sup>32</sup> The National Council of Juvenile and Family Court Judges recommends that all parties have competent representation at every critical state of the proceedings.<sup>33</sup> The U.S.

---

<sup>27</sup> See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

<sup>28</sup> *Santosky v. Kramer*, 455 U.S. 745 (1982).

<sup>29</sup> 452 U.S. 18 (1981).

<sup>30</sup> *Id.* at 34.

<sup>31</sup> NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE, Technical Assistance Bulletin, March 1998, Vol. II, No. 2 at 21.

<sup>32</sup> See Appendix A. Currently there is no state-by-state comparison addressing key infrastructure elements of respondent parents' counsel practice. In order to provide contextual information to the project team, NCSC conducted an independent examination of RPC issues. NCSC Knowledge and Information Services (KIS) reviewed relevant literature and also distributed an e-mail survey directed to state CIP personnel requesting a response on key areas of interest including: compensation; caseload; representation model; funding source; application process; duties; and legal authority. Although the NCSC Compendium is not a by product of the current needs assessment project, the results of this effort are included for the benefit of the Respondent Parents' Counsel Task Force. Only those states that responded to the KIS inquiry are included.

<sup>33</sup> NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES* (Spring 1995).

Department of Health and Human Services also recommends that parents receive the benefit of counsel at every stage of dependency and neglect proceedings.<sup>34</sup>

Despite the lack of a constitutional entitlement, current Colorado law provides a reasonably complete model for the representation of respondent parents. By statute, Colorado gives respondent parents a right to counsel at every stage of the dependency and neglect proceedings.<sup>35</sup> The Colorado Judicial Department contracts with individual attorneys to represent parents. Judges then assign attorneys to cases in their jurisdictions.<sup>36</sup> The RPC appointment contract (see Appendix B, Colorado Judicial Department Agreement for Services by Independent Contractor as Respondent Parents' Counsel in Dependency and Neglect Actions) provides a framework for representation. The contract defines Counsel's duties, and imposes a caseload limit of no more than 100 active cases at one time. Respondent parents' counsel are paid a flat fee of \$855 for each new appointment. Counsel are required to obtain at least 10 hours of continuing legal education related to children and family matters per legal education period.

The representation of parents in Dependency cases in the United States and in Colorado has evolved since the 1970s. Questions about the adequacy of representation continue to be raised, and courts, judges, and counsel themselves describe chronic problems. Fortunately, at this stage in the evolution of this work, we are well enough situated to study this area, record our findings, and make recommendations for improvement.

---

<sup>34</sup> DONALD N. DUQUETTE & MARK HARDIN, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN VII-1 (Department of Health and Human Services, ed. 1999).

<sup>35</sup> C.R.S. § 19-3-202. Right to counsel and jury trial. (1) At the first appearance of a respondent parent, guardian, or legal custodian, the court shall fully advise such party of his legal rights, including the right to a jury trial, the right to be represented by counsel at every stage of the proceedings, and the right to seek the appointment of counsel if the party is unable financially to secure counsel on his own. The court shall fully explain to such party the informational notice of rights and remedies for families prepared pursuant to section 19-3-212, and shall recommend that the party discuss such notice with counsel. Further, the court shall advise the party of the minimum and maximum time frames for the dependency and neglect process, including the minimum and maximum time frames for adjudication, disposition, and termination of parental rights for a child who is under six years of age at the time the petition is filed in a county designated pursuant to section 19-1-123.

<sup>36</sup> See Chief Justice Directive 98-02, which requires judicial districts *to work collaboratively with local departments of social services, county attorneys, guardians ad litem, and respondent parents' counsel to develop local policies and procedures that focus on permanency for children*. Chief Justice Directive 98-02 is accompanied by a Memorandum of Procedures, which is intended to provide guidance to judicial districts in developing local policies and procedures to: achieve permanency for children in a more timely and efficient manner; and satisfy the requirements of state and federal legislation. Noteworthy is the section on the Preliminary Protective Proceeding (Detention or Shelter Hearing). The purpose of the first hearing of the dependency process is...*to make a determination as to temporary custody and appropriate placement of the child, to ensure that all respondent parents are identified, represented by counsel and understand the D&N process [emphasis added]*. Affirmative judicial action includes the appointment of counsel for parents, if eligible. See Chief Justice Directive 98-02, <http://www.courts.state.co.us/supct/directives/98-02mop.pdf>.

### SECTION III. STATEWIDE NEEDS ASSESSMENT METHODOLOGY AND ANALYSES

This section of the *Statewide Needs Assessment Report* summarizes the methodological approach taken in this study of RPC practice, including site selection, data collection procedures, data sources, instrumentation, and final analyses. The methodological model adopted for this needs assessment included selection of specific project sites for intensive data collection, as well as a web-based survey designed to capture a “statewide” perspective from RPC and other stakeholders. While every attempt was made to encourage responses to the online survey from throughout the state, the limited final survey sample size (especially from RPC), and the fact that some jurisdictions in the state had no survey respondents or only a handful, limits the extent to which the survey reflects a statewide sampling. Nevertheless, project sites were carefully selected to represent a variety of socio-demographic variables from throughout the state (see Section III.A.). Because of the depth of information collected in each of these sites, the study does inform an understanding of statewide RPC practice.

#### A. Project Site Selection

Selection of project sites for inclusion in this study was made after consultation with the Respondent Parents’ Counsel Task Force. Sites were also selected to represent a variety of racial, economic, educational and population characteristics, and differing caseloads. As depicted in Figure 1, the three “project sites” were:

1. The Second Judicial District (Denver County)
2. The Fourth Judicial District (El Paso and Teller County)
3. The Nineteenth Judicial District (Weld County)

#### B. Data Collection Methods and Data Sources

This RPC Statewide Needs Assessment examined the issues facing respondent parents’ counsel using multiple data sources and both qualitative and quantitative methods. Specifically, the following data sources informed this needs assessment study:

- Online (web-based) survey of dependency and neglect system stakeholders and RPCs (statewide)
- Semi-structured in-person interviews with system stakeholders, with special attention to interviews with respondent parents’ counsel in project sites
- Focus groups with respondent parents’ counsel and other system stakeholders in project sites
- Analysis of court records and court orders
- Structured observation of dependency and neglect case hearing practice
- Analysis of management information systems (MIS) data where available

This needs assessment also sought the input of respondent parents. Respondent parents were randomly selected for invitation to participate in a focus group discussion with the project team [from a list of time-specific and closed cases, which was generated by the Colorado Judicial Department through the State Court Administrator’s Office through its management information system (MIS) known as ICON]. In total 250 invitations were mailed to respondent parents across the three project sites. However, despite best efforts to recruit respondent parents, only one individual completed an interview. Because of the limited sample size, feedback from respondent parents did not inform this needs assessment study.

Figure 1. Respondent Parents' Counsel Needs Assessment Project Sites

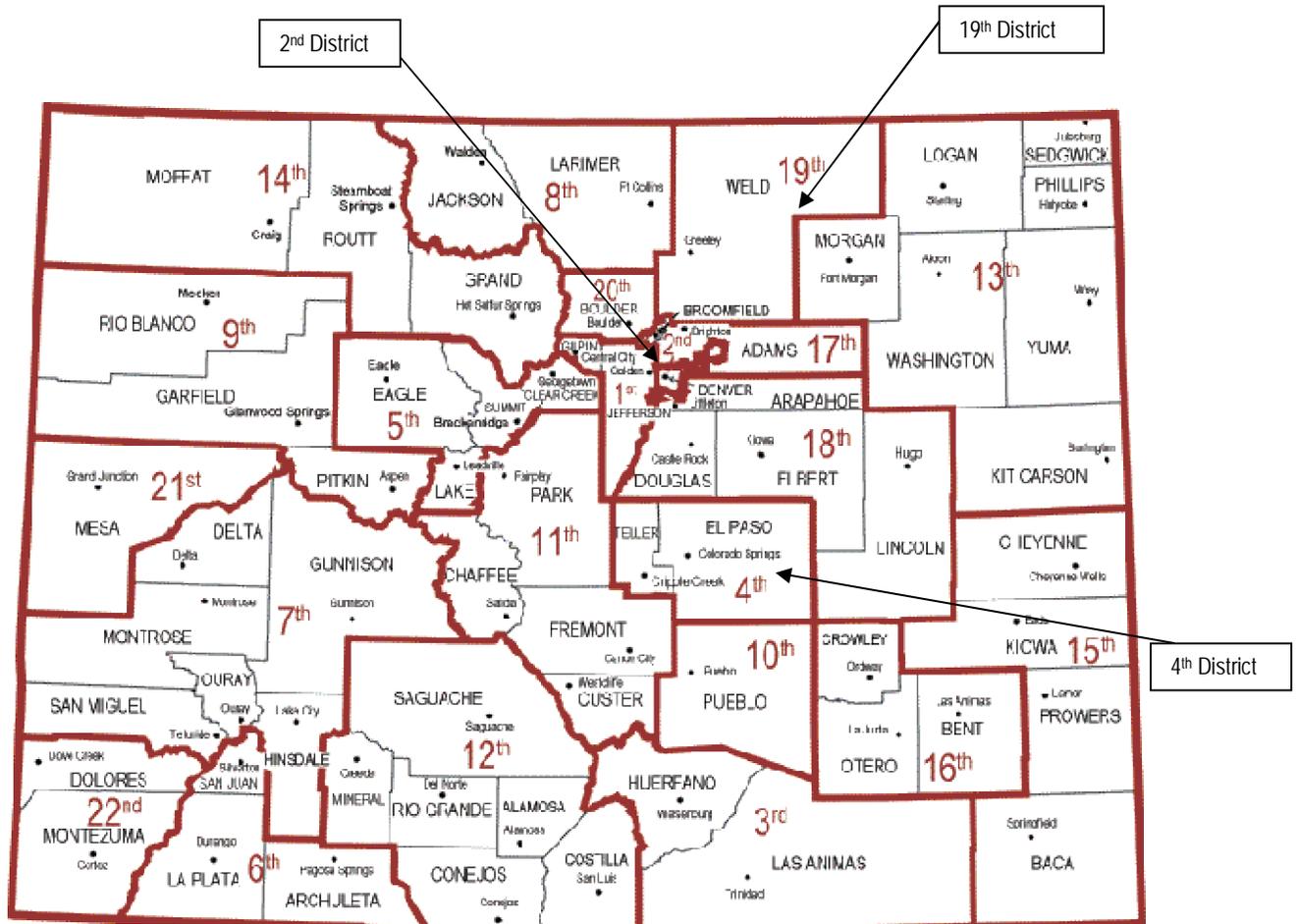


Table 1. Number of Case Filings and Out-of-Home Placement Cases: Fiscal Year 2005 – RPC Needs Assessment Project Sites				
DISTRICT	COUNTY	# OF DEPENDENCY/NEGLECT FILINGS <sup>37</sup>	# OF EXPEDITED PERMANENCY PLANNING FILINGS <sup>38</sup>	# OF OUT-OF- HOME PLACEMENT CASES <sup>39</sup>
2	Denver	117	226	2,202
4	El Paso	236	338	1,314
	Teller	25	11	56
19	Weld	87	122	702

Each of the data collection methods are outlined in detail in the following sections.

### 1. Online Statewide Survey of System Stakeholders and Respondent Parents' Counsel

Two online (web-based) surveys were designed for the purpose of this study: (1) An online survey was designed to elicit opinions about and experiences with RPC from a broad range of dependency and neglect system stakeholders throughout the state; and (2) An online survey was designed to elicit information from RPC about their practice and needs. Lists of both system stakeholders and RPC to include in the study were generated by the Judicial Department through the State Court Administrator's Office (SCAO). Invitations and follow-up reminders to participate in the survey were also sent out by the State Court Administrator's Office.

The surveys were administered on the NCSC's web platform, and survey respondents were given two weeks from receipt of the invitation letter to complete the survey. At approximately one week, a reminder e-mail was sent by the SCAO encouraging individuals to complete the survey if they had not already done so. Deadlines were extended in order to provide as much opportunity as possible for system stakeholders and RPC to complete a survey. Additionally, RPCs were contacted by phone as an additional reminder and to encourage their participation in the online survey. Any individuals who received and completed the wrong survey (e.g., RPCs who received a survey intended for a system stakeholder) were eliminated from the final analysis.

Due to the short duration of the project, both online surveys consisted primarily of close-ended, forced-choice questions to facilitate coding and analysis. The survey instruments were pre-tested on a small sample of attorneys and key stakeholders drawn from the NCJFCJ's national model courts project. Results from this pre-test were used to refine and finalize the survey instrument.

<sup>37</sup> Source: Colorado Judicial Branch Fiscal Year 2005 Annual Statistical Report at <http://www.courts.state.co.us/panda/statrep/ar2005/ar2005toc.htm>.

<sup>38</sup> Source: Colorado Judicial Branch Fiscal Year 2005 Annual Statistical Report at <http://www.courts.state.co.us/panda/statrep/ar2005/ar2005toc.htm>.

<sup>39</sup> Source: Colorado Department of Human Services, Child Welfare Services Mitigation at [http://www.cdhs.state.co.us/cyf/Child\\_Welfare/Mitigation/index.htm](http://www.cdhs.state.co.us/cyf/Child_Welfare/Mitigation/index.htm).

### Survey Content

The statewide system stakeholder survey was designed to elicit information about:

- Timeliness of appointment of respondent parents' counsel.
- Quality of parents' representatives' advocacy.
- Quality of parents' representatives' training in dependency matters.
- Best practices and system strengths with respect to parents' representation.
- Impediments to effective parents' representation.
- Recommendations for improvement.
- Opinions about general court performance.
- Opinions about permanency outcomes in dependency cases.

Information obtained from system stakeholders was analyzed to determine their overall assessment of RPC practice, opinions about need for RPC practice improvement, and descriptive information about hearing practice and outcomes. A total of 118 system stakeholders from around Colorado completed the online survey, including:

- Judicial officers hearing dependency and neglect cases
- County Attorneys
- Guardians *ad Litem*
- Attorneys for Children
- Juvenile Family Court Facilitators
- Court Appointed Special Advocates
- Department of Human Services and Child Welfare Services Caseworkers

The statewide respondent parents' counsel survey was designed to elicit information about:

- Degree of experience representing parents in child abuse and neglect cases.
- Judicial district of primary caseload.
- Percentage of caseload accounted for by dependency cases and total number of clients represented on current caseload.
- Percentage of time spent on dependency and neglect matters.
- Stage of case most likely to be appointed.
- Frequency with which attorney meets with client.
- Amount of training in dependency work prior to working in the field.
- Amount of specialized training received in dependency matters since beginning work in the field.
- Barriers to effective representation of parents in dependency matters.
- Identification of needs to address those barriers.
- Best practices or systems' strengths with respect to parents' representation.
- Opinions about general court performance.
- Opinions about permanency outcomes in dependency cases.
- Compensation levels, including an assessment of whether compensation is appropriate.

Information obtained from RPC was analyzed to determine their overall assessment of practice strengths and areas in need of improvement, recruitment procedures, and training needs. A total of 44 RPCs (out of 110 RPCs for a 40% response rate) from around Colorado completed the online survey.

## 2. Semi-Structured In-Person Interviews/Focus Groups with Stakeholders in Project Sites

In addition to the statewide online surveys, semi-structured in-person interviews were conducted with stakeholders (n=96), including RPC (n=15), in each of the project sites. Interviews were designed to further explore issues emerging from the statewide online survey, clarify local practice issues, and elicit information about:

- Attorney roles and responsibilities
- Caseloads (workloads)
- Level and frequency of client contact
- Training experience and needs
- Appointment practices
- Compensation levels
- Challenges or impediments to effective respondent parents' counsel practice
- Stakeholder satisfaction with respondent parents' counsel practice
- Recommendations for practice improvements

Interviews and focus groups included questions concerning respondent parents' counsel performance; identification of innovative programs and initiatives in each jurisdiction that involve respondent parent's counsel; and perceptions of the degree of, and effectiveness of, multi-system collaboration, including the involvement of respondent parent's counsel. Local project site designees performed the scheduling and invitation process. The distinction between the interview and focus group process involved the delivery method of the questions based on the number of participants during the scheduled timeframe. Table 2 identifies the type and number of interview and focus group participants across the three project sites.

		RPC	Judicial Officers	GAL	ACA	FCF	DHS	CASA/ Svc Prvdrs	Clerk/ JA
Judicial District	County								
2 <sup>nd</sup>	Denver	2	3	1	1	1	1	5	1
4 <sup>th</sup>	El Paso	10	7	2	2	1*	38	7	1
	Teller	--	1	1	1	--	3	1	--
19 <sup>th</sup>	Weld	3	2	3	2	1	5	3	2
Total		15	13	7	6	3	47	16	4

\*Family Court Facilitator serves the entire 4<sup>th</sup> District, which includes El Paso and Teller counties. Although the Family Court Facilitator attended sessions in both locations, this person is only counted once.

## 3. Analysis of Court Records and Court Orders

A structured case file review analysis supplemented qualitative methods (e.g., survey and interview data) in order to examine case outcomes and to explore whether patterns or trends in RPC practice could be identified across a large number of cases. Specifically, court records and court orders were reviewed in each project site and coded to determine the timeliness of appointment of parents' counsel, continuity of counsel, appearance rates at hearings, information about petition allegations and reunification rates.

Case File Review Sampling Strategy

A random sample of closed child abuse and neglect cases, from both a “dependency-neglect” population and an “expedited-placement” population, was drawn in each project site for review and coding. For purposes of this study, the sample for file review in each project site was drawn from cases that closed in that jurisdiction in FY 2005. If insufficient numbers of cases had closed within 2005 to represent the diversity of permanency outcomes needed, or approximate the sample size needed (see Table 3), cases for review were randomly drawn from cases that closed in previous years (2004, 2003, etc.) until a sufficient number of cases and permanency outcomes had been reviewed.

The SCAO generated a list of closed cases for each of the project sites and provided those lists to the needs assessment project team. The project team then randomly selected cases to include in each of the project sites’ study sample (see sampling strategy below). The resulting list of cases was provided to the project sites, and staff from the project sites pulled those cases for review by the project team.

In order to determine a sufficient sample size (i.e., one that is reflective of jurisdictional practice and variety of permanency outcomes), a sampling statistic was generated. This statistic was calculated based on information about annual petition filing rates in each of the project sites, and based on a confidence level of 95 percent (i.e., we can be 95 percent certain that the random sample of cases drawn is reflective of the population of cases that closed in that jurisdiction).<sup>40</sup>

Table 3 provides information about the sample of cases needed and coded in each project site.

Table 3. Case File Review Sample Size and Sample Coded		
Project Site	Total Number of Cases Needed to Code at 95% Confidence Interval	Sample Coded
2 <sup>nd</sup> Judicial District	121	124 (54 DN cases; 70 EPP cases)
4 <sup>th</sup> Judicial District	El Paso: 143	155 (75 DN cases; 80 EPP cases)
	Teller: 36	24 <sup>41</sup> (19 DN cases; 5 EPP cases)
19 <sup>th</sup> Judicial District	100	101 (46 DN cases; 55 EPP cases)

The Case File Review Instrument

A case file review instrument was adapted for use in this study from previous studies assessing parent representation.<sup>42</sup> This instrument was pre-tested on a small number of case files during the first project site

<sup>40</sup> Because the sample size needed at this level of confidence is large, a confidence interval of 10 was selected to calculate the sampling statistic. While not ideal, it is realistic given the time and resource constraints on the file review process.

<sup>41</sup> The case files that were physically pulled for coding in Teller County included a number of cases that were out of the sampling frame (i.e. cases without an assigned RPC, transfers out of jurisdiction, open and active cases). All cases pulled within the sampling frame were coded. Therefore, the entire sample available to the project team during the Teller County file review period was coded.

<sup>42</sup> Oetjen, J.A. (2003). “Improving Parents’ Representation in Dependency Cases: A Washington State Pilot Program Evaluation.” National Council of Juvenile and Family Court Judges.

visit, and modifications were made as necessary. Categories of information captured by the file review instrument are listed in Table 4.

Table 4. Case File Review Instrument Information Categories		
Basic Case Demographic Information	Case Flow	Respondent Parents' Counsel Information
<ul style="list-style-type: none"> <li>• Gender of child</li> <li>• Age of child</li> <li>• Number of siblings involved</li> <li>• Primary allegations</li> <li>• Child placement history</li> <li>• Previous history with the Department</li> <li>• Previous history with the Court</li> <li>• ICPC and ICWA, if relevant</li> </ul>	<ul style="list-style-type: none"> <li>• Date of removal</li> <li>• Date of petition filing</li> <li>• Dates of each hearing and review</li> <li>• Outcome of case (by type of outcome)</li> <li>• Date of dismissal</li> </ul>	<ul style="list-style-type: none"> <li>• Date of appointment of parent's counsel</li> <li>• Number of counsel changes per case</li> <li>• Number of continuances requested by RPC and reason for request</li> <li>• Number of continuances for absence of parents' attorney</li> <li>• Number of motions filed by RPC</li> <li>• Number of times RPC appeared with or without respondent parent</li> </ul>

Coding and Data Analysis Strategies

Case files were coded onto a case file coding sheet, and then entered into a statistical database (SPSS) for analysis. Frequencies, cross-tabulations, and regressions were run on variables of interest.

4. Structured Court Observation

Court hearing observations provided the needs assessment research team with an opportunity to assess representation practice in each of the project sites. The project partners' in-depth experience conducting court observation for research purposes has led to the creation of a standard coding process which was adapted for use in this study. Observation instruments were pre-tested on a small sample of cases and modifications to the instruments were made as necessary. Hearing observation was conducted by attorneys on the project team who are experienced coders with knowledge of child abuse and neglect hearing practice, attorney practice, and general best practice in these cases. A total of 151 hearings were observed and analyzed for this study.

5. Analysis of Management Information Systems

Statewide data regarding child dependency and neglect case processing and outcomes for all FY 2005 case closures were supplied by the SCAO management information system. The dataset provided was reviewed to produce data on outcomes specific to RPC counsel practice.

6. Data and Information Analyses

Data entry and analysis were ongoing throughout all phases of the research, including interview transcriptions, transcription of observation field notes, etc. Quantitative data obtained from each data

source were entered into a SPSS database for analysis and frequencies, cross-tabulations, ANOVAs, and regressions were run on all variables of interest. Qualitative findings from stakeholder interviews, surveys, and court observations were examined in light of quantitative findings to determine the extent to which they provided context for any outcome measurements. Qualitative data sources were also examined to determine the extent to which trends or themes relevant to RPC practice issues emerged. All data and findings are integrated into this *Needs Assessment Report*.

### C. Respondent Parents' Counsel Practice and Comparisons to National Standards

Performance assessment, and ultimately the successful implementation of meaningful reform, is aided by candid comparison of current actual practice to industry standard model practice. Model practice is defined largely by national standards and guidelines promulgated by respected child welfare organizations to promote best practices. As part of the *Needs Assessment Report*, selected current practices of Colorado RPCs were compared to such standards and guidelines.

#### 1. Guidelines and Standards of Practice

The key practice area comparisons examined herein are derived from widely accepted best practice models. The majority of practice standards in existence focus on the representation of children and agencies. There is considerable skill set crossover in this work so such standards do have useful application for RPC representation. They do not, however, specifically address some of the unique challenges of representing parents in dependency and neglect proceedings. Fortunately, the ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases were adopted by the ABA and endorsed by the National Association of Counsel for Children in 2006, and, therefore, are heavily relied on in this comparison.<sup>43</sup>

#### List of Standards and Guidelines Influencing This Analysis

- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (2006) (NACC Endorsed 2006)
- The American Bar Association (ABA) Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys<sup>44</sup>
- The National Council of Juvenile and Family Court Judges' *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*<sup>45</sup>
- Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases;<sup>46</sup> specifically the applicable due process measures addressing legal counsel for parents
- The ABA (and ABA/NACC Revised) Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

---

<sup>43</sup> The ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases are located in Appendix B.

<sup>44</sup> American Bar Association Center on Children and the Law, 2000.

<sup>45</sup> National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, 1995.).

<sup>46</sup> ABA Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges (Spring 2004) Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases.

[http://www.ncsconline.org/WC/Publications/Res\\_CtPerS\\_TCPS\\_PackGde4-04Pub.pdf](http://www.ncsconline.org/WC/Publications/Res_CtPerS_TCPS_PackGde4-04Pub.pdf).

- ABA Standards of Practice for Lawyers Representing Child Welfare Agencies (2004) (NACC Endorsed 2005)
- NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001)
- NACC Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases (2006)
- Adoption 2002: The President's Initiative on Adoption and Foster Care/Guidelines for Public Policy and State Legislation Governing Permanence for Children (HHS Children's Bureau 1999)

## 2. Key Standards and Guidelines Used

In 1995, the National Council for Juvenile and Family Court Judges released the publication *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Resource Guidelines). This document emphasizes the importance of competent, diligent, and timely representation for all parties in a child welfare case. The *Resource Guidelines* recommend that courts create prerequisites for attorneys accepting child welfare cases, including requirements for training and experience. The *Resource Guidelines* also recommend that states provide reasonable compensation for attorneys.

The National Center for State Courts, the ABA Center on Children and the Law, and the National Council of Juvenile and Family Court Judges collaborated to create, *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Case* (Guide), this document is intended to improve dependency court performance by measuring court performance and judicial workload. The document addresses the significance of ensuring due process in the child welfare court process. The *Guide* recommends that courts measure due process outcomes by considering, among other factors: the percentage of case in which counsel for parents are appointed before the preliminary protective hearing, the percentage of cases in which legal counsel for parents changes, and the percentage of cases in which counsel for all parties are present.

The *ABA (NACC Revised) Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, The *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, The *Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases*, each focus primarily on attorney representation of children. The themes and concepts applicable to RPC work are relied on here.

In August 2006, the American Bar Association adopted *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (ABA Standards). The ABA Standards encompass the theme of the previously published ABA practice guide, *Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys*.<sup>47</sup> The ABA Standards provide recommendations for best practices in the areas of attorney performance, obligations of the attorney manager, and the role of the court. The ABA Standards are designed to promote quality representation and uniformity of practice. As they are designed specifically for attorneys representing parents, the ABA Standards are the most relevant set of standards to use when comparing the current practice of RPC in Colorado to nationally recognized best practice models.

## 3. Key Practice Areas

The key practice areas examined in this study, as influenced by national standard and guidelines include both attorney performance measures and systemic factors impacting attorney performance.

---

<sup>47</sup> American Bar Association Center on Children and the Law, 2000.

### Attorney Performance Measures

- Professionalism
- Preparation
- Advocating for their Client's Position
- Communicating with Parties
- Courtroom Skills
- Respondent Parents' Counsel Activity
- Continuances Due to Respondent Parent's Counsel

### Systemic Factors Impacting the Quality Of Representation

- Appointment Practice
- Turnover
- Respondent Parents' Counsel Resources
- Training
- Written Standards
- Caseload and Workload
- Compensation Structure
- Recruitment, Contracting and Oversight

#### D. State Comparisons

Currently there is no state-by-state comparison addressing key infrastructure elements of respondent parents' counsel practice. In order to fill that void and provide contextual information to the project team, NCSC conducted an independent examination of RPC issues. In the summer of 2006, NCSC Knowledge and Information Services (KIS) reviewed relevant literature and also distributed an e-mail survey directed to state CIP personnel requesting a response on key areas of interest including: compensation, caseload, representation model, funding source, application process, duties, and legal authority. Although the NCSC Compendium is not a by product of the current needs assessment project, the results of this effort are included in Appendix A for the benefit of the Respondent Parents' Counsel Task Force. Only those states that responded to the KIS inquiry are included, however. At various points throughout the *Needs Assessment Report*, the information contained in Appendix A is woven into the discussion and narrative, where applicable and appropriate.

#### E. Human Subject Protection and Confidentiality

The NCSC/NCJFCJ/NACC project team took precautions to ensure that the data collection activities and the resulting data did not compromise the anonymity of the human subjects of this needs assessment and the RPCs and dependency and neglect stakeholders participating in the data and information collection process. This includes administrative and physical security of identifiable data to preserve the anonymity of individuals. Steps taken to protect the confidentiality of our human subjects included:

- Electronic data were maintained on a secure, password accessed computer system. These data are backed-up nightly by the NCSC and NCJFCJ Information Technology staff. The back-up data is stored in a fire-proof safe and is accessible only to NCSC and NCJFCJ Information Technology staff, as applicable.
- No identifying information for human subjects or dependency and neglect court stakeholders are presented in the results or the *Needs Assessment Report*.
- All parent and child identifying information will be stripped from all electronic data at the conclusion of the project.
- Both electronic and paper files will be destroyed based on federal requirements for retention of records. Back-up electronic data will be destroyed after one year.

- Focus group and interview participants were advised that individual comments will be kept confidential and anonymous prior to participation.
- The NCSC Institutional Review Board reviewed the processes and procedures associated with the respondent parent interviews to ensure the protection of these parents.

#### F. About the Statewide Needs Assessment Report

The *Statewide Needs Assessment Report* discusses the information and findings gathered through the various data collection processes. Each of the data and information sources informed the researchers about RPC performance in the state of Colorado. The national standards, information and data are presented by theme: (1) Roles and Responsibilities; (2) Training; (3) Written Standards; (4) Caseload and Workload; (5) Compensation Structure; (5) Recruitment; (6) Turnover; (7) Resources; (8) Contracting and Oversight; (6) Appointment Practice, Appearances, and Continuances; (7) Professionalism, Legal Representation, and Performance; and (8) Best Practices, Barriers, and Opportunities for Improvement. What follows in each section is a comparison of current RPC practice to national standards; a summary of results of the qualitative and quantitative data<sup>48</sup> around each theme; a comparison to other state RPC practices, where applicable; and a summary of findings and recommendations associated with each theme. In all, the project team was able to capture a well rounded picture of RPC performance in these key practice areas. The *Statewide Needs Assessment Report* ends with the concluding remarks of the project team and their overall thoughts on respondent parents' counsel practice in Colorado.

---

<sup>48</sup> For a comprehensive discussion of the quantitative and qualitative data, see Appendix D (Statewide Case File Review Data Report), Appendix E (Statewide Court Observation Data Report), Appendix F (Statewide RPC Online Survey Data Report), Appendix G (Statewide Stakeholder Survey Data Report); and Appendix H (Statewide MIS Data Report).

## SECTION IV. ROLES AND RESPONSIBILITIES

### A. Interviews and Focus Groups

The terms of the *Agreement for Services by Independent Contractor as Respondent Parent Counsel in Dependency and Neglect Actions* (hereafter "Agreement") with the Colorado Judicial Department specify certain obligations for attorneys receiving court appointments. Selected provisions of the Agreement are quoted below.

*Provide all representation and services required by this Agreement in a thorough, competent, and professional manner, subject to all applicable standards, rules, regulations, canons, statutes and case law. This duty specifically includes:*

- *Contacting the respondent parent client prior to all court hearings or having written documentation that contact was attempted and unsuccessful.*
- *Communicating the results of court hearings to respondent parent client in person or if the person was not present at the hearing, in writing.*
- *Representing respondent parent client wishes in hearings. Contractor's file should reflect documentation as to client respondent parent wishes and how and when those wishes were communicated to the Contractor.*
- *Filing a notice of appeal, as requested.*

*Upon notification of appointment by the court, Contractor undertakes to prepare for and appear at: (1) all hearings prior to the filing of a petition in dependency and neglect; (2) adjudication; (3) disposition; (4) permanency planning hearings; (5) all review hearings; (6) reappointment to a case reopened for any reason; and (7) any other proceedings that occur within the 24 months following the date of appointment. With acceptance of court appointment, Contractor agrees to have reasonable calendar time available for all hearings and trials scheduled in the case. "Reasonable calendar time" specifically includes being available for termination of parental rights hearings within 120 days of the filing of a motion for termination of parental rights.*

When asked to describe their role and responsibilities in dependency and neglect cases, respondent parents' counsel in the project sites offered the following descriptions:

- Prepare the clients and represent their interests in the court, as best and zealously as the attorney is able.
- Advise clients, especially at the beginning of the case, as to their rights, the options, and the advantages and disadvantages of each option.
- Inform clients of the process and the importance of staying in communication with the caseworker.
- Solve problems and answer questions after the beginning of the case.

Various stakeholders offered similar descriptions and used phrases such as "advocate for the parent," "protect the rights of the parent," "represent the legal interests of the parent," and "represent what the client feels is in his or her best interest." Stakeholders also noted the importance of the attorney explaining the legal process and court system to the client, maintaining contact, and keeping the client updated on the progress of the case.

Some DHS caseworkers and CASA volunteers believed that their own training should include more specific information on the role and responsibilities of RPC and the guidelines that govern their work. While current training covers the legal process and generally includes in-court observation, there can still be confusion. Primarily, they learn on the job through communication with colleagues and working with the various RPCs. One agency supervisor commented that it is the supervisor's responsibility to help the caseworkers understand the role of the RPC on an ongoing basis to ensure that the relationship is maximized in the interest of the clients that they serve. Neither the case worker nor the RPC wants to be surprised or blind-sided in court. Several case workers noted that, based on their experience, clients were more likely to express satisfaction with their attorney when there is good communication between the case worker and the RPC. Another said that RPCs serve as a resource for workers because they can ask the attorney to speak with their client if the parent is angry, not listening, failing to comply, or simply not willing to hear certain things from the case worker. However, it was also noted that some RPC advise their clients not to communicate directly with the agency workers, but this did not appear to be a common practice.

Nevertheless, in all but one of the project sites, attorneys can be appointed as both RPCs and GALs in dependency and neglect cases. None of the stakeholders believed this practice posed a conflict; in fact, a number expressed the view that it was generally an asset and promoted better understanding of the different parties' concerns. Some reservations were expressed about the clients seeing the attorneys "change chairs" in the courtroom and casually talking among themselves before and after hearings. The concern is that this may cause parents to perceive that everyone is just part of the "system."

## B. State Comparisons

Across the country, there is a range of RPC contracting and structural models.

- In California, attorneys contract with the county to perform RPC services. In a fairly recent pilot program, responsibility for RPC contract attorneys moved from the local courts at the county level to the California Administrative Office of the Courts.<sup>49</sup>
- In Georgia, RPCs contract with the county.
- In Montana, parental representation is a combination of Public Defender Regional Offices that represent the mother and contract attorneys who represent the father.
- Contracting practices and conditions of contract vary across the state of Nebraska.
- In New Jersey, the Office of the Public Defender is responsible for court-appointed counsel services to parents, through its Office of Parental Representation.
- Financially eligible parents may be represented by the public defender or a contract attorney depending on the jurisdiction in Ohio.
- In Utah, legislation created the Office of Child Welfare Parental Defense to enter into contracts with attorneys; to provide assistance and advice; to develop and provide educational and training programs; and to help RPCs comply with their duties.

## C. Summary, Conclusion, and Recommendation

Whereas Colorado RPC practice does not indicate a significant problem regarding counsels' understanding of their role, it is imperative that role clarity continue to exist and to improve where there is a lack of clarity. Duties of counsel flow from role and role dictates tasks.

---

<sup>49</sup> The California pilot program is known as DRAFT, Dependency Representation, Administration, Funding, and Training.

*Recommendation 1: RPC Role Clarity and Definition*

*Attorneys retaining contracts must make it clear that the RPC is the attorney for the parent(s), bound by the traditional rules of attorney-client competence, loyalty, and confidentiality, for example. This is true regardless of the source or adequacy of attorney compensation. The duty to the parent client must be communicated to and understood by the client, court, and all parties.*

*Recommendation 1- Implementation Strategies*

*1-A The SCAO should include language in the RPC contract, which counsel specifically accepts, that defines the role of RPC as owing his/her duty to the client.*

*1-B The SCAO should consider including language in the RPC contracts that not only outlines the minimum practice expected; but also outlines "best practice" standards for RPC practice.*

*1-C The SCAO and the Respondent Parents' Counsel Task Force should implement multidisciplinary and/or cross disciplinary training that affords other system stakeholders (e.g., DHS case workers, CASAs, guardians ad litem, and county attorneys) an opportunity to learn about the specific role and responsibilities of RPC.*

## SECTION V. TRAINING

In order to be effective advocates for parents, Colorado RPC should have the opportunity for and be required to receive training in dependency practice prior to eligibility for cases and on-going training throughout their RPC tenure. Training should focus not only on the legal aspects of dependency law, procedure, litigation skills, trial advocacy, and alternative dispute resolution, but it should also focus on the psychosocial dynamics of child maltreatment and development, physical and mental health, substance abuse, permanency, family dynamics, and available services for parents in the community. To assess preliminary and ongoing training practices, training competency, and training needs, information was gathered from the focus groups, the RPC online survey, and the stakeholder online survey.

### A. National Standards

#### Model Standard

The *Resource Guidelines* recommend training and preparation for attorneys prior to becoming involved in a dependency and neglect action. Specifically, the recommendations state that prior to appointment the attorney should be trained in or familiar with: relevant legislation and case law, the causes and available treatment for child abuse and neglect, relevant services available in their community, the structure and the function of the state agency and court system, and local experts who can provide consultation and testimony.<sup>50</sup>

Likewise, the ABA Standards address the necessity for initial and continued training. The Standards state that RPC have a responsibility to adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case, and acquiring sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.<sup>51</sup> The Commentary goes into further detail recommending that all parents' attorneys receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Additionally, it specifies that training should directly relate to the attorney's child welfare practice.

The ABA Standards also urge the court to "Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards."<sup>52</sup>

---

<sup>50</sup> *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, pp 23.

<sup>51</sup> ABA Standard of Practice for Attorneys Representing Parents in Child Abuse and Neglect Proceedings, Basic Obligations 1 and 2 (pp 8).

<sup>52</sup> ABA Standards, Role of the Court, Standard 3, pp 38.

Colorado RPC Compliance with Model Standard

Under the terms of the *Agreement for Services by Independent Contractor as Respondent Parent Counsel in Dependency and Neglect Actions* (hereafter "Agreement") with the Colorado Judicial Department, attorneys are required to obtain at least 10 hours of continuing legal education pertaining to child and family matters during each three year legal education period.<sup>53</sup> There are no specific requirements for training prior to signing the Agreement or receiving appointments to cases.

RPC focus group participants cited a number of opportunities for relevant training and education, but agreed that there was little that was specific to their role in dependency and neglect cases and virtually nothing that addressed actually working the cases from beginning to end. Focus group participants also suggested that RPC need more support during the first year of practice in the area.

B. State Comparisons

Other states have identified initial and ongoing training requirements for respondent parents' counsel.

- In Montana, respondent parents' counsel must have 16 hours of training to be eligible to receive court-appointed cases. Four of the hours must be devoted to the Indian Child Welfare Act (ICWA).<sup>54</sup> Standards outline areas in which counsel shall be knowledgeable including: legislation, case law, causes and treatment of child abuse, services available to families, local experts, child development, substance abuse, and mental health issues.
- Although there are training requirements for attorney GALs representing children in dependency cases in Wyoming, there are no concurrent recommendations for parents' attorneys. Fifteen hours of CLE is required by the Wyoming Bar Association; but, it is not specific to parent representation.

C. Interviews and Focus Groups

Under the terms of the *Agreement for Services by Independent Contractor as Respondent Parent Counsel in Dependency and Neglect Actions* (hereafter "Agreement") with the Colorado Judicial Department, attorneys are required to obtain at least ten hours of continuing legal education pertaining to child and family matters during each three year legal education period. Practicing attorneys in Colorado are required to complete a total of 45 continuing legal education (CLE) credits within a three-year period. Of the 45 credits, 7 must be ethics credits. There are no specific requirements for training prior to signing the Agreement or receiving appointments to cases.

RPC focus group participants cited a number of opportunities for relevant training and education, but agreed that there was little that was specific to their role in dependency and neglect cases and virtually nothing that addressed actually working the cases from beginning to end. As some stakeholders described it, the trainings are not "nuts and bolts" and "hands-on" enough and need to be more practical.

<sup>53</sup> Practicing attorneys in Colorado are required to complete a total of 45 continuing legal education (CLE) credits within a three-year period. Of the 45 credits, 7 must be ethics credits.

<sup>54</sup> The Indian Child Welfare Act, 25 U.S.C. §§1901-63.

The available training and education sessions identified in the RPC focus groups included the annual Child Welfare Conference sponsored by the child welfare agency, which is team-oriented and includes a track for the attorneys, and the continuing legal education (CLE) presented by the Juvenile Law Section of the Colorado Bar Association. However, these were described as focusing more on the issues and resources in neglect and dependency cases than the litigation process. In one project site jurisdiction, there are monthly CLE courses on relevant juvenile law issues, organized by the Family Court Facilitator. Some noted an overall increase in the number of trainings that address child abuse and neglect and the availability of more general seminars on family law or trial practice. Several RPC in the sample sites have also attended National Institute for Trial Advocacy (NITA) courses.

RPCs and other stakeholders identified a number of areas where additional training and education is needed, including:

- Review of the details of the statutes that govern dependency and neglect and updates on the case law
- Case management
- Issues that regularly arise in dependency and neglect cases, such as visitation and evaluating the treatment plan
- Use of expert witnesses
- Litigation skills

Of these topics, the one most often cited as a training need was litigation skills, with some participants noting that this was a training need not only for RPCs but also for GALs and prosecutors. Some stakeholders said that it was in contested matters and trials that the differences in the quality of representation and the weaknesses of some RPC emerged. Some even characterized RPC as "afraid" to go to contested hearings or trial. Because the number of contested matters and trials is generally low, attorneys who do not have prior experience with trial work do not have the opportunity to acquire or hone these skills on the job. In addition, as one stakeholder noted, attorneys are not drawn to this practice because of the opportunity to litigate cases.

Focus group participants also suggested that RPCs need more support during the first year of practice in the area. There are no formal mentoring programs or structured opportunities to serve as co-counsel in a case or shadow another, more experienced attorney. Participants were supportive of such efforts as well as more opportunities for training when attorneys first enter the practice.

#### D. RPC Survey and Stakeholder Survey

Information regarding the training RPC currently receive was also examined in the online survey for stakeholders and the RPC online survey. Questions were focused on three aspects of RPC training; specifically the perceptions of the stakeholders of how well RPC are trained, how much and what type of training RPC receive prior to assignment to child abuse and neglect cases, and how much and what type of training RPC receive while carrying active child abuse and neglect cases.

- When asked whether RPC are sufficiently well-trained and knowledgeable about child abuse and neglect case practice and issues, 68.5 percent (n=76 of 111) of stakeholders say "yes," while 31.5 percent (n=35 of 111) responded "no."

Information from the other data sources hints as to why nearly a third of stakeholders believe RPC are not sufficiently well trained.

- Responses from the RPC online survey indicate that when asked how many hours of training they had prior to being appointed to child abuse and neglect cases, the most likely response was “no training at all” (39.5%; n=17 of 43).<sup>55</sup> The second most selected response was 1 to 5 hours.
- When asked what type of training they received, general litigation skills was selected most frequently (59.1%; n=26 of 44), followed by training regarding how to introduce and present evidence (47.7%; n=21 of 44), and how to question witnesses (45.5%; n=20 of 44). Therefore it is apparent from the RPC online survey that there is little training provided that emphasizes RPC practice *specific* to child abuse and neglect cases.

## E. Summary, Conclusion, and Recommendation

RPC training prior to appointment is limited and centers on general litigation practice. The results from our analyses indicate that both RPC and stakeholders feel that more training should be offered that is specific to the role of a parents’ representative in dependency and neglect cases, informing RPC of what is expected of them throughout the duration of the case.

### *Recommendation 2: Training<sup>56</sup>*

*Respondent parents’ counsel should have the opportunity for and be required to receive training in dependency practice prior to eligibility for cases and throughout the course of taking cases, in dependency law and procedure, trial advocacy, alternative dispute resolution, child maltreatment and development, physical and mental health, substance abuse, permanency, family dynamics and available services for parents in the community.*

### *Recommendation 2- Implementation Strategies*

*2-A The Respondent Parents’ Counsel Task Force should develop a mandatory training curriculum for initial and ongoing training of RPCs. A source of the competencies for training can be found in the treatise *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases*, (Bradford Publishing 2005).*

*2-B The Respondent Parents’ Counsel Task Force should review the specific training needs identified by focus group participants and responses to the online surveys and prioritize the topics and, as appropriate and funding allows, incorporate them into its short and long-term training and education plan.*

---

<sup>55</sup> One RPC failed to provide a response to this question.

<sup>56</sup> Authority: *RESOURCE GUIDELINES*, page 23; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Basic Obligations 1 – 2; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager 5; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 3.

2-C *Training at the state and local level should incorporate more opportunities for cross-training. In addition to the knowledge shared, cross training enhances understanding of the roles, perspectives, and challenges of other participants in the process and fosters improved communication and collaboration in other areas. Judges should actively participate in the training of attorneys.*

2-D *Training should also incorporate structured but more informal opportunities for peer-to-peer discussion of concerns and issues as well as exchange of information on practices and procedures they have found to be successful (as well as unsuccessful) in improving RPC performance in child abuse and neglect cases. Individuals are often more receptive to new ideas and "lessons learned" when they come from colleagues who are perceived to share the same experience.*

2-E *A system of "mentoring" for new RPC should be considered, where new RPC are assigned a more experienced and knowledgeable RPC to shadow and/or exchange practice tips. Structured opportunities to serve as co-counsel in a case should also be explored.<sup>57</sup>*

2-F *Online or web-based training curricula specific to abuse and neglect cases should be considered to afford RPC from throughout Colorado the opportunity to participate in continuing education.*

2-G *The SCAO and the Respondent Parents' Counsel Task Force should consider development of an online resource that provides statewide assistance to RPC handling child abuse and neglect cases. This online resource could serve as a legal resource center with a multitude of legal materials and information, including contributions from practitioners around the state. The online resource center could also maintain a private e-mail list allowing attorneys to collaborate with their colleagues through postings and sharing of practice issues and solutions.*

2-H *Any RPC training or curricula must include a focus on educating and guiding the parent through the Colorado dependency and neglect legal system.*

---

<sup>57</sup> To ensure that attorneys representing parents in child abuse and neglect cases provide quality legal services for parties, the Lucas County (Toledo, Ohio) Juvenile Court developed an attorney mentor program. This program allows the mentee to shadow an attorney to each dependency-neglect hearing, as well as receive training specific to this area of law.

## SECTION VI. WRITTEN STANDARDS OF PRACTICE

Written standards of RPC practice provide much needed guidance, as well as an accountability mechanism, for attorneys engaging in this area of law. They foster consistency and continuity of practice between lawyers and across all judicial districts in Colorado. The standards of practice should articulate a RPC practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable. Of course, any such written standards should be consistent with existing national dependency practice standards and guidelines including the 2006 ABA Standards for Representation of Respondent Parents. To determine the existence and status of RPC written standards of practice, the project team conducted focus groups and reviewed the work of the Guidelines Committee—a sub-committee of the Respondent Parents' Counsel Task Force.

### A. Interviews and Focus Groups

When asked about any written standards that define their roles and responsibilities in dependency and neglect cases, RPCs generally cited the Agreement, statutes, and rules of court. In one project site, the attorneys also mentioned the court's case management orders and memorandums of agreement (MOU) between the court and RPCs as well as GALs and DHS caseworkers. Others stated that standards of practice come from the bench. Some acknowledged that the requirements in the Agreement were minimal and basic obligations in any case or client-attorney relationship were applicable.

Participants were generally supportive of standards of practice for RPCs, but noted that standards would probably have more impact on new attorneys than those who have been practicing in the area for a long time. One commented that standards would be useful because there are instances when representation is not adequate, yet the only accountability is when contracts are scheduled for renewal once a year.

One RPC pointed out that many RPCs in the state are geographically isolated and do not have role models or colleagues that they can consult with on individual cases or other issues related to practice in the area. This RPC believed that the list serve developed by the Office of the Child's Representative for the GALs was one effective mechanism for overcoming this isolation and sharing information and experience. A List Serve for RPC was implemented in February, 2006; and maintained by SCAO staff. However, some RPCs indicate that the volume is burdensome—to the point where they do not bother to read or participate. A web-based platform such as web board may be a better alternative for information dissemination and conversation among RPCs inasmuch as it is a proactive review of information.

### B. Colorado Draft Guidelines for Respondent Parents' Counsel

In January, 2006, the Guidelines Work Group of the Respondent Parents' Counsel Task Force began a collaborative process of developing guidelines for respondent parents' counsel in dependency and neglect cases. These guidelines, based in part on the American Bar Association Standards for Respondent Parent Representation, are intended to promote uniformity of practice among respondent parents' counsel, quality representation, and due process of law. The guidelines address the following areas of respondent parents' counsel performance: training, communication and contact with clients and other professionals, investigation and review of relevant documentation, representation throughout the proceedings, advocacy within county child protection agency proceedings, cultural awareness, and filing of appeals. In addition to collaboration on these guidelines within the Task Force, the Guidelines Work Group has solicited and received feedback from interested members of Colorado's legal community, including but not limited to, judicial officers, bar associations and their ethics and juvenile committees, and attorneys practicing juvenile

law. The Guidelines Work Group is currently awaiting one final set of comments from members of the legal community, and it expects the guidelines to be finalized by the end of March 2007.

### C. State Comparisons

Nationally, several states have developed standards of practice for attorneys representing parents or are in various states of development.

- In Arkansas, standards of representation have been developed by the Arkansas Administrative Office of the Courts. Periodically, a survey is sent to abuse and neglect professionals (e.g., judges, GALs, and CASAs) to rate attorney performance based upon these standards. Attorneys with low ratings are subject to review. Failure to comply with the standards or failure to improve may result in termination of or failure to renew a RPC contract.
- In Georgia, legislation created the statewide Public Defender Standards Council. The legislation that passed excluded juvenile cases from receiving any of the state funding (although they could obtain funding via the counties or other sources). The Supreme Court is now supporting an amended version of the legislation that would add abuse and neglect cases. The Court also wants to use CIP money (\$25,000-\$50,000) to contract with the Council for parent counsel standards and training.
- In Montana, standards have been promulgated for representation of parents in dependent/neglect cases. In addition to training requirements, the Montana standards specifically articulate case preparation and case handling provisions for attorney practice.
- In Ohio, the Supreme Court is expected to adopt standards for GALs from the Advisory Committee on Children, Families and the Courts. *Report and Recommendations on Standards for Guardians ad Litem*. Columbus, OH: Advisory Committee, December 2005. The proposed standards involve training, duties, reporting, etc. Because many of the parents' counsel are also GALs, the thinking is that there will be a general elevation and improvement of the system, as a whole, when the GAL standards are adopted.

### D. Summary, Conclusion, and Recommendation

Currently, only the Agreement for Services articulates specific requirements for RPC practice. Like many other states across the country that have promulgated or are developing standards for RPC practice, Colorado is in the process of vetting a draft set of guidelines for review and commentary. The draft guidelines are expected to be finalized in March 2007. Standards of practice (and guidelines to a far lesser degree) define and encourage proficient practices among professionals. Functioning according to standards which an industry, the government, and the public hold professionals accountable helps to ensure high quality work. It is also fair to the professional as it puts the professional on notice as to expectations. Standards are especially relevant in underdeveloped area of legal practice such as abuse, neglect, and dependency.

#### *Recommendation 3: Standards of Practice<sup>58</sup>*

*Standards of practice (and guidelines to a far lesser degree) define and encourage proficient practices among professionals. The dependency court*

---

<sup>58</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 2.

*system should adopt mandatory standards of practice creating a practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable. Such standards should be consistent with existing national dependency practice standards and guidelines including the 2006 ABA Standards for Representation of Respondent Parents.*

### *Recommendation 3- Implementation Strategies*

*3-A The Respondent Parents' Counsel Task Force should continue to vet and refine the draft Guidelines. The Guidelines should then be submitted to the Supreme Court for adoption. In order to institutionalize optimal RPC practice, however, the Guidelines should evolve into standards of practice in the future.*

*3-B Once the Guidelines (and then as standards in the future) have been adopted and approved by the Supreme Court, efforts must be made to effectively publicize their existence; train RPCs; and expose all Colorado dependency and neglect stakeholders to the Guidelines so that they can have a better understanding of RPC's roles and responsibilities in dependency and neglect cases.*

## Section VII. Caseload and Workload

Excessive RPC caseloads and workloads jeopardize the due process rights of the respondent parent, as well as their rights to access services and achieve reunification with their child. As caseloads rise, RPCs likely can, and do, work faster. But rising caseloads mean that attorneys spend less and less time on each case (and with each parent). For dependency and neglect cases this problem is exacerbated by the recent ASFA legislation increasing the frequency of the court review process, and also by the many out-of-court meetings required to resolve the issues in the case. Attorneys should have reasonable and appropriate caseloads that allow them to adequately and effectively provide services to all parents to whom they are appointed. The project team utilized focus groups, the RPC online survey, and the stakeholder survey to assess RPC caseload and workload.

### A. National Standards

#### Model Standard

The ABA Standards recommend that attorney managers determine and set reasonable caseloads for attorneys, and it urges the court to ensure that attorneys who receive appointments have a reasonable caseload that allows them to provide competent representation for their clients. The Commentary notes that the standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards.<sup>59</sup>

#### Colorado RPC Compliance with Model Standard

Section 3.A. of the Agreement specifies that the caseload of respondent parents' counsel is not to exceed 100 active dependency and neglect cases during the one-year term of the agreement. Estimates of RPC caseload varied across the sample jurisdictions, from approximately 30 to 95 cases. A number of stakeholders believed that RPC caseloads are often too high and that this was one factor which prevented RPC from devoting adequate time to cases and being proactive in their representation.

### B. Interviews and Focus Groups

Section 3.A. of the Agreement specifies that the caseload of Respondent Parents' Counsel is not to exceed 100 active dependency and neglect cases during the one-year term of the agreement.<sup>60</sup> Some RPC did not appear to be aware of the caseload cap, and others noted that the distinction between active and open cases was mainly for billing purposes and not that meaningful in terms of the time involved in one versus the other. One commented that managing 100 active cases would be difficult because of the time spent in court in dependency and neglect cases. Another concluded that caseload caps are not effective unless attorneys are prevented from taking appointments in other areas.

Estimates of RPC caseload varied across the sample jurisdictions, from approximately 30 to 95 cases. In all but one of the project sites, attorneys can serve as both RPC and GAL and so have more of a mixed caseload. Several noted that they were "self-capping" in terms of RPC appointments because of the other court appointments they receive and their private practice. While some stakeholders expressed the view

<sup>59</sup> ABA Standards, Obligations of Attorney Managers, Standard 3, pp 32.

<sup>60</sup> Active dependency and neglect cases are defined as cases in which a permanency plan has not yet been established, or in which a motion to terminate parental rights has been filed and the court's decision regarding parental rights has not been made.

that more RPCs were needed in their jurisdiction, some RPC disagreed, preferring a system where they could receive enough RPC appointments to do the work full-time.

A number of non RPC stakeholders believed that RPC caseloads are often too high and that this was one factor which prevented RPC from devoting adequate time to cases and being proactive in their representation. They noted that RPC often do not have support staff and may not have learned to manage a large caseload.

### C. RPC Survey and Stakeholder Survey

Questions were included in the stakeholder online survey and the RPC online survey to ascertain if there was a sufficient number of RPC.

- According to the RPC online survey, the overwhelming majority of RPCs carry over 30 dependency and neglect cases (87.3%; n=34 of 44), with 15.9 percent indicating they carry over 100 cases in their caseload. This matches the impression identified in the RPC focus group that the RPC caseload is too high, estimating that 30 to 95 cases was the typical caseload for RPC.

Yet when examining whether there are enough RPC present, the different data sources produced mixed results.

- An analysis of the stakeholder online survey reveals that 60.9 percent (n=70 of 115)<sup>61</sup> of stakeholders believe there is a sufficient number of parents' attorneys, while 39.1 percent (n=45 of 115) of stakeholders do not believe there is a sufficient number of parents' attorneys.
- Responses from the RPC online survey found that 86.4 percent (n=36 of 44) of RPC reported that there were enough attorneys available to handle the caseload demands, while only 13.6 percent (n=6 of 44) indicated that there were not enough RPC.
- While some RPC indicated that more RPC are needed, others indicated that if they were able to have enough RPC appointments to make up 100 percent of their caseload, they could devote more time to honing their RPC skills. The influence of mixed caseloads is evident in the RPC online survey, which found that the majority of respondents indicated that child abuse and neglect cases make up between 70-79 percent of all of their cases.

### D. State Comparisons

RPC caseloads and workloads vary across the country.

- In California, RPC caseloads range from 141 to 273 cases.
- Georgia is awaiting the results of a workload study to identify optimal caseload and workload ranges for attorneys representing parents.
- In Montana, caseloads for RPC, whether through the Public Defender's Office or contract attorneys, are *monitored and administered in accordance with Standards of Representation of Parents in Dependent/Neglect Cases*

---

<sup>61</sup> Three stakeholders failed to provide a response to this question.

- Caseload sizes vary by county in Ohio.
- In Washington, full-time attorneys are permitted to carry a maximum caseload of 80 cases. This cap includes dependency and neglect cases and termination of parental rights cases.<sup>62</sup>

## E. Summary, Conclusion, and Recommendation

While stakeholders believe that more RPC are needed to provide quality representation, RPC report that having to take on other cases makes it difficult to focus on the complex RPC practice. RPC report that they would prefer to have higher level caseloads consisting entirely or primarily of enough RPC appointments to be able to practice as an RPC full time. There is some divergence as to which direction RPC practice should go – more attorneys to meet the demand, or a slight increase in attorneys but have those attorneys focused primarily on RPC practice.

### *Recommendation 4: Caseload and Workload<sup>63</sup>*

*Attorneys should have reasonable and appropriate caseloads which allow enough case focus for the development of expertise which in turn promotes proficiency. (This recommendation is inexorably connected to the compensation recommendation).*

### *Recommendation 4- Implementation Strategies*

*4-A In order to ensure an equitable distribution of appointments and workload across eligible attorneys, each judicial district should review local practices governing the appointment of counsel to ensure that they are clear and definitive in regard to the requirements and process by which attorneys are assigned to cases and the procedure for appointment at various stages of a case. While time constraints and the interest in providing counsel as quickly as possible may necessitate departures from these routines in individual cases, efforts to maintain balance and monitor the distribution of*

---

<sup>62</sup> In 2000, at the request of the legislature, the state of Washington Office of Public Defense (OPD) created a pilot program to improve representation of parents. A state appropriation of \$500,000 was given to the OPD to provide better representation to parents, decrease court delay caused by overburdened parents' attorneys, and increase compensation for parents' attorneys. Pilot programs were started in Benton-Franklin Juvenile Court and Pierce County Juvenile Court. Pilot attorneys were given specific roles and duties, attended specialized training, and had a caseload maximum of 90 cases per full-time RPC attorney. An evaluation of the pilot found that: (1) The majority of cases in both courts were compliant with statutory timeframes, with a marked decrease in time between removal and shelter hearings; (2) The average number of days in foster care decreased from pre-pilot times; and (3) Pre-pilot reunification rate was 37 percent compared with 56 percent in the pilot courts. This increase was possibly the result of better representation for parents. [See Jason A. Oetjen, "Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation." NCJFCJ *Technical Assistance Bulletin* (August 2003).] Now the OPD's Parents' Representation Program is the central entity statewide. In recent years the pilot has been re-funded and expanded to include the following counties: Clallam, Clark, Cowlitz, Ferry, Grant, Grays Harbor, Kitsap, Kittitas, Pacific, Pend Oreille, Skagit, Snohomish, Spokane, Stevens, and Yakima.

<sup>63</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager, 2 – 3; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 5 and 8.

*appointments will encourage wider attorney participation and help to reduce scheduling conflicts.*

*4-B In light of the increasingly complex nature of the law and requirements in child abuse and neglect cases, the workload implications of these cases, and the need for ongoing training, efforts should be made to allow attorneys to specialize, to the extent feasible given overall caseloads and available resources, in the handling of dependency and neglect cases. While not a solution to all workload issues, specialization provides an incentive to obtain the training and education necessary and allows individuals to more rapidly gain experience.*

*4-C The SCAO and the Respondent Parents' Counsel Task Force should consider conducting an RPC attorney workload assessment to determine reasonable caseload and workload limits [for full-time and part-time RPCs]; and to determine whether the 100 active case limit articulated in the Agreement is realistic or whether it should be modified depending upon the results of the workload assessment.*

## SECTION VIII. COMPENSATION STRUCTURE

The structure and level of compensation should reinforce the importance of the parent's position and the RPC role in dependency and neglect cases. It should not be a disincentive to actively working a case. It should not jeopardize an attorney's willingness to take cases or enter this specialized area of law. The compensation structure should not discourage timely resolution of cases or parent-child reunification. Attorneys should receive compensation at least competitive with agency and public defender counsel wages.<sup>64</sup> Focus groups, the RPC online survey, and the stakeholder online survey helped to determine the current compensation structure, the level of compensation, and RPC and stakeholder perception of the current compensation structure.

### A. National Standards

#### Model Standard

The ABA Standards encourage the court to ensure parents' attorneys receive a fair compensation. Additionally, it provides that attorney managers should "Advocate for competitive salaries for staff attorneys." The Commentary argues that RPC should receive the same wage as other government and court-appointed attorneys for other parties in the child abuse and neglect case.<sup>65</sup>

#### Colorado RPC Compliance with Model Standard

Respondent parents' counsel is paid a flat fee of \$855 for each new appointment in a case that is active for at least 60 days. RPC receive an additional \$959 for continued representation when a petition is filed for termination of parental rights. If representation has not concluded at the end of 24 months, RPC may bill on an hourly basis at \$57 per hour. Maximum fees, including both the initial flat rate and hourly billings may not exceed \$2,500. Requests for fees in excess of \$2,500 must be approved by the appointing court in advance of performing the work.

Focus group participants, both RPCs and other stakeholders, expressed concerns about the level of compensation. The amount of compensation is not seen as proportionate to the work that is required of RPC in dependency and neglect cases. Some stakeholders noted that RPC should be paid the same as GALs.

### B. Interviews and Focus Groups

As of July 1, 2006, a Respondent Parents' Counsel is paid a flat fee of \$855 for each new appointment in a case that is active for at least 60 days. RPC receive an additional \$959 for continued representation when a petition is filed for termination of parental rights. No additional compensation is made for voluntary relinquishment of parental rights. Appointments are for a period of 24 months, including the filing of an appeal, if applicable. If representation has not concluded at the end of 24 months, RPC may bill on an hourly basis at \$57 per hour. Maximum fees, including both the initial flat rate and hourly billings may not exceed \$2,500. Requests for fees in excess of \$2,500 must be approved by the appointing court in advance of performing the work.

<sup>64</sup> The United States District Court for the Eastern District of New York held that inadequate pay for respondent parents' attorneys results in inadequate representation, with the court ordering fees be increased from \$40.00 per hour to \$90.00 per hour (*In re Nicholson*, 2002 U.S. Dist. Lexis 4820 (E.D.N.Y. 2002)).

<sup>65</sup> ABA Standards, Role of the Court, pp 39.

In one project site, several RPC stated that they routinely withdraw from the case after 24 months because they find the process of hourly billing cumbersome and time consuming, and they prefer the certainty of the flat-rate system. This did not appear to be a concern, or a common practice, in the other project sites.

Focus group participants, both RPCs and other stakeholders, expressed concerns about the level of compensation.

- First, the amount of compensation is not seen as proportionate to the work that is required of the RPC in dependency and neglect cases. The cases are complex, and the RPC must understand both the legal and social work aspects of these cases. One judge noted that it was more difficult than providing representation in a criminal case. There are more hearings and RPC are expected to attend mediations, staffings, and other types of meetings, depending on the jurisdiction.
- Second, stakeholders perceived that the amount of compensation caused attorneys to accept more appointments than they probably should, given the demands of the cases, in order to keep their practices financially solvent. Some RPCs noted that the amount of in-court time made it difficult or impossible to have a private practice in addition to their work on dependency and neglect cases.
- Third, the amount of compensation was seen as discouraging attorneys to enter this area of practice, stay in this area of practice, and specialize in this area of practice.

Some stakeholders offered the opinion that specialization was increasingly necessary in this area of law, and they would like to see more continuity and specialization among attorneys in the field.

Focus group participants also expressed reservations about the flat-rate compensation structure.

- Some stakeholders offered the opinion that, on its face, it would appear to be a disincentive to being aggressive in cases, contesting matters, and going to trial. It was also seen as discouraging attorneys from doing the work necessary in the initial stages of the case.
- Some participants noted the additional payment for termination of parental rights and commented that resources should be front-loaded to encourage early involvement.
- Several RPC acknowledged that earnings are maximized the less one does and commented on earning \$5 per hour on cases that go to trial. One noted that most RPC are making \$40 per hour and the good ones only \$20 per hour, and added that RPC should be paid to work for their clients rather than to not work for their clients.

Still, some RPC did not see the compensation structure as an impediment in an individual case, one noting that the cases balance out and another that it depends on the attorney's way of thinking. Other stakeholders commented that the attorneys know what the terms of the contract are when they enter the practice and they do the work necessary despite the compensation. In only one instance was it suggested that RPC would sometimes exert pressure to keep cases open beyond 60 days to insure their fee or encourage/agree to the filing of petition for termination only to later encourage their client to voluntarily relinquish their parental rights.

Most focus group participants favored a compensation system based on hourly billing, some noting that RPC should be paid the same as GALs. One GAL, who had experience with both systems, characterized hourly billing as a better motivator than a flat-rate system. Others suggested options such as reducing the period of appointment at the flat rate to one year and switching to hourly billing thereafter or having some other mechanism to switch to hourly billing for long, complex cases. One RPC expressed interest in the state of Washington's system which pays counsel a flat rate, or salary, per year for all appointments.

### C. RPC Survey

Respondents to the RPC online survey showed variability as to whether they prefer hourly compensation (57.9%; n=22) or a flat fee (42.1%; n=16).

- For those who prefer a flat fee structure (42.1%; n=16), billing hours and bookkeeping tasks are perceived to be tedious and time-consuming.<sup>66</sup> Some seem to believe those tasks will reduce the net pay, as the compensation is low to start with; hence, they would rather spend time on cases than on bookkeeping. Others seem to believe it evens out over time, as some cases are simple and close quickly while others may require more work. In short, a flat fee structure is preferred for easier billing and financial planning.
- Those who prefer an hourly compensation structure (57.9%; n=22) believe that an hourly compensation structure would pay them fairly for the work done, and that their clients would receive fair attention and quality work from their appointed counsel.

When analyzing the comments from the RPC online survey, it is apparent that the RPC, regardless of their fee structure preference, would like their compensation increased—believing that would permit them to be more attentive to their clients and spend more time on cases. For instance, an ethical issue was raised under such a pay structure. One RPC stated that “going above and beyond the norm is implicitly discouraged under a flat fee arrangement.” A flat fee may encourage the RPC to do less work in order to break even. Another RPC stated “these cases are intended to be more collaborative and less adversarial, and hourly billing would encourage more attempts to drag things out.” This also seems to be a common notion that attorneys try to take the cases to trial so that they get paid more.

There also seems to be a sense of being unappreciated from the RPC standpoint. One RPC stated “pay us a reasonable fee for our work. It shows respect for the practice. Lip service is given to how much our legislators care about this area of the law but the poor pay belies their concern.” This appears important to address as a motivation factor. The survey comments made by the RPC lead to the impression that high compensation equals showing respect to them as an attorney and providing quality service to all parties involved.

### D. State Comparisons

Across the nation, RPC compensation differs as to the amount and to the term of payment.

- The recommended minimum is \$60 per hour in Georgia.
- In the 22<sup>nd</sup> Circuit of Missouri (St. Louis City), attorneys receive \$1,000 per month for attorneys representing mothers and \$750 per month for attorneys representing fathers. (Note-- Assignments are generally based upon a one-day per month rotation of cases.)
- As of July 1, 2006, the new statewide Office of Public Defense opened in Montana. Prior to this, RPCs were paid \$60 per hour. This hourly rate is being continued for attorneys (for mothers) employed by the regional public defender offices or contract attorneys (for fathers) to provide services thru June 2007. There is a bill pending before the Wyoming legislature that would increase payment to \$71 per hour, effective July 1, 2007.

---

<sup>66</sup> It should be noted, however, that several provisions of the Agreement require that RPCs maintain time and activity records. See Agreement, section 3.H. [work performed outside the scope of the Agreement], 3.I. [extraordinary circumstances], and 3.K. [records of all work performed relating to the Agreement]. Therefore, although paid on a flat fee basis, RPC should be monitoring and recording case-related time and activity.

- In Ohio compensation is determined by the local Court of Common Pleas. The State Public Defender's Office reimburses the county 25 percent of the costs for indigent parent defense in abuse and neglect cases.
- In Washington compensation for full-time RPC attorneys is from \$100,000 to \$120,000 per year. This is paid monthly to the attorney upon submission of required monthly documentation, including an accounting of the attorney's current caseload and the hours spent on cases. The attorney is expected to cover own overhead costs.

## E. Summary, Conclusion, and Recommendation

There is variability among RPCs as to whether the current flat-fee structure or an hourly rate is preferred. There is no single compensation model across the country and states vary on the compensation structure and amount. Adequate and professional level compensation is part and parcel of quality service. Appropriate and competitive compensation must become a component of RPC representation.

### *Recommendation 5: Compensation<sup>67</sup>*

*As indicated in Recommendation 4, attorneys should have reasonable and appropriate caseloads which allow them to complete the proficiencies required by model standards of practice. At the same time, they must be compensated adequately for cases that allow for lower caseloads. Attorneys should receive compensation at least competitive with agency and public defender counsel wages.*

### *Recommendation 5-Implementation Strategies*

*5-A The SCAO should implement an hourly rate compensation structure that pays attorneys for work actually performed as is the standard in the practice of law. The Agreement for Services should require billing documentation that allows for appropriate scrutiny but does not unduly burden the practitioner.*

*5-B At a minimum the flat fee rate should be increased. The incentive to take a case to TPR or extend the case should be minimized with an emphasis on front loading and early resolution of cases.*

*5-C The SCAO and the Respondent Parents' Counsel Task Force should consider piloting an hourly compensation structure to assess viability and RPC satisfaction with the process.*

---

<sup>67</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager, 2 – 3; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 5 and 8.

*5-D The SCAO and the Respondent Parents' Counsel Task Force should consider piloting a staffed public defender type office (similar to the El Paso County GAL office), where RPC are full-time salaried staff.*

## SECTION IX. RECRUITMENT

Proficient RPC representation requires recruitment of competent counsel. An objective recruitment system that targets recruiting and hiring practice focused on hiring highly-qualified candidates should be emphasized. This includes a wide-net recruitment process that: encourages new and veteran attorneys to submit applications for consideration, encourages diversity recruitment, and encourages speakers of multiple languages to apply. To gauge the current recruitment and hiring practice and the perceptions of the same, the project team reviewed the results of the applicable focus groups, the RPC online survey, and the stakeholder online survey questions associated with this issue.

### A. National Standards

#### Model Standard

ABA Standard 9, Obligations of the Attorney Manager, urges attorney managers to “Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.” The commentary notes that hiring high quality attorneys raises the level of representation and the level of services parents in the jurisdiction receive. Additionally, it emphasizes the importance of making efforts to recruit RPC who reflect the racial, ethnic, and cultural backgrounds of the clients.

#### Colorado RPC Compliance with Model Standard

Questions were included in the RPC and stakeholder online surveys asking how many people are aware of the RPC recruitment procedures. The responses indicated that 23.2 percent of stakeholders report that the court takes active steps to recruit respondent parent’s counsel, 4.5 percent of stakeholders reported they were not aware of any efforts, while 72.3 percent report that the court does *not* make active efforts to recruit. Among the stakeholders who reported that they were aware of recruitment efforts, 14 offered specific examples of such efforts. The two most frequent techniques for recruitment identified were: (a) the District Court Administrator sends notifications to the bar about open positions and (b) judges are proactive in asking lawyers to accept appointments.

### B. Interviews and Focus Groups

The State Court Administrator’s Office (SCAO) sends out a notice of the RPC application and contract process to the courts in April of each year. According to focus group participants, copies of the notice are posted in the courthouse and other locations and letters are sent to the attorneys currently on the appointment list. When the application period is over, the dependency and neglect judges will meet en banc to review the candidates. In one project site, the court requires three years of experience and prefers that it be in the area of juvenile law. In addition, any attorney with a disciplinary action in the past year is excluded from consideration. Otherwise, the selection criteria were described as informal. If the attorney has practiced in another jurisdiction, a telephone call may be made to a judge in that jurisdiction to check on performance. In another project site, the judges will seek input on the candidates, inquiring about complaints, timeliness, and overall performance.

The courts would like to have more attorneys apply to be on the appointment list. Recruitment is especially difficult in the one project site where attorneys will likely be commuting to the court. Diversity is also important because of the large Spanish-speaking population in some jurisdictions. Some focus group participants observed that it was difficult to get “new blood” into the system and that the appointment lists do not change very much over time. One judge commented that it would be a more objective process if the

RPC contracting process was modeled after OCR's process where judges have input, but not the final decision making authority. It was described as difficult to take attorneys off the list at the local level because of long-standing relationships.

### C. RPC Survey and Stakeholder Survey

Information pertaining to the recruitment of RPCs was also informed by the RPC online survey, as well as the stakeholder online survey. Questions were included in the RPC and stakeholder online surveys asking how many people are aware of these recruitment procedures.

- The responses indicated that 23.2 percent (n=26 of 112) of stakeholders report that the court takes active steps to recruit respondent parents' counsel, 4.5 percent (n=5 of 112) of stakeholders reported they were not aware of any efforts, while 72.3 percent (n=81 of 112) report that the court does not make active efforts to recruit.
- Among the stakeholders who reported that they were aware of recruitment efforts, 14 offered specific examples of such efforts.
- The two most frequent techniques for recruitment identified were: (a) the District Court Administrator sends notifications to the bar about open positions (28.6%; n=4 of 14) and (b) judges are proactive in asking lawyers to accept appointments (21.4%; n=3 of 14).
- Half of the RPC surveyed (50%; n=21) reported having no awareness of any efforts made by the court to recruit more respondent parent's counsel, whereas 16 (38.1%) RPC indicated that the court makes efforts to recruit more Respondent Parents' Counsel. The remainder of the survey respondents (11.9%; n=5) reported no efforts are made.
- Among the 16 counsel who are aware of efforts made by the court for RPC recruitment (38.1%; n=16), 14 counsel responded with specific examples of such efforts. Half (50.0%; n=7) of those counsel reported position availability was posted in various ways including flyers in the courthouse. Three (21.0%) counsel reported that the judge made appointments directly, and two counsel (14.0%) indicated that recruitment is made via discussion at local bar meetings.

### D. Summary, Conclusion, and Recommendation

The current recruitment process appears limited in breadth and reach. The focus group and survey data suggest that the court should take more active efforts in the recruitment process. Additionally, the process for the recruitment of RPCs must be widened in order to increase the likelihood for highly-qualified and diverse candidates.

#### *Recommendation 6: Recruitment<sup>68</sup>*

*Proficient representation requires recruitment of competent counsel. The dependency court system should develop and follow a recruitment system which targets recruiting and hiring practice focused on hiring highly qualified candidates.*

---

<sup>68</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager, 1, 6, 9, and 10.

*Recommendation 6- Implementation Strategies*

*6-A Efforts to recruit RPC who reflect the racial, ethnic, and cultural backgrounds of the clients are critical. Recruitment efforts must include outreach to diverse and minority associations including the Hispanic Bar Association, the Women's Bar Association, and the African American Bar Association. Collaboration with the Colorado Bar Association Family and Juvenile law sections is encouraged.*

*6-B The SCAO and the Respondent Parents' Counsel Task Force should reach out to law schools to stress the importance of this area of law and emphasize the need for highly qualified attorneys for parents. There should be collaboration with both the University of Colorado and Denver University juvenile and family law programs. The SCAO and the Respondent Parents' Counsel Task Force should promote and lobby for dependency and neglect questions on the State Bar examination in order to ensure that law schools include dependency and neglect in their curricula. The SCAO and the Respondent Parents' Counsel Task Force should encourage and help to establish intern or externships for law school students to expose them to RPC practice.<sup>69</sup>*

*6-C The SCAO and the Respondent Parents' Counsel Task Force should expand recruitment visibility to include announcements in Bar Journals, newsletters, list serves and other public interest law forums.*

---

<sup>69</sup> The Lucas County (Toledo, Ohio) Juvenile Court has partnered with the University of Toledo Law School, to develop a legal externship program at the juvenile court. Through hearing observation, reading, research and writing assignments, two law students per year acquire foundational knowledge of relevant law and court procedure to equip them to later efficiently represent parents and children. This externship is designed to generate interest in the future practice of child protection matters among law students, and highlight the vital role of parental advocates in a balanced judicial process that safeguards the best interests of the child, and the rights and interests of the parents.

## SECTION X. TURNOVER

An important measure of good attorney practice is having parents be represented by one counsel throughout the duration of the case. This not only enables the courts to expedite the case to meet ASFA timelines, but also provides stability and a trusted resource for parents. To assess turnover, information was ascertained from the focus groups, the RPC online survey, the stakeholder online survey, as well as from the case file review.

### A. National Standards

#### Model Standard

ABA Standard 4, Obligations of the Attorney Manager, urges attorney managers to “Develop a system for the continuity of representation.” The commentary emphasizes the importance of continuity of representation.

#### Colorado RPC Compliance with Model Standard

RPCs claim a low turnover rate while stakeholders have the impression that RPC turnover more frequently. A closer examination of county differences reveals a significant difference in RPC turnover between the judicial districts. Specifically, parents are significantly more likely to experience a change in RPC in Denver County than in Weld, Teller, or El Paso counties.

### B. Interviews and Focus Groups

On the whole, participants in the RPC focus groups said it was fairly rare that there was a change in attorneys after initial appointment and that it generally occurs only in the event of a conflict. The courts were described as discouraging “attorney shopping” and strict on granting requests for withdrawal or a new attorney. In one jurisdiction, it was estimated that 90 percent of the attorneys stay on the case throughout the proceedings. The policy there is: “If the client fires the attorney, they do not get a new one. If the court fires the attorney, the client gets a new one.”

### C. RPC Survey and Case File Review

When combining the data sources, we find that RPC claim a low turnover rate while stakeholders have the impression that RPC turnover more frequently.

- According to the RPC focus groups, attorney turnover is very rare, estimating that 90 percent of attorneys stay with the parents through the entirety of the case. The same proportion was estimated on the RPC online survey. When asked to estimate how frequently a parent experienced a change in RPC from the beginning to the end of the case, the most frequently reported proportion was less than 10 percent (50%; n=22 of 44).
- This is similar to the data from case file review, which found that parents experienced a change in RPC in 10.7 percent (n=38 of 355) of the cases coded.
- Yet a closer examination, based on an examination of county differences, reveals a significant difference in RPC turnover between the judicial districts. Specifically, parents are significantly more likely to experience a change in RPC in Denver County as compared to Weld, Teller, or El Paso

counties ( $F(3, 351)=3.062, p=.28$ ), in which 17.2 percent of cases involved a change in RPC. This suggests different regions have different experiences with turnover.

#### D. Summary, Conclusion, and Recommendation

RPC claim a low turnover rate, while stakeholders have the impression that RPC turnover more frequently. The impact of RPC turnover in Denver County may lead those involved in the court to overestimate how frequently parents experience a counsel change in general. Overall, it appears that it is typical for one RPC to represent a parent throughout the duration of the case statewide, contrary to the perception of the stakeholders. Yet, within the state of Colorado, Denver County may be the location most afflicted by RPC turnover, and may require active steps to increase the rate at which parents are represented by one counsel for the duration of the case.

##### *Recommendation 7: Turnover*

*Respondents' representation suffers from lack on continuity of counsel. The system should track counsel case continuity and turnover and communicate with the RPC bar to understand and promote success and address failures.*

##### *Recommendation 7-Implementation Strategies*

*7 The SCAO should convene a focus group discussion with Denver County RPC to further explore reasons for turnover. It may be helpful to include in the discussion, RPC counsel from other judicial districts with low turnover. RPC focus group participants should brainstorm strategies that will help lessen Denver County turnover and identify resources that might facilitate continuity in counsel.*

## SECTION XI. RESOURCES

RPC should have and utilize resources necessary for effective advocacy, including office research and preparation tools and case and expert consultation services. The information from focus groups and the RPC online survey helped to inform the level of current resources available to RPC and the level of additional need.

### A. National Standards

#### Model Standard

The ABA Standards, Role of the Court, Standards 6 and 7, urge the court to “Ensure the timely payment of fees and costs for attorneys” and “Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.”

#### Colorado RPC Compliance with Model Standard

This study suggests that resources are available, but not always affordable. Specifically, there are insufficient resources for RPC to conduct an independent investigation, and to procure the services of expert witnesses if needed. Some focus group participants voiced concerns about the inability to access independent evaluations, expert witnesses prior to termination proceedings, service of process fees, and other items. There is some indication that this is due to delay in reimbursement, and that RPC would use experts, evaluations, and interpreters more if they could bill for them.

### B. Interviews and Focus Groups

Under the terms of the Agreement and Chief Justice Directive 04-05, Respondent Parents' Counsel can request reimbursement for the costs of expert and standard witness fees, service of process, depositions, psychiatric evaluations, psychological or other testing, discovery, and other items. These requests are to be made in the form of a motion and approved in advance by the appointing court. The appointing court is also responsible for the payment of these items.

Despite these provisions, some focus group participants voiced concerns about the inability to access independent evaluations, expert witnesses prior to termination proceedings, service of process fees, and other items.

- Several stakeholders noted that RPC do not subpoena witnesses, in part, because they do not have the money to have them served or pay the fees. Instead they call in individuals who are already working with the family or ask the prosecutor to make sure they are present for a court hearing. (Note--The case file review discussed in Section XI.C. showed that of the 133 motions filed by RPC in a total of 404 cases, 24 percent (n=32) were for expert witnesses.)
- Still, several RPC, judicial officers, and other stakeholders cited the need for greater access to expert witnesses and consulting services at earlier stages of the case. It is not clear whether the funds for these services are limited, RPC are not aware of their ability to request approval and reimbursement, or RPC simply do not pursue the process because of time constraints and delay in reimbursement.
- One RPC noted that it has taken months to obtain reimbursement for discovery costs.

- Others said that they believed RPC would use experts, evaluations, and interpreters more if they could simply bill for them.

### C. RPC Survey

Information pertaining to the resources available to RPC in the state of Colorado was also informed by the RPC online survey.

- When asked what resources are available to them, the most frequent response on the RPC survey was the availability of Expert Witnesses (75.0%; n=33), followed by Interpreters (68.2%; n=30 of 44), and Clerical Assistance (56.8%; n=25 of 44).
- Only two counsel indicated that investigators were available to them (4.5%; n= 2 of 44).
- When asked which resources they think should be increased, RPC responded that investigators should be increased in order to assist counsel in representing respondent parents (63.6%; n=28 of 44).

### D. State Comparisons

In Wyoming, costs under \$200 per case do not need pre-approval. Costs for experts up to \$2,000 per function must be pre-approved by the regional Office of Public Defense. For those costs exceeding \$2,000, pre-approval is required from the state Office of Public Defense.

### E. Summary, Conclusion, and Recommendation

At best, RPC in Colorado appear to have the minimum resources necessary for adequate representation. There are insufficient resources for RPC to conduct an independent investigation to competently challenge the Departments position, including the ability to procure expert witness services.

#### *Recommendation 8: Resources<sup>70</sup>*

*Counsel should have and utilize resources necessary for effective advocacy including office research and preparation tools and case and expert consultation services throughout all stages of dependency and neglect cases.*

#### *Recommendation 8- Implementation Strategies*

*8-A In accordance with the Agreement for Services and the Chief Justice Directive 04-05, the SCAO's policies and procedures should clearly allow for the appointment of and reimbursement of experts and investigators early on*

---

<sup>70</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager, 7 - 8; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 9.

*in the dependency and neglect cases, and not just at termination proceedings.*

*There appears to be a variation among judicial districts as to whether the costs of experts during the early stages of the dependency and neglect cases are reimbursable to RPCs. The SCAO policies and procedures [clearly allowing for the appointment of and reimbursement of experts and investigators] should be disseminated to the district administrators and the district court judges so that there is continuity and consistency across Colorado.*

*Prior to the RPC fiscal year contracting period, the SCAO should conduct an in-service training or presentation in each of the judicial districts to discuss the terms and provisions of the Agreement for Services and the Chief Justice Directive 04-05 addressing access to and payment processing procedures for standard witness fees, service of process, depositions, psychiatric evaluations, psychological or other testing, discovery, and other items as needed. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the Family Representation Coordinator, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight. The activities discussed within this recommendation could and should be performed by this staff member.*

*8-B There appears to be a variation among judicial districts as to what fees and costs will be reimbursable to RPCs. To the extent possible, there should be consistency and continuity between judicial districts regarding what is and is not eligible for reimbursement to RPC attorneys.*

*8-C A RPC case "expert bank" should be developed at the state and local level. The experts should be catalogued by their specialty area, their willingness to participate in the evaluation and court process, their rates, their preferred jurisdictions, etc. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the Family Representation Coordinator, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight. The activities discussed within this recommendation could and should be performed by this staff member.*

*8-D The SCAO should develop written materials that describe the treatment and other services available locally to parents and those that can be accessed in other counties so that the RPCs have a better understanding*

*of what is available, the nature of the services, and their appropriateness for certain clients.*

*8-E The SCAO and the Respondent Parents' Counsel Task Force should consider methods to expand legal services to parents in dependency court, thereby providing resources that should positively impact RPC practice, such as: obtaining drivers' licenses for clients, assisting clients to complete the restraining order process and filing those papers with the Court, expunging records, applying for child support and applying to have child support payments and arrearages reduced, assisting in issues related to legal guardianship, assisting parents to make Court appearances by providing transportation costs, and referring parents to local agencies for help with other legal services such as divorce and immigration.<sup>71</sup>*

---

<sup>71</sup> The Santa Clara County (San Jose, California) Dependency Legal Services Attorneys, who represent parents in dependency court used some attorney resources to address these problems.

## SECTION XII. CONTRACTING AND OVERSIGHT

The RPC contract should be clear and concise and thoroughly outline the role and responsibility of counsel as well as direct counsel to appropriate authority for best practices. Additionally, quality attorney oversight is essential to proficient practice. In Colorado, a centralized authority should conduct oversight for optimal RPC practice. In order to assess current RPC contracting and oversight, the applicable results from the focus groups were reviewed and analyzed by the project team.

### A. Interviews and Focus Groups

A number of focus group participants commented on the lack of oversight and accountability in the RPC system.

- One focus group participant observed that the only accountability was when contracts come up for renewal or through the billing process.
- There is no structure similar to the Office of Child's Representative or Office of Alternative Defense, and it is not clear how much oversight can be, or is exercised, by the SCAO.
- In speaking with SCAO staff, other than attorney payment processing, it appears that there is little to no oversight of RPC practice, training, and Agreement compliance.<sup>72</sup>
- For instance, one focus group participant noted that the ten-hour family and juvenile law training requirement in the Agreement is not monitored and verified.
- It appears that other provisions of the Agreement, such as the requirement that attorneys document attempts to contact the client and inform them of the outcomes of hearings, are not systematically reviewed or audited.

Focus groups participants in several of the jurisdictions commented on the important role that specific judges or the court as a whole have played in recent improvements in the overall performance of the court in abuse and neglect cases as well as attorney practice. They cited increased judicial efforts to hold all parties accountable, to articulate and enforce standards of practice, and to reinforce the court's commitment to timely decisions and case processing. When asked about the existence of standards of practice for RPCs, one attorney simply said that they came from the bench. In addition, the court's adoption of a strict policy on requests by clients for a change in their appointed attorney or by attorneys to withdraw from a case was seen as important in ensuring continuity of representation and reducing delay.

Efforts have been made to more effectively advise clients of their rights and grievance procedures through written advisements and, in one instance, a video in addition to the written advisement. In at least one project site, the Family Court Facilitator takes an active role in reviewing complaints and will review the file, call the attorney, schedule a meeting between the attorney and client if necessary, and/or advise the attorney to write a letter to the client outlining developments in the case. However, as one judge observed, parents are often reluctant to complain to a judicial officer because of the circumstances, the court setting, and their abilities.

---

<sup>72</sup> This will likely change in the immediate future. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the *Family Representation Coordinator*, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight.

## B. State Comparisons

Across the country, there is a mix of state and local oversight of RPC practices and performance.

- In Arkansas, the Attorney ad Litem Coordinator at the Arkansas Administrative Office of the Courts is responsible for the state-level oversight of RPCs. A survey is sent to abuse and neglect professionals (e.g., judges, GALs, and CASAs) to rate attorney performance based upon these standards. Attorneys with low ratings are subject to review through court observation, case file review, interviews with stakeholders and the RPC. Failure to comply with the standards or remediate problem areas may result in termination of or failure to renew RPC contract.
- In California, attorneys contract with the county to perform RPC services. In a fairly recent pilot program, responsibility for RPC contract attorneys moved from the local courts at the county level to the California Administrative Office of the Courts.<sup>73</sup>
- In Montana, parental representation is a combination of Office of Public Defense (OPD) and contract attorneys. OPD provides oversight of OPD staff and contract attorneys.
- Contracting practices and conditions of contract vary across the state of Nebraska.
- In New Jersey, the Office of the Public Defender is responsible the delivery, quality, and oversight of court-appointed counsel services to parents, through its Office of Parental Representation.
- In Utah, legislation created the Office of Child Welfare Parental Defense to enter into contracts with attorneys; to provide assistance and advice; to develop and provide educational and training programs; and to help RPCs comply with their duties.

## C. Summary, Conclusion, and Recommendation

By necessity there are some local efforts to provide oversight of RPC performance; the strongest of which is the RPC contract renewal process. Avenues to provide parents the opportunity to make complaints or file grievances with the trial court are not often utilized because of fear, ignorance, or limited abilities. There is little to no oversight of RPC practice, training, and Agreement compliance at the state level. Provisions of the Agreement, such as the requirement that attorneys document attempts to contact the client and inform them of the outcomes of hearings, are not systematically reviewed or audited. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the *Family Representation Coordinator*, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight.

### *Recommendation 9: Contracting and Oversight<sup>74</sup>*

*The contract should be clear and concise and thoroughly outline the role and responsibility of counsel as well as direct counsel to appropriate authority for best practices. Additionally, quality attorney oversight is essential to proficient practice. New attorneys should be mentored by experienced highly proficient practitioners. Staffed RPC offices with full time dependency counsel including managers and supervisors should be*

---

<sup>73</sup> The California pilot program is known as DRAFT, Dependency Representation, Administration, Funding, and Training.

<sup>74</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Obligations of the Attorney Manager, 1, 6, 9, and 10.

*explored where feasible. In other instances, a centralized authority should conduct oversight.*

#### *Recommendation 9- Implementation Strategies*

*9-A Provisions of the Agreement, such as the requirement that attorneys document attempts to contact the client and inform them of the outcomes of hearings, are not systematically reviewed or audited at the state or local level. As a starting point, the SCAO may wish to consider the model developed by Arkansas. In Arkansas, the Attorney ad Litem Coordinator at the Arkansas Administrative Office of the Courts is responsible for the state-level oversight of RPCs. A survey is sent to abuse and neglect professionals (e.g., judges, GALs, and CASAs) to rate attorney performance based upon these standards. Attorneys with low ratings are subject to review through court observation, case file review, interviews with stakeholders and the RPC. Failure to comply with the standards or remediate problem areas may result in termination of or failure to renew an RPC contract.*

*9-B Avenues to provide parents the opportunity to make complaints or file grievances with the trial court are not often utilized. A formal complaint grievance process, that is separate from the trial court judge's oversight, should be developed and implemented at the state level. Documents in English and in Spanish should be developed and distributed to the parent upon the assignment of the RPC. These documents should clearly articulate (1) the roles and responsibilities of RPC, (2) the complaint or grievance process, and (3) a contact name, telephone number, and e-mail address.*

*9-C See again Recommendation 5-D regarding piloting a public defender type staffed RPC office.*

### SECTION XIII. APPOINTMENT PRACTICES, APPEARANCES, AND CONTINUANCES

Several fundamental areas of RPC practice are addressed in this Section of the *Statewide Needs Assessment Report*.

- First, the initial step of appointing Respondent Parents' Counsel influences many factors that are detrimental to good representation. By appointing RPC as soon as possible, court time frames are expedited, parents' access to services are enhanced, and parents are provided with a voice in court as early on in the case process as possible. To ascertain when parents are first represented by RPCs, the project team used information gathered from case file review, ICON (the Colorado Judicial Department's MIS System), as well as the impression of participants in the RPC and stakeholder focus groups.
- Second, another measure of best practice is to ensure that parents and RPC are present together in all phases of the case proceedings. Information pertaining to appearance rates was ascertained from the case file review, as well as the RPC online survey.
- Finally, courts should have a strict continuance policy in order to ensure timely resolution of the case. Doing so limits the amount of time a child spends in the care of the child welfare agency as well as allowing courts to comply with ASFA time lines. Information pertaining to court delay, and the extent to which RPC contributed to that delay, was ascertained in the case file review, court observation, and the online stakeholder survey.

#### A. National Standards

##### Model Standard

The ABA Standards urge the court to "Ensure appointments are made when a case first comes before the court or before the first hearing and last until the case has been dismissed from the court's jurisdiction."<sup>75</sup>

##### Colorado RPC Compliance with Model Standard

Information from the case file review indicated that 75 percent (n=288 of 384)<sup>76</sup> of parents were represented by RPC as early in the case process as the Initial/Emergency hearing (e.g., RPC was present at that hearing to represent their client).

##### Model Standard

The *Resource Guidelines* recommend that continuances should only be granted when parties are ill, essential witnesses cannot be located, or service of process has not been completed.<sup>77</sup> The ABA Standards recommend that RPC only request continuances if there is an emergency or strategic benefit to the client's case.<sup>78</sup>

<sup>75</sup> ABA Standard, Role of the Court, Standard 4.

<sup>76</sup> Researchers were unable to confidently determine when RPC first appeared in all of the case files reviewed.

<sup>77</sup> *RESOURCE GUIDELINES*, pp 21.

<sup>78</sup> ABA Standards, Basic Obligation of the Attorney, 5.

### Colorado RPC Compliance with Model Standard

Overall, it appears that continuances are relatively infrequent. Approximately 22.7 percent (n=20 of 88) of the continued cases identified in the case file review were continuances requested by the RPC. The reasons listed for these continuances were: (a) to allow RPC time to meet with their client (n=7) or (b) because they were unable to locate the parent (n=5). Responses from the stakeholder online survey rank lack of preparation by RPC as the foremost factor, among 15 independent issues, resulting in the highest degree of impact on court continuances.

#### B. Interviews and Focus Groups

In two of the four project site counties, focus group participants estimated that 95 to 98 percent of respondent parents have court-appointed counsel.

- It was described as rare that parents proceed without legal representation (pro se) or with retained counsel.
- Participants noted that the financial eligibility guidelines are interpreted generously in their jurisdictions and the courts encourage parents to have legal representation.

In the third project site, participants estimated that 80 to 90 percent of respondent parents had court-appointed counsel. In the fourth project site, participants estimated that only 75 to 85 percent of respondent parents have court-appointed counsel and that as many as 15 percent of parents proceed pro se and 5 percent retain private counsel. Participants attributed this to a stricter interpretation of the financial eligibility guidelines, noting, in particular, that the income of other household members is attributed to the parent for purposes of making the eligibility determination. They observed that this provision is inconsistently applied across jurisdictions. Participants in this project site also noted some inconsistency in whether appointment of counsel is reconsidered at a later date if circumstances change.

In three of the four project site counties, procedures are in place to determine the client's eligibility for appointed counsel, to appoint counsel, and have counsel present at the emergency hearing.

- Respondent parents are noticed to arrive a half hour or an hour prior to the scheduled start of the hearing to complete the necessary paperwork, review a written advisement of rights, and meet with counsel.
- In one of the jurisdictions, parents also view a video that advises them on the process and their rights before the emergency hearing.
- Attorneys are present to take appointments based on rotation schedules determined by the team assignment or, in one instance, formulated by the RPCs internally.
- In all jurisdictions, if there is a need to appoint counsel at later stages of the process, an attempt is made to determine and appoint the attorney who was designated to "pick-up" appointments on the day of the emergency hearing for the case. This procedure is designed to ensure an equitable distribution of caseload and workload over the long term.

In the fourth project site county, while counsel is appointed at the emergency hearing, there is no attorney present to advise the client. The relatively low number of case filings, sporadic schedule of emergency hearings, and lack of resident RPCs makes it difficult to have a system of rotation or assignment that would ensure the presence of an attorney. However, the court is working on a system whereby an RPC would be available by conference call from the facilitator's office and the child welfare agency would provide the

financial affidavit to the parent along with the petition. The fact that RPCs have to commute to attend hearings as well as staffings and other meetings can also pose problems at later stages of the case.

Whether the same attorney is present for all hearings was described as more variable.

- In one project site, it was estimated that as many as 25 percent of the hearings are “covered” by an attorney other than the appointed counsel for the case. While the ability to obtain coverage for hearings was generally described as a positive, perhaps even bringing a fresh perspective to the case, some concern was expressed about the client’s perception of, and frustration at, being “handed-off” to another attorney.
- Stronger reservations were expressed about coverage at the emergency hearing because of the opportunity it provides to connect with the client, obtain contact information, and set up appointments.

## C. RPC Survey, Stakeholder Survey, Case File Review, and Court Observation

### 1. Length of Time to Appointment

Information from the case file review indicated that 75 percent (n=288 of 384) of parents were represented by RPC at the Initial/Emergency hearing (an RPC was present to represent the parent at the initial/emergency hearing).<sup>79</sup>

- This means that a quarter (25%; n=96 of 384) of the parents did not receive representation until after the Emergency/Initial hearing. However, this does not appear to be due to an inability of the courts to secure parents representation if they qualified for court-appointment.
- The case file review analysis revealed that it took parents an average of 2.4 days to receive counsel after applying for one, with 88 percent (n=227 of 258) of parents receiving counsel on the same day they applied for one.
- From the case file review, it appears that the application for representation needs to be presented to the parent as soon as possible, preferably before the Emergency/Initial hearing.
- An Analysis of Variance of the Colorado MIS data found that parents who are appointed an RPC on the same day as the petition filing reach adjudication significantly faster than parents who are appointed counsel some time after the Initial/Emergency hearing is held ((F 91,117) = 3.083, p=.043).

---

<sup>79</sup> The following NCSC and NCJFCJ studies provide a context for these results and findings.

- In an evaluation of dependency court practice in the state of Nevada, while protective custody hearings (initial/emergency hearings) were held, on average, 2.1 days from removal of the child, appointment of counsel for parents happened, on average, 20.21 days from petition filing (Nevada Court Improvement Project Re-Assessment, June, 2005, National Council of Juvenile and Family Court Judges).
- In an Ohio evaluation of child abuse and neglect court cases, almost half of the cases (45.76 percent) had a shelter hearing before or on the day of the removal from the home. Within 5 days of the shelter care hearing, counsel for the mother was appointed in 59 percent of cases; and counsel for the father in 32 percent of cases reviewed (Ohio State Court Improvement Program Reassessment, July 2005, National Center for State Courts).
- In an evaluation of dependency court practice in the state of Washington, the average time from petition filing to formal appointment of respondent parents’ counsel was 32 days (Washington State Court Improvement Project Re-Assessment, June, 2005, National Council of Juvenile and Family Court Judges).
- In a Wyoming evaluation of dependency case processing, court-appointed counsel for parents were appointed approximately 24 days after the shelter care hearing (The 2006 Reassessment of Wyoming’s Juvenile Court System: Child Abuse and Neglect Case Processing, June 2006, National Center for State Courts).

## 2. Respondent Parents' Counsel without Parents/Parents without Respondent Parents' Counsel

- Data from the case file review finds that at the Initial Emergency/Shelter Care hearings, parents appeared without counsel in 15.5 percent (n=62 of 401) of the cases reviewed, while counsel appeared without the parent in 5.5 percent (n=22 of 401) of the cases.
- At the adjudication hearing, parents appeared without counsel in 8.5 percent (n=29 of 343) of the cases coded, while counsel appeared without the parent in 11.4 percent (n=39 of 343) of the cases.
- By the permanency hearing, parents appeared without counsel in only 4.3 percent (n=29 of 320) of the cases coded, while counsel appeared without the parent in 17.5 percent (n=56 of 320) of the permanency hearings.

Data from the case file review suggests a pattern, in which parents often appear without RPC early in the case, whereas at later stages of the case RPC appear more frequently without their clients.<sup>80</sup>

A question was included in the RPC online survey to examine what steps RPC take to locate parents who have not maintained contact with them and fail to appear at hearings. An analysis of the responses find that calling the client at home is the most popular method of contacting parents (95.5 %; n=42 of 44), as well as contacting the social worker (95.5 %; n=42 of 44), followed by attempted contact by mail (90.9%; n=40 of 44).

Overall, it seems that RPC and parents typically appear in hearings together in the overwhelming majority of cases. The parent or the RPC was missing in about 10 to 15 percent of the hearings reviewed. Although this is a small proportion, cases in which either the parent or an RPC is missing provide grounds for the court to continue the hearing. In fact, respondents of the stakeholder survey indicate that "parents not being available ( $\chi=2.95$  indicating only "sometimes")" is the number one source of delay out of 15 possible sources of delay (e.g., late reports, lack of preparation from various parties, etc.).

## 3. Continuances due to Respondent Parents' Counsel

- Only 7.1 percent (n=88 of 1,242 hearings coded as part of the case file review sample) were continued.
- This proportion of continued cases was slightly larger among the court observations, with 12.9 percent (n=8 of 62) of the observed cases being continued.
- Just over half of the stakeholders (54.1% (n=59 of 109)) surveyed reported that the court "often" or "always" adheres to a firm continuance policy.

---

<sup>80</sup> A similar trend is evident in Wyoming. In a Wyoming evaluation of dependency case processing, the attendance rate of court-appointed attorneys for mothers and fathers was low at shelter [6%-mother; 5% father] and initial hearings [21%-mother; 12%-father] and increased markedly for adjudicatory [82%-mother; 70%-father], disposition [87%-mother; 83%-father], and permanency hearings [70%-mother; 67%-father]. (The 2006 Reassessment of Wyoming's Juvenile Court System: Child Abuse and Neglect Case Processing, June 2006, National Center for State Courts).

When analyzing the source of the court delays that do occur, it seems that a good proportion were at the request of RPC.<sup>81</sup>

- Approximately 22.7 percent (n=20 of 88) of the continued cases identified in the case file review were continuances requested by the RPC. The reasons listed for these continuances were: (a) to allow RPC time to meet with their client (n=7) or (b) because they were unable to locate the parent (n=5).
- Court observers witnessed eight continued cases during the court observation process, with five (63%) continuances requested by an RPC (two of which were due to counsel being appointed at the hearing that was being observed).
- Although the rate at which continuances were requested was small, stakeholders' were more likely to attribute delay to the RPC. Responses from the stakeholder survey, for example, ranked lack of preparation by RPC as the foremost factor, among 15 independent issues (e.g. lack of preparation by GAL, Late Reports, ICWA), resulting in the highest degree of impact on court continuances.

#### D. Summary, Conclusion, and Recommendation

**Appointment:** Participants in the stakeholder focus group strongly believe that appointing parents' counsel early in the case contributes to timeliness and due process. Therefore it appears that active steps need to be taken by the courts to ensure parents have representation at each hearing. Doing so will not only ensure the rights of the parents are upheld at each stage of the case process, but it will also facilitate timely adjudication of cases.

**Appearances:** Overall, it seems that RPC and parents typically appear in hearings together in the overwhelming majority of cases.

**Continuances:** From the collective data sources it appears that the Colorado dependency and neglect court system does make efforts to avoid continuances. Overall, it appears that continuances are relatively infrequent. Yet when they do occur, they are more than likely to be requested by the RPC. This was identified in the data collected in the case file review and court observations, and corroborates the perceptions of the respondents in the stakeholder survey.

#### *Recommendation 10: Appointment, Appearances, and Continuance<sup>82</sup>*

*Counsel for parents should be appointed and must appear at the earliest possible opportunity. The administrative judge of each court should be required to develop, in collaboration with other judges, and with*

---

<sup>81</sup> In an assessment of the causes of court delay in Nevada, 22 percent of continued cases identified in a case file review (n=14 of 63 continued cases) were the result of respondent parents' counsel, such as lack of parents' attorney or lack of preparation by parents' attorney (Nevada Court Improvement Project Re-Assessment, June, 2005, National Council of Juvenile and Family Court Judges). In a study of Washington State's dependency court practice, 13 percent of hearings were continued (n=27 of 208) with unavailability of parents' attorneys the second most frequent reason listed for delay, behind lack of agency reports (Washington State Court Improvement Project Re-Assessment, June, 2005, National Council of Juvenile and Family Court Judges).

<sup>82</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Basic Obligation, 4; ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Role of the Court, 4.

*magistrates, prosecuting attorneys, agency attorneys, and the local bar, a written continuance policy designed to minimize unneeded continuances.*

### *Recommendation 10–Implementation Strategies*

*10-A There is variation across Colorado’s judicial districts regarding the interpretation of the financial eligibility guidelines for the appointment of court-appointed counsel for parents. In some jurisdictions, financial eligibility guidelines are interpreted generously and the courts encourage parents to have legal representation. In other jurisdictions, there is a stricter interpretation of financial eligibility guidelines, noting, in particular, that the income of other household members is attributed to the parent for purposes of making the eligibility determination. There is also inconsistency in whether appointment of counsel is reconsidered at a later date if circumstances change. To the extent possible, financial eligibility requirements must be consistently applied throughout all judicial districts.*

*10-B Because of due process and timeliness implications, parent attorneys should be appointed contemporaneously with the initial shelter care hearing. The following mechanisms may assist in this effort: (1) Parent attorneys should be immediately “on call” or in-person for the initial shelter care hearings on a rotational basis (e.g., weekly), including a back up in the event of attorney conflicts. (2) All court-appointed respondent parent attorney assignments would emanate from this initial shelter care hearing rotation schedule. (3) A right to counsel notice and affidavits of indigency should be included in all petition service packets directed to parents. (4) Parents should be noticed to appear 30 to 60 minutes prior to the initial shelter care hearing in order to submit indigency affidavit paperwork to the clerk of court; receive designation as indigent, check for conflicts with attorney on rotation schedule, and meet with court appointed counsel in advance of initial shelter care hearing.*

*10-C Plans should articulate guidelines for judges and magistrates to use in granting continuances, procedures for requesting continuances, means for documenting the frequency and reasons for continuances, and establish procedures for remediation of excessive continuances. Remediation may range from corrective procedures to be undertaken where a system deficiency causing excessive continuances is identified, to specific responses to the conduct of participants in the court process.*

## SECTION XIV. PROFESSIONALISM, LEGAL REPRESENTATION, AND PERFORMANCE

### A. Overview and General Perception

#### 1. National Standards

Performance assessment, and ultimately the successful implementation of meaningful reform, is aided by candid comparison of current actual practice to industry standard model practice. Model practice is defined largely by national standards and guidelines promulgated by respected child welfare organizations to promote best practices. The key practice areas examined in this section include fundamental performance areas impacting attorney performance.

#### Attorney Performance Measures

- Professionalism
- Preparation
- Advocating for their Client's Position
- Communicating with Parties
- Courtroom Skills
- Respondent Parents' Counsel Activity
- Continuances Due to Respondent Parents' Counsel

#### 2. Interviews and Focus Groups

Asked to assess the adequacy and quality of the legal representation provided by Respondent Parents' Counsel in their jurisdiction, stakeholder focus group participants often noted the variability across the attorneys practicing in the area.

- In short, while most of the attorneys were described as providing adequate or even a high level of representation, others were described as substandard, although not incompetent.
- One judicial officer described it as the difference between being a real advocate versus doing only what is minimally necessary.
- Others described it as the difference between being reactive versus proactive in cases.
- Many of these observations about the adequacy of RPC representation were accompanied by acknowledgement of the complexity of the cases and the sometimes difficult client population. The parents are often dealing with multiple issues, including drug and alcohol abuse, domestic violence, and/or mental health problems. They may be transient and not have telephones or other means of contact. Stakeholders also acknowledged that the expectations and requests of clients can often be unrealistic or even unreasonable given the circumstances of the case.

In terms of an overall rating of RPC quality on a scale of one to ten, stakeholders generally gave scores ranging from five to eight, noting again the variability across attorneys and averaging the high and low performers.

- Depending on the jurisdiction, the percentage of attorneys described as providing an adequate or high level of representation ranged from 90 to 33 percent.
- Still, stakeholders often described the RPCs as a whole as "dedicated," "passionate," and "having their heart in the right place." They were often praised for their ability to work collaboratively and cooperatively with other team members and for not losing sight of child protection despite the fact that they represent the parents.

- In two project site counties, stakeholders stated that practice had noticeably improved over the last several years. This was attributed to efforts of the judicial officers in these courts to hold all parties accountable, require a higher level of performance, and create a culture of reunification and a family focus.

At the same time, the RPC were sometimes described as the weakest, least informed, and/or least active stakeholder in the dependency and neglect system.

- Some stakeholders observed, however, that the team and/or the judicial officer also serve as a “safety net” that prevents any one member’s practice and performance from falling below standard. It is the combined work of the team, some noted, that results in positive outcomes.
- For their part, some RPCs cited the high rates of unification in their jurisdiction and their successful efforts in termination of parental rights trials as evidence of the quality of their representation.

### 3. Respondent Parents’ Counsel Performance Measures

An able attorney must perform at a high level in order to adequately represent parents accused of child abuse and neglect. The inevitable conclusion of a case can be partially determined by an attorney’s performance in key areas. As part of the project team’s analysis of RPC performance, measures were designed to examine professionalism, preparation, advocacy, communication with other parties, and overall skill level. The performance of RPC was ascertained from court observation, the RPC online survey, the stakeholder online survey, the RPC focus groups, and the stakeholder focus groups. Together these data sources provide insight into five key areas of RPC performance: Professionalism, Preparation, Advocating for their Client’s Position, Communication with Parties, and Skills.

#### B. Professionalism

##### 1. Court Observation and Stakeholder Survey

Information pertaining to RPC professionalism was ascertained from court observation and the stakeholder online survey. “Professionalism” was operationalized or defined as being timely, prepared, having a professional appearance and demeanor, demonstrating respect for their clients and other parties, and maintaining client confidentiality.

- When observing court, project researchers consistently found that RPC comport themselves professionally.
- They were rarely late (only 3 percent of the time in hearing observations (n=6 of 199))<sup>83</sup> and were found to overwhelmingly behave professionally in the majority of the observed hearings (98.3%; n=175 of 178).
- These perceptions are congruent with the responses from the stakeholder survey, as stakeholders overwhelmingly reported that RPC “often” or “always” present themselves professionally (88.9%; n=95 of 106), demonstrate professionalism and respect for other professionals in the courtroom (82.2%; n=88 of 107), treat their clients respectfully in the courtroom (95.2%; n=101 of 106), and keep their client’s information confidential (94.2%; n=101 of 106).

---

<sup>83</sup> The sample size for court observation findings may differ depending on whether the coders could confidently determine that a performance variable was present or not and/or the total number of RPC present in the hearing being observed.

- These stakeholder perceptions support what was viewed in the court observation (however, with respect to court observation, the possibility of an “observer effect” should be noted – RPC were aware that observers were present and may have modified their practice accordingly).

## 2. Summary, Conclusion, and Recommendation

Attorneys are professionals with a distinguished role and value in society. Attorneys should conduct themselves accordingly thereby imparting an image of importance and dignity to their work. This is particularly critical in the child welfare field which receives diminished respect from the public and the bar. Project researchers consistently found that Colorado RPC comport themselves professionally.

### *Recommendation 11: Professionalism and Protocol*

*Attorneys should act and be treated as professionals. This includes professional dress and demeanor before the court, client, and community. Formality in the dependency court should be encouraged by the court and followed by counsel.*

### *Recommendation 11- Implementation Strategies*

*11-A RPC training should stress the importance of professionalism and emphasize the elements that demonstrate professionalism in the courtroom – timeliness, preparation, respect for clients and other system stakeholders, maintaining client confidentiality, etc. RPC training should also stress that a problem-solving approach to handling dependency and neglect cases, or a “team” approach in the courtroom, does not mean that cases should not be handled with the appropriate degree of formality that these cases (and families) deserve. If a mentoring model for RPC training is adopted, mentor-attorneys should provide feedback to new attorneys about their level of professionalism and model professional practice.*

*11-B Judges should provide feedback about courtroom demeanor to all of the professionals that practice before them—judges should set high expectations for professional conduct by all parties and should clearly communicate those expectations.*

*11-C Formal complaint procedures should permit stakeholders to raise concerns about RPC professionalism in a safe and confidential environment. RPC for whom complaints about professionalism have been made should be at serious risk of losing their contract to serve as RPC in dependency and neglect cases.*

## C. Preparation

### 1. National Standards

#### Model Standard

The *RESOURCE GUIDELINES* recommend that attorneys appointed in dependency and neglect cases should: actively participate in every critical stage of the proceeding, thoroughly investigate the case at every stage of the proceedings, conduct a full interview with the client, interview key witnesses and service providers, review all documents submitted to the court, review the agency records, obtain or subpoena other relevant records, arrange for independent evaluations as necessary, stay in regular contact with clients, and remain in contact with the agency and monitor case progress between hearings.<sup>84</sup>

The NACC Recommendations lay out the fundamental obligations of counsel, which include the duties to: (1) meet with and advise client; (2) explain options and potential outcomes throughout the litigation; (3) participate actively in trial (e.g., investigate allegations, introduce evidence, call witnesses, file briefs and memoranda); (4) advise client of ultimate outcome; and (5) explain appellate options.

Likewise, the ABA Standards provide that RPC shall thoroughly investigate a case including formal and informal discovery. ABA Standards 19 – 31 review the duties of the attorney in preparation for court as follows:

- Conduct a thorough and independent investigation at every stage of the proceeding.
- Interview the client well before each hearing, in time to use client information for the case investigation.
- Review the child welfare agency case file.
- Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.
- When needed, use formal discovery methods to obtain information.
- Develop a case theory and strategy to follow at hearings and negotiations.
- Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.
- Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.
- Aggressively advocate for regular visitation in a family-friendly setting.
- With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
- Thoroughly prepare the client to testify at the hearing.
- Identify, locate and prepare all witnesses.
- Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

---

<sup>84</sup> *RESOURCE GUIDELINES*, pp 23.

Colorado RPC Compliance with Model Standard

During court observation, it was observed that Respondent Parents' Counsel had typically reviewed the relevant files and documents prior to the hearing and had discussed the issues pertaining to the case with their client prior to the hearing. The stakeholder online survey also reported that RPC "often" appeared prepared for court, but only "sometimes" appear to have discussed issues with their client prior to the hearing.

2. Court Observation, Stakeholder Survey, and RPC Survey

Information pertaining to how well RPC prepare for hearings was ascertained from court observation, the stakeholder online survey, and the RPC online survey.

- Ninety-six percent (n=42 of 44) of RPCs report they typically meet privately with parents only immediately or just before hearings.
- During court observation, it appeared that respondent parents' counsel had reviewed the relevant files/documents prior to the hearing in 98.4 percent (n=184 of 187) of the observed hearings.
- It also appeared that RPC discussed the issues pertaining to the case with their client prior to the hearing, doing so in 89.2 percent (n=148 of 166) of the cases observed.
- The observations made in court by researchers parallel the responses provided in the stakeholder survey. When asked how frequently RPC do a list of tasks, respondents were most likely to report that they "often" (45.4%; n=49 of 108) appeared to have reviewed files/relevant documents prior to hearings.
- However, stakeholders reported that RPC only "sometimes" appear to have discussed issues with their client prior to hearings (40.7%; n=44 of 108).
- Therefore it appears that like court observations, RPC are more likely to prepare themselves than to prepare the client.
- This is in contrast to the responses from the RPC survey, who were most likely to indicate that they "always" discussed issues with their client prior to hearings (average rating = 4.89). Therefore the perception of the RPC is opposite of that of stakeholders.

3. Summary, Conclusion, and Recommendation

Colorado RPC preparation is generally adequate given limited time and resources. The fact that other stakeholders perceive RPC to only "sometimes" discuss issues with their clients to hearings is worthy of note.

*Recommendation 12: Case Preparation<sup>85</sup>*

*Proficient practice requires extensive preparation. Attorneys should take and be given the time to prepare their cases. Such preparation includes case analysis, preparation of case legal theory and persuasive theme, active participation in every stage of the proceeding, thorough investigation*

<sup>85</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Basic Obligations, 19 – 24, 29 – 31.

*including full interviews with witnesses, and obtaining and reviewing of all relevant pleadings and documents including agency records.*

*Recommendation 12- Implementation Strategies*

*12-A RPC training should emphasize the critical importance of case preparation, the various elements involved in that preparation, and strategies to facilitate timely preparation.*

*12-B The Court should be encouraged to ensure that copies of court orders are distributed to all parties immediately after each hearing – RPC are then better able to follow-up immediately with their clients regarding what happened in the hearing and ensure their understanding.*

D. Client Advocacy

1. National Standards

Model Standard

ABA Standard 7 states that the attorney has a basic obligation to “Advocate for the client’s goals and empower the client to direct the representation and make informed decisions based on thorough counsel.” Additionally, Standard 26 requires that the attorney “Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.”

Colorado RPC Compliance with Model Standard

The data consistently suggest that RPC advocate for their clients’ position. It was observed that RPC generally advocated for their client’s position at hearings, engaged in case planning, and advocated for the appropriate social services. The observations made in court are consistent with the perception of stakeholder online survey respondents, who reported that RPC “often” advocate for their clients.

Model Standard

ABA Standard 26 states that attorneys shall “Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.” Standard 33 states that the attorney has an obligation to “Prepare and make all appropriate motions and evidentiary objections.” The commentary notes the importance of preserving issues for appeal.

Colorado RPC Compliance with Model Standard

The data suggests that RPC rarely file motions, with the majority of RPC only filing one motion per case. The stakeholders and RPC focus groups agreed however that written motions are rare; most motions are made orally, or matters are handled by the team of attorneys involved in the cases.

## 2. Interviews and Focus Groups

In the view of some stakeholders, RPC do not challenge or contest matters or go to trial as often as they should. Some attributed this, in part, to a long history of non-adversarial relationships in dependency and neglect cases and an increasing emphasis on a collaborative approach. Still a number of stakeholders noted how few contested hearings and trials have occurred in their court in recent years, and one prosecutor questioned whether the system was producing too many agreements and consents. As noted previously, the view was also expressed that some RPC were reluctant to enter into contested hearings and trials because they do not have the necessary skills nor adequate experience with litigation. This echoes other comments made by focus group participants regarding the lack of training for new RPCs on litigation skills. The perceived reluctance to proceed to trial and engage in contested hearings may also reflect the resource constraints discussed elsewhere in this *Statewide Needs Assessment Report*, such as limited access to expert witnesses and independent evaluations, lack of support staff such as paralegals and administrative assistants or secretaries, and no readily available funds for service of process.

Stakeholders and RPCs agreed that, in general, there is not an active paper practice in dependency and neglect cases, but some also maintained that it was not necessarily inappropriate. Some matters may be handled informally by the team, negating the need for a formal motion, or motions may be made orally in court. Still, others expressed the view that, in some instances, RPCs should be filing motions on matters such as visitation and return of the child in order to get these issues before the court in an expeditious manner. Rather, RPC generally wait for the next hearing and make an oral motion. Views were mixed on how active RPC were in advocating for better or increased services for their clients. Some thought this and other "social work" aspects of cases were an area of strength for many RPCs, while others thought RPCs did not challenge treatment plans or adequately question caseworkers about risk and available services.

RPC participation in mediations, facilitations, and team decision-making meetings, when it occurred, was generally described as appropriate; that is, non-adversarial, and often beneficial to the process. Some stakeholders commented that it was these contexts that the RPC's role as a "counselor" was apparent. RPC were described as playing an important part in helping clients to understand the process and also empowering their clients to speak. It was noted that RPC are not always able to attend certain meetings that occur outside of court because they are scheduled in a short time frame and priority is given to accommodating the schedules of those participants who are mandated to attend. However, RPC are generally given the opportunity to participate by telephone, and some will do so or follow-up on what has occurred.

## 3. Court Observation, Case File Review, and Stakeholder Survey

### a. Advocating for their Client's Position

Information pertaining to whether RPC actively advocate for their client's position was ascertained from court observation and the stakeholder online survey.

- From court observation, RPC advocated their client's position in 92.3 percent (n=96 of 104) of the hearings.
- It was also observed that RPC had engaged in case planning and had advocated for the appropriate social services in 89.6 percent (n=60 of the 67) of observed hearings.
- The observations made in court are consistent with the perception of stakeholder survey respondents, who reported that RPC "often" advocate for their clients (40.7%; n=44 of 108).

Therefore, the data consistently suggest that RPC advocate their clients' position.

#### b. Respondent Parents' Counsel Activity

With RPC being the only voice advocating the position of the parents, it is important that they be active on behalf of their client throughout the duration of the case. One way to measure RPC activity is to examine the number of motions they filed during the course of a case. Information regarding RPC activity was ascertained from case file review, the stakeholder online survey, the RPC focus group, and the stakeholder focus group.

- According to data from the case file review, parents' counsel filed a motion in 32.7 percent (n=132 of 404) of the cases.
- The average number of motions made by each parents' counsel was .5, with the majority of RPC only filing one motion per case (68.4%; n=91 of 133). The motion most likely to be filed was for an expert witness (24.1%; n=32 of 133), followed by an RPC request to withdraw as counsel (23.3%; n=31 of 133).

From the results of the case file review, it seems only a few written motions are filed in each case by RPC and those appear to be primarily perfunctory or "administrative" motions. The reason as to why so few motions are filed was addressed in stakeholder and RPC focus groups. Both parties agree that written motions entered into court are rare—by any party. On one hand, parties from both types of focus groups indicated that most motions are made orally, or matters are handled by the team of attorneys involved in the cases (where prosecutor, RPC, and GAL are assigned to the same courtroom), negating the need for a formal motion. On the other hand, stakeholders do believe that RPC should be filing more motions in regards to visitation and the return of the child to assist in expediting the case.

The stakeholder online survey incorporated five measures of RPC activity. When asked whether RPC (a) file motions on behalf of their client, (b) present independent information or evidence, (c) present a response to a continuance, (d) introduce witnesses, and (e) appeal court orders, respondents most frequently reported that the RPC "often" performed each of these tasks.

#### 4. Summary, Conclusion, and Recommendation

When analyzing the data from each of these sources, a complex scenario arises. Although the data from the case file review suggests only few written motions are filed, case files only contain written motions. It seems that RPC are making oral motions in court or decisions within a "team," as opposed to traditional written motions. This leads stakeholders to report that RPC are often very active. However, they report that there is room for improvement, as RPCs can file more motions to expedite the case (e.g., filing written visitation motions and motions to return the child for example).

*Recommendation 13: Knowledge and Utilization of Community Services<sup>86</sup> and Utilization of Tools<sup>87</sup>*

*Attorneys should have knowledge of and advocate for services available and appropriate for their client's and their clients children. Attorneys should know and utilize legal resources and remedies available to their clients including discovery, motions, objections, trial briefs, writs, and appeals. They should also have a full understanding of dependency law and procedure, trial advocacy, child maltreatment and development, medicine, mental health, and family dynamics.*

*Recommendation 13-Implementation Strategies*

*13-A RPC training should include the myriad of dependency-neglect elements already discussed but should also stress litigation skills to better prepare RPC to take cases to trial if appropriate.*

*13-B The SCAO should develop written materials that describe the treatment and other services available locally to parents and those that can be accessed in other counties so that the RPCs have a better understanding of what is available, the nature of the services, and their appropriateness for certain clients.*

*13-C The SCAO and the Respondent Parents' Counsel Task Force should consider methods to expand legal services to parents in dependency court, thereby providing resources that should positively impact RPC practice, such as: obtaining drivers' licenses for clients; assisting clients to complete the restraining order process and filing those papers with the Court; expunging records; applying for child support and applying to have child support payments and arrearages reduced; assisting in issues related to legal guardianship; assisting parents to make Court appearances by providing transportation costs; and referring parents to local agencies for help with other legal services such as divorce and immigration.<sup>88</sup>*

---

<sup>86</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Court Preparation, 26 – 27.

<sup>87</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Court Preparation, 19 -23, 25, 28, 33, 35, 39 – 44.

<sup>88</sup> The Santa Clara County (San Jose, California) Dependency Legal Services Attorneys, who represent parents in dependency court, used some attorney resources to address these problems.

## E. Communication with Parties and the Client

### 1. National Standards

#### Model Standard

ABA Standard 6 states that RPC has an obligation to “Cooperate and communicate regularly with other professionals in the case.” Additionally, the ABA Standards address the basic obligations of the attorney in his or her relationship with the client. Standard 11 provides that the attorney shall “Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client’s rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.”

#### Colorado RPC Compliance with Model Standard

A major concern expressed in the stakeholder focus groups is that RPC appear to only meet with parents in a limited fashion in the courthouse immediately prior to hearings. This was supported by responses to the RPC online survey, where 95.5 percent (n=42 of 44) of respondents report they typically meet privately with parents only immediately or just before hearings.

One measure of RPC activity is whether RPC directly communicate with the other court stakeholders in hearings (i.e., how actively engaged are they) or whether they are more “passive” (i.e., rarely communicating in the hearing). Court observation found that RPC communicated with other counsel and the court in most hearings. Stakeholders expressed the view that RPC are more likely to communicate with city/county attorney than the GAL, and that RPC are most likely to communicate with the court.

### 2. Interviews and Focus Groups

The primary, and often repeated, complaint about RPC, voiced across project sites, is that they do not appear to meet with clients outside of court hearings. Focus group participants cited the five-minute, pre-hearing courthouse hallway/courtroom meetings, lack of knowledge of their client’s position in the courtroom, and complaints from clients to that effect. One said it was sometimes obvious in court that no communication had occurred since the last hearing. Others cited incidents when the client did not even know they had an attorney or did not recognize the attorney in court. In some instances, GALs, CASAs, and caseworkers noted that the parents routinely come to them for explanations of what has happened in court and what is going to happen in a case. In addition to not communicating with their clients, some faulted RPCs for not visiting the homes of their clients, observing visitation, or meeting with incarcerated parents. However, RPCs stated that they did meet with clients outside of court, but noted that some clients did not keep appointments or attempted to contact them at odd hours.

### 3. Court Observation, Stakeholder Survey, and RPC Survey

Information pertaining to how often RPC communicate with other parties involved in the case was ascertained from court observation, the stakeholder focus group, the stakeholder online survey, and the RPC online survey. Measures focused on RPC communication with their client, other counsel, and the court. One of the major concerns expressed in the stakeholder focus group is that it does not appear that

RPC meet with parents outside of the courtroom. They suggest that, as a result, RPC suffer from a lack of knowledge of their client's position in the courtroom. In some instances, GALs, CASAs, and caseworkers indicated that parents routinely come to them for explanations as to what is going on in their case. It seems to them that RPC are satisfied with the five minute pre hearing court house "hallway meeting." This was supported by responses to the RPC survey, where 95.5 percent (n=42 of 44) of RPCs responded that they typically meet privately with parents only immediately or just before hearings.

- The court observation found that RPC communicated with other counsel before, during, or after in 93.9 percent (n=92 of 98) of the hearings.
- According to stakeholders, RPC are more likely to communicate with city/county attorney than the GAL. Analysis of the responses finds that stakeholders most often marked "often" (39.1%; n=43 of 110) when responding to how frequently RPC communicate with city/county attorneys, whereas stakeholders most often marked "sometimes" (35.5%; n=39 of 110) when responding to how often RPC communicate with GALs.
- When asked to rank the frequency in which they communicate with the other parties involved in the case, RPC ranked the city/county attorney first among a list of all parties. Therefore the open communication between RPC and city/county attorneys may be driven by the emphasis RPC place on that relationship, devoting less attention to GALs.

Of all the parties, RPC was most likely to communicate with the court.

- During court observation, project researchers found that RPC communicated directly with the court during 95.2 percent (n=100 of 105) of the hearings.
- This high level of communication between RPC and the court is also perceived by the stakeholders, of which 94.4 percent (n=102 of 108) report it occurs "often" or "always."
- However, when asking RPC to rank which parties they meet with, communicate with, and cooperate with, RPC ranked the court 5<sup>th</sup> (3.7= "often"), a ranking far lower than parties such as the city/county Attorney (4.63= "always"), caseworkers (4.51), and GALs (4.47).

#### 4. Summary, Conclusion, and Recommendation

Case preparation is essential to successful representation. Interaction with the client is perhaps the most significant component of case preparation. Because of time, resources, compensation, and expectations, adequate client contact is limited. Likewise, successful representation is dependent on successful communication (via counsel) with opposing parties. The primary, and often repeated, complaint about RPC, voiced across project sites, is that they do not appear to meet with clients outside of court hearings. However, RPCs report that they did meet with clients outside of court, but noted that some clients did not keep appointments or attempted to contact them at odd hours. Although it appears that RPC feel as though they communicate with other parties more, it appears to court observers and other stakeholders that their communication is typically directed toward the court.

##### *Recommendation 14: Client and Party Communication<sup>89</sup>*

*Successful representation is contingent upon a meaningful relationship with the client. Such a relationship cannot be built with casual and infrequent client contact. Attorneys should meet with clients meaningfully in advance*

<sup>89</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Basic Obligations, Relationship with the Client, Standards 7 – 18.

*of proceedings and throughout the case, counsel clients as to legal options given the universe of likely outcomes, and represent the client's directives and interests. Attorneys should have and take the time to prepare clients for proceedings and to communicate with opposing counsel.*

#### *Recommendation 14- Implementation Strategies*

*14-A At a minimum there should be designated spaces and private rooms for RPC to meet with parents outside the courtroom in each courthouse.*

*14-B The SCAO and Respondent Parents Counsel Task Force should explore the feasibility for local RPCs to hold "office hours" for parents to meet them at the courthouse rather than their offices. Generally, court houses are on bus lines or are more easily accessible.*

*14-C The court should require that RPCs (and possibly other stakeholders) sign-in 15 minutes prior to hearings to afford at least 15 minutes to meet with clients before the hearing is convened.<sup>90</sup>*

*14-D RPCs (and GALs) could be required to complete a form in advance of the hearing that notes when they last met with their client. This form would be handed in to the court—informing the court about extent of contact between attorneys and their clients as well as setting clear expectations that contact is occurring in-between hearings.<sup>91</sup>*

*14-E The way in which cases are calendared before the court can be a barrier to RPCs meeting with their clients in the courthouse prior to hearings. The Court should examine its case calendaring practice to facilitate opportunities for counsel to meet with their clients prior to hearings in ways that are more meaningful (e.g., in a quiet location and for more than just a brief few minutes). Because lengthy meetings in the courthouse with clients prior to hearings may not always be warranted (e.g., because RPC have had an opportunity in between scheduled hearings to meet with their clients), the court may want to consider a brief "staffing" meeting at the beginning of each day's calendar. For example, prior to the beginning of each calendar day, the court can set a brief scheduling meeting in the courtroom for parties. During this meeting, the cases scheduled for that day can be discussed in terms of whether or not there is a need for additional time or re-ordering of hearings on the calendar call, to permit a*

---

<sup>90</sup> The 15-minute attorney sign-in sheet is used in the Washington, D.C. NCJFCJ Model Court and stakeholders including defense counsel, report that it has facilitated opportunities to meet and engage parties before hearings in more meaningful ways.

<sup>91</sup> The NCJFCJ Alexandria, Virginia Model Court has recently implemented a procedure in which GALs must complete a form detailing the extent of contact they have had with their clients. This form must be submitted to the court prior to each hearing. This procedure was implemented because of concerns that GALs were unable to confidently report on their client's situation at hearings because of a lack of contact.

*meeting between attorney and client. The court can then consider building in some time before the case is called to facilitate that meeting. This “staffing” meeting can also be used to trouble-shoot attorney scheduling conflicts with other cases and courtrooms, as well as missing agency reports or the need to locate other parties who should be in attendance at hearings.<sup>92</sup>*

## F. Skills

### 1. National Standards

#### Model Standard

The ABA Standards emphasize the importance of effective courtroom skills, and places a duty on the RPC to seek out opportunities for training in trial skills. ABA Standard 34 states that the attorney has an obligation to “Present and cross-examine witnesses, prepare and present exhibits.” The Standards provide an extensive list of the basic obligations of the parent’s attorney in court preparation, which include in part: “In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions;” “Request the opportunity to make opening and closing arguments;” “Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court’s decision or may otherwise benefit the client.”<sup>93</sup>

#### Colorado RPC Compliance with Model Standard

The data indicate that stakeholders believe that a “lack of skills” prevent RPC from aggressively pursuing contested hearings, and RPC and other stakeholders report that additional training in litigation skills would be beneficial.

### 2. Interviews and Focus Groups

RPCs and other stakeholders identified a number of areas where additional training and education is needed, including:

- Review of the details of the statutes that govern dependency and neglect and updates on the case law
- Case management
- Issues that regularly arise in dependency and neglect cases, such as visitation and evaluating the treatment plan
- Use of expert witnesses
- Litigation skills

Of these topics, the one most often cited was litigation skills, with some participants noting that this was a training need not only for RPCs but also for GALs and prosecutors. Some stakeholders said that it was in

<sup>92</sup> The NCJFCJ Los Angeles Model Court uses this “staffing” meeting at the beginning of each calendar day in each of its courtrooms to determine if the scheduling of cases needs to be adjusted to permit attorney-client meetings, obtain missing agency reports, or avoid attorney conflicts with other courtrooms.

<sup>93</sup> ABA Standards, Basic Obligation of the Attorney, Standards 35, 37, and 38.

contested matters and trials that the differences in the quality of representation and the weaknesses of some RPC emerged. Some even characterized RPC as “afraid” to go to contested hearings or trial. Because the number of contested matters and trials is generally low, attorneys who do not have prior experience with trial work do not have the opportunity to acquire or hone these skills on the job. In addition, as one stakeholder noted, attorneys may not be intrinsically drawn to this practice because of the opportunity to litigate cases.

Focus group participants also suggested that RPCs need more support during the first year of practice in the area. There are no formal mentoring programs or structured opportunities to serve as co-counsel in a case or shadow another, more experienced attorney. Participants were supportive of such efforts as well as more opportunities for training when attorneys first enter the practice.

### 3. Court Observation and Stakeholder Survey

Information related to attorney performance and skill level was ascertained from court observation and the stakeholder online survey, as well as the stakeholder focus group.

- In court observation, RPC displayed oratory skills (e.g., the ability to articulate their argument well and persuasively) in 97.1 percent (n=169 of 174) of the observed hearings.
- Nevertheless, according to stakeholders participating in interviews and focus groups, however, RPC at times appear to be the weakest, least informed, and/or least active member of the team (“team” refers to prosecutors, GALs, and RPC who are assigned to the same court). They believe that a “lack of skills” prevent the RPC from aggressively pursuing contested hearings.
- These sentiments are congruent with responses from the stakeholder survey, which indicate that only 34.2 percent (n=39 of 114) believe that respondent parents’ counsel exhaust their legal options, while 32.5 percent (n=37 of 114) of stakeholders report that *they do not* believe that respondent parents’ counsel exhaust their legal options.

### 4. Summary, Conclusion, and Recommendation

Court observers found that RPC take their function seriously and work hard for their clients. Deficiencies were noted primarily in the area of trial skills. Stakeholders, who observe RPC performance more frequently and under typical circumstances, are critical of the skill level of RPC practicing in the Colorado dependency and neglect courts. PRC themselves actively requested training in the area of trial skills. Trial skills are largely, post-law school learned practice skills acquired through training and mentorship.

#### *Recommendation 15: Courtroom/Trial Skills<sup>94</sup>*

*The traditional art of trial advocacy including, direct and cross exam, opening statements, closing arguments, objections, and evidentiary foundations is critical to the dependency court process. Attorneys should acquire and use these skills.*

---

<sup>94</sup> Authority: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, Court Preparation, 33, 34, 37, and 38.

*Recommendation 15- Implementation Strategies*

15 While there are multiple sources for substantive child welfare law and procedure training in Colorado and nationally, trial skills training, which is strongly desired by the RPCs themselves, is harder to arrange and is expensive. The SCAO and the Respondent Parents' Counsel Task Force should consider the National Institute for Trial Advocacy regional training conducted with NACC in the Denver Area each May, or other learn-by-doing experiential trial training.

## SECTION XV. BEST PRACTICES, BARRIERS, AND OPPORTUNITIES FOR IMPROVEMENT

As part of the needs assessment process, the project team was charged with the identification of local best practices, barriers to optimal RPC practice, and opportunities for improvement of RPC practice. This section of the *Needs Assessment Report* reports the findings associated with the RPC and stakeholder focus groups in these areas.

### A. Best Practices

Stakeholders and RPCs cited several factors that they considered to be best practices or system strengths in dependency and neglect cases.

- First, some noted their court's efforts to ensure that all respondent parents who need representation are assigned an attorney. The courts also discourage "attorney-shopping," and there is a high level of continuity in representation.
- Second, participants uniformly expressed the view that early appointment of counsel and the attorney-client, pre-hearing meetings, in the jurisdictions where they occur, are beneficial practices and contribute to timeliness and due process. Participants commented that these practices provide an opportunity to make clients aware of their rights, clarify issues, "next steps," and expectations, and give clients a perspective on their case other than that of the case worker. Parents were described as highly motivated when they come to the emergency hearing, and, therefore it is a critical time to let them know how important it is to get evaluations, start programs, and so forth. One prosecutor stated that it is also beneficial to have an attorney on the case early so there is someone to contact directly if there are questions. When attorneys are appointed at a later date, there may be delay and continuances because the attorney needs time to become familiar with the case.
- Third, stakeholders and RPCs generally believed that the "team" concept, where prosecutors, GALs and RPCs are assigned to specific courtrooms, had improved docket management and facilitated their ability to attend, or obtain coverage for, the multiple hearings in dependency and neglect cases. In addition, team members become familiar with the expectations of the court and know what to expect from each other. However, one judge noted that it was not clear how these "shared expectations" actually affect practice and others noted that familiarity may also be a negative in some instances. Some participants acknowledged having reservations about the team system when it was first proposed and implemented, but had concluded over time that it was beneficial and contributed to better working relationships among the parties and a more smoothly flowing process. In general, stakeholders and RPCs felt that the overall culture of cooperation and collaboration that existed in their courts helped to ensure that issues came to the fore and that practice did not fall below standard.

Other positives or "best practices" noted by focus group participants in some project sites included the use of mediations and facilitations to resolve issues in cases, access to interpreters for court hearings and attorney-client meetings, and greater emphasis on advising respondent parents of their rights and grievance procedures. However, in regard to the last comment, one judge noted that the judicial officer is still the primary recourse for clients, and the clients are often reluctant to complain because of the situation and their lack of skills.

## B. Barriers

Stakeholders and RPCs also cited a number of challenges or impediments to effective representation of respondent parents.

- As discussed previously, many participants believe that RPC caseloads are generally too high and that the number of cases that attorneys accept prevents them from meeting with clients outside of court and working the cases in a proactive manner.
- Many faulted the compensation system which, in their view, requires attorneys to accept a large number of appointments in order to sustain a practice in this area. Others believed the compensation system, both the amount of pay and the flat-fee structure, discouraged attorneys from entering and staying in this area of practice.

RPCs do not have ready access to the support services and other resources that could help them manage their caseloads and deliver a higher level of representation.

- Some RPC do not have clerical support or anyone available to answer the phone in their absence.
- While RPC can file a motion with the appointing court to hire an investigator or paralegal in a particular case, there is a cap on the total fees which will be paid in any one case.
- Most participants believed that a structure where such personnel could be shared and made available upon request would facilitate the process and promote greater use.
- Many RPC and other stakeholders would also like to see greater access to expert witnesses, independent evaluations, and consulting services at all stages of the case.
- Participants also described a need for even more basic support, such as practice manuals, copies of the statutes, and a data bank of motions.

Another significant area of concern was the lack of practical and RPC role-specific training and education, both prior to entering the practice and on an ongoing basis after RPC have been practicing in this area.

- Of particular concern was the need for training on litigation skills; an area of expertise that is not part of the background of many RPC and where there are few opportunities for on-the-job training.
- The training requirements, as delineated in the Agreement, are minimal, and there is no structured mentoring or co-counsel program.
- Training was another area, in addition to resource-sharing, where participants often expressed the view that there was a need for a structure that would develop and coordinate efforts and, in general, provide greater oversight and accountability for RPC.

A lack of services for clients was not described as a major impediment to effective representation, although not all participants were satisfied with the number and range of services available in their jurisdiction, especially in the area of mental health.

- Some noted that RPCs need to become more familiar with services that may be available but are not part of the standard package.
- Others said that it was not the availability of services, but the timeliness of referrals, transportation issues, and other factors that might make service delivery problematic. One participant expressed the view that parents are often overloaded with services and other requirements, and this makes it difficult for parents to be employed or do anything else while their case is pending.

- Finally, some RPC noted that treatment plans, status reports, court orders, and other documents are not always prepared and distributed in a timely manner. This in turn limits the time they have to review these materials with their client and respond.

### C. Opportunities for Improvement

Recommendations for improvement in respondent parents' counsel representation generally mirrored the discussion of current challenges and impediments to effective representation.

- There was general support for an infrastructure for RPC, similar to the Office of Child Representative (OCR) or Office of Alternative Defense (OAD), which would provide oversight and coordination in areas such as RPC recruitment and contracting, training and education, and resource sharing. Not everyone was convinced that the OCR had actually improved the quality of representation, but all acknowledged that it had led to greater accountability for GALs.
- There was general support for the promulgation of written standards of practice given the minimal provisions in the Agreement and the general lack of guidelines specific to the RPC's role and responsibilities.
- There was a general consensus that the current system of compensation should be reviewed and consideration given to an hourly-billing or salary-based system. The system of compensation should encourage specialization and ensure that attorneys are motivated to work all phases of the case. Caseload caps were supported by some participants, but were viewed as effective only if the attorneys were prohibited from taking other types of court appointments.

It was agreed that there should be greater access to support personnel—clerical staff, investigators, social workers, paralegals—and other resources, such as expert witnesses and independent evaluations, at all stages of the case.

## SECTION XVI. CONCLUDING REMARKS AND SUMMARY OF RECOMMENDATIONS

Colorado has a proud tradition of progressive services to children and families in the child welfare court system. From pioneering medical and mental health research, to creation of the juvenile court, to adoption of mandatory child abuse reporting, to mandated legal counsel for children, Colorado has been a national leader in juvenile court improvement. Like most states, however, Colorado has, until now, neglected to give adequate attention and resources to legal representation of respondent parents in the dependency court system.

High quality legal representation of all parties is necessary to produce just outcomes for children and their families. Ensuring high quality legal representation of respondent parents is a proper and necessary focus of court improvement at this time. Federal and state law and policy mandate that our system ensure the safety and permanence of Colorado's children. The permanence priority under the law is the family. Because of this and federal and state law providing parents with a due process liberty interest in the parent / child relationship, the relationship must remain intact absent compelling reasons proved by clear and convincing evidence.

Protecting that parental right and serving that family interest as directed by the parent client is the charge and duty of the respondent parent attorney. In order for such legal service to be delivered, however, we must have an administrative and court system that promotes high quality RPC practice, populated by proficient legal counsel. This study assessed that system and counsel performance within it.

Based on the data received, it is the conclusion of the project team that the practice of law representing parents in Colorado dependency cases is typically adequate but rarely proficient. It is our further assessment that the cause of sub proficient practice is not unwillingness of counsel to provide proficient service but rather the existence of practice, administration, and court systems which discourage optimal practice.

This assessment is not an indictment of the attorneys who work in the system. It is our general assessment that RPCs do well given limited resources and opportunity. Nonetheless, we believe counsel can and should improve performance. Likewise, this is not an indictment of system personnel who administer the system. It is a call to system workers and policy makers to reform an imperfect system which will promote proficient practice.

In order to move the Colorado RPC system toward proficiency, we make the following attorney performance and systemic change recommendations. These recommendations are based on measured deficiencies in current practice.

### *Recommendation 1: RPC Role Clarity and Definition*

*Attorneys retaining contracts must make clear that the RPC is the attorney for the parent(s), bound by the traditional rules of attorney-client competence, loyalty, and confidentiality, for example. This is true regardless of the source or adequacy of attorney compensation. The duty to the parent client must be communicated to and understood by the client, court, and all parties.*

*Recommendation 1- Implementation Strategies*

1-A *The SCAO should include language in the RPC contract, which counsel specifically accepts, that defines the role of RPC as owing his/her duty to the client.*

1-B *The SCAO should consider including language in the RPC contracts that not only outlines the minimum practice expected; but also outlines "best practice" standards for RPC practice.*

1-C *The SCAO and the Respondent Parents' Counsel Task Force should implement multidisciplinary and/or cross disciplinary training that affords other system stakeholders (e.g., DHS case workers, CASAs, guardians ad litem, and county attorneys) an opportunity to learn about the specific role and responsibilities of RPC.*

*Recommendation 2: Training*

*Respondent Parents' Counsel should have the opportunity for and be required to receive training in dependency practice prior to eligibility for cases and throughout the course of taking cases, in dependency law and procedure, trial advocacy, alternative dispute resolution, child maltreatment and development, physical and mental health, substance abuse, permanency, family dynamics and available services for parents in the community.*

*Recommendation 2- Implementation Strategies*

2-A *The Respondent Parents' Counsel Task Force should develop a mandatory training curriculum for initial and ongoing training of RPCs. A source of the competencies for training can be found in the treatise *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases*, (Bradford Publishing 2005).*

2-B *The Respondent Parents' Counsel Task Force should review the specific training needs identified by focus group participants and responses to the online surveys and prioritize the topics and, as appropriate and funding allows, incorporate them into its short and long-term training and education plan.*

2-C *Training at the state and local level should incorporate more opportunities for cross-training. In addition to the knowledge shared, cross training enhances understanding of the roles, perspectives, and challenges of other participants in the process and fosters improved communication and collaboration in other areas. Judges should actively participate in the training of attorneys.*

2-D *Training should also incorporate structured but more informal opportunities for peer-to-peer discussion of concerns and issues as well as exchange of information on practices and procedures they have found to be successful (as well as unsuccessful) in improving RPC performance in child abuse and neglect cases. Individuals are often more receptive to new ideas and "lessons learned" when they come from colleagues who are perceived to share the same experience.*

2-E *A system of "mentoring" for new RPC should be considered, where new RPC are assigned a more experienced and knowledgeable RPC to shadow and/or exchange*

*practice tips. Structured opportunities to serve as co-counsel in a case should also be explored.*

*2-F Online or web-based training curricula specific to abuse and neglect cases should be considered to afford RPC from throughout Colorado the opportunity to participate in continuing education.*

*2-G The SCAO and the Respondent Parents' Counsel Task Force should consider development of an online resource that provides statewide assistance to RPC handling child abuse and neglect cases. This online resource could serve as a legal resource center with a multitude of legal materials and information, including contributions from practitioners around the state. The online resource center could also maintain a private e-mail list allowing attorneys to collaborate with their colleagues through postings and sharing of practice issues and solutions.*

*2-H Any RPC training or curricula must include a focus on educating and guiding the parent through the Colorado dependency and neglect legal system.*

### *Recommendation 3: Standards of Practice*

*Standards of practice (and guidelines to a far lesser degree) define and encourage proficient practices among professionals. The dependency court system should adopt mandatory standards of practice creating a practice proficiency standard below which counsel may not fall and to which the system holds counsel accountable. Such standards should be consistent with existing national dependency practice standards and guidelines including the 2006 ABA Standards for Representation of Respondent Parents.*

#### *Recommendation 3- Implementation Strategies*

*3-A The Respondent Parents' Counsel Task Force should continue to vet and refine the draft Guidelines. The Guidelines should then be submitted to the Supreme Court for adoption. In order to institutionalize optimal RPC practice, however, the Guidelines should evolve into standards of practice in the future.*

*3-B Once the Guidelines (and then as standards in the future) have been adopted and approved by the Supreme Court, efforts must be made to effectively publicize their existence; train RPCs; and expose all Colorado dependency and neglect stakeholders, to the Guidelines so that they can have a better understanding of RPC's roles and responsibilities in dependency and neglect cases.*

### *Recommendation 4: Caseload and Workload*

*Attorneys should have reasonable and appropriate caseloads which allow enough case focus for the development of expertise which in turn promotes proficiency. (This recommendation is inexorably connected to the compensation recommendation).*

#### *Recommendation 4- Implementation Strategies*

*4-A In order to ensure an equitable distribution of appointments and workload across eligible attorneys, each district should review local practices governing the appointment of counsel to ensure that they are clear and definitive in regard to the requirements and process by which attorneys are assigned to cases and the procedure for appointment at various stages of a case. While time constraints and the interest in providing counsel as quickly as possible may necessitate departures from these routines in individual cases, efforts to maintain balance and monitor the distribution of appointments will encourage wider attorney participation and help to reduce scheduling conflicts.*

*4-B In light of the increasingly complex nature of the law and requirements in child abuse and neglect cases, the workload implications of these cases, and the need for ongoing training, efforts should be made to allow attorneys to specialize, to the extent feasible given overall caseloads and available resources, in the handling of dependency and neglect cases. While not a solution to all workload issues, specialization provides an incentive to obtain the training and education necessary and allows individuals to more rapidly gain experience.*

*4-C The SCAO and the Respondent Parents' Counsel Task Force should consider conducting an RPC attorney workload assessment to determine reasonable caseload and workload limits [for full-time and part-time RPCs]; and to determine whether the 100 active case limit articulated in the Agreement is realistic or whether it should be modified depending upon the results of the workload assessment.*

#### *Recommendation 5: Compensation*

*As indicated in Recommendation 4, attorneys should have reasonable and appropriate caseloads which allow them to complete the proficiencies required by model standards of practice. At the same time, they must be compensated adequately for cases that allow for lower caseloads. Attorneys should receive compensation at least competitive with agency and public defender counsel wages.*

#### *Recommendation 5-Implementation Strategies*

*5-A The SCAO should implement an hourly rate compensation structure that pays attorneys for work actually performed as is the standard in the practice of law. The Agreement for Services should require billing documentation that allows for appropriate scrutiny but does not unduly burden the practitioner.*

*5-B At a minimum the flat fee rate should be increased. The incentive to take a case to TPR or extend the case should be minimized with an emphasis on front loading and early resolution of cases.*

*5-C The SCAO and the Respondent Parents' Counsel Task Force should consider piloting an hourly compensation structure to assess viability and RPC satisfaction with the process.*

5-D *The SCAO and the Respondent Parents' Counsel Task Force should consider piloting a staffed public defender type office (similar to the El Paso County GAL office), where RPC are full-time salaried staff.*

#### *Recommendation 6: Recruitment*

*Proficient representation requires recruitment of competent counsel. The dependency court system should develop and follow a recruitment system which targets recruiting and hiring practice focused on hiring highly qualified candidates.*

##### *Recommendation 6- Implementation Strategies*

6-A *Efforts to recruit RPC who reflect the racial, ethnic, and cultural backgrounds of the clients are critical. Recruitment efforts must include outreach to diverse and minority associations including the Hispanic Bar Association, the Women's Bar Association and the African American Bar Association. Collaboration with the Colorado Bar Association Family and Juvenile law sections is encouraged*

6-B *The SCAO and the Respondent Parents' Counsel Task Force should outreach to law schools to stress the importance of this area of law and emphasize the need for highly qualified attorneys for parents. There should be collaboration with both the University of Colorado and Denver University juvenile and family law programs. The SCAO and the Respondent Parents' Counsel Task Force should promote and lobby for dependency and neglect questions on the State Bar examination in order to ensure that law schools include dependency-neglect in their curricula. The SCAO and the Respondent Parents' Counsel Task Force should encourage and help to establish intern or externships for law school students to expose them to RPC practice.*

6-C *The SCAO and the Respondent Parents' Counsel Task Force should expand recruitment visibility to include announcements in Bar Journals, newsletters, list serves and other public interest law forums.*

#### *Recommendation 7: Turnover*

*Respondents' representation suffers from lack on continuity of counsel. The system should track counsel case continuity and turnover and communicate with the RPC bar to understand and promote success and address failures.*

##### *Recommendation 7- Implementation Strategies*

7 *The SCAO should convene a focus group discussion with Denver County RPC to further explore reasons for turnover. It may be helpful to include in the discussion, RPC counsel from other judicial districts with low turnover. RPC focus group participants should brainstorm strategies that will help lessen Denver turnover and identify resources that might facilitate continuity in counsel.*

## Recommendation 8: Resources

*Counsel should have and utilize resources necessary for effective advocacy including office research and preparation tools and case and expert consultation services throughout all stages of dependency and neglect cases.*

### Recommendation 8- Implementation Strategies

*8-A In accordance with the Agreement for Services and the Chief Justice Directive 04-05, the SCAO's policies and procedures should clearly allow for the appointment of and reimbursement of experts and investigators early on in the dependency and neglect cases, and not just at termination proceedings.*

*There appears to be a variation among judicial districts as to whether the costs of experts during the early stages of the dependency and neglect cases are reimbursable to RPCs. The SCAO policies and procedures [clearly allowing for the appointment of and reimbursement of experts and investigators] should be disseminated to the district administrators and the district court judges so that there is continuity and consistency across Colorado.*

*Prior to the RPC fiscal year contracting period, the SCAO should conduct an in-service training or presentation in each of the judicial districts to discuss the terms and provisions of the Agreement for Services and the Chief Justice Directive 04-05 addressing access to and payment processing procedures for standard witness fees, service of process, depositions, psychiatric evaluations, psychological or other testing, discovery, and other items as needed. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the Family Representation Coordinator, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight. The activities discussed within this recommendation could and should be performed by this staff member.*

*8-B There appears to be a variation among judicial districts as to what fees and costs will be reimbursable to RPCs. To the extent possible, there should be consistency and continuity between judicial districts regarding what is and is not eligible for reimbursement to RPC attorneys.*

*8-C A RPC case "expert bank" should be developed at the state and local level. The experts should be catalogued by their specialty area; their willingness to participate in the evaluation and court process; their rates; their preferred jurisdictions, etc. In January 2007, a new position was created and a staff member was hired (in the Family Issues Unit of the SCAO) to focus on issues associated with attorney representation in dependency and neglect cases. This position, known as the Family Representation Coordinator, will be responsible for RPC-related issues such as training, recruitment, compensation and oversight. The activities discussed within this recommendation could and should be performed by this staff member.*

*8-D The SCAO should develop written materials that describe the treatment and other services available locally to parents and those that can be accessed in other*

counties so that the RPCs have a better understanding of what is available, the nature of the services, and their appropriateness for certain clients.

8-E The SCAO and the Respondent Parents' Counsel Task Force should consider methods to expand legal services to parents in dependency court, thereby providing resources that should positively impact RPC practice, such as: obtaining drivers' licenses for clients, assisting clients to complete the restraining order process and filing those papers with the Court; expunging records, applying for child support and applying to have child support payments and arrearages reduced, assisting in issues related to legal guardianship, assisting parents to make Court appearances by providing transportation costs, and referring parents to local agencies for help with other legal services such as divorce and immigration.

### *Recommendation 9: Contracting and Oversight*

The contract should be clear and concise and thoroughly outline the role and responsibility of counsel as well as direct counsel to appropriate authority for best practices. Additionally, quality attorney oversight is essential to proficient practice. New attorneys should be mentored by experienced highly proficient practitioners. Staffed RPC offices with full time dependency counsel including managers and supervisors should be explored where feasible. In other instances, a centralized authority should conduct oversight.

#### *Recommendation 9- Implementation Strategies*

9-A Provisions of the Agreement, such as the requirement that attorneys document attempts to contact the client and inform them of the outcomes of hearings, are not systematically reviewed or audited at the state or local level. As a starting point, the SCAO may wish to consider the model developed by Arkansas. In Arkansas, the Attorney ad Litem Coordinator at the Arkansas Administrative Office of the Courts is responsible for the state-level oversight of RPCs. A survey is sent to abuse and neglect professionals (e.g., judges, GALs, and CASAs) to rate attorney performance based upon these standards. Attorneys with low ratings are subject to review through court observation, case file review, interviews with stakeholders and the RPC. Failure to comply with the standards or remediate problem areas may result in termination of or failure to renew RPC contract.

9-B Avenues to provide parents the opportunity to make complaints or file grievances with the trial court are not often utilized. A formal complaint grievance process, that is separate from the trial court judge's oversight, should be developed and implemented at the state level. Documents in English and in Spanish should be developed and distributed to the parent upon the assignment of the RPC. These documents should clearly articulate (1) the roles and responsibilities of RPC; (2) the complaint or grievance process; and (3) a contact name, telephone number, and e-mail address.

### *Recommendation 10: Appointment, Appearances, and Continuance*

*Counsel for parents should be appointed and must appear at the earliest possible opportunity. The administrative judge of each court should be required to develop, in collaboration with other judges, and with magistrates, prosecuting attorneys, agency attorneys, and the local bar, a written continuance policy designed to minimize unneeded continuances.*

#### *Recommendation 10 –Implementation Strategies*

*10-A There is variation across Colorado's judicial districts regarding the interpretation of the financial eligibility guidelines for the appointment of court-appointed counsel for parents. In some jurisdictions, financial eligibility guidelines are interpreted generously and the courts encourage parents to have legal representation. In other jurisdictions, there is a stricter interpretation of financial eligibility guidelines, noting, in particular, that the income of other household members is attributed to the parent for purposes of making the eligibility determination. There is also inconsistency in whether appointment of counsel is reconsidered at a later date if circumstances change. To the extent possible, financial eligibility requirements must be consistently applied throughout all judicial districts.*

*10-B Because of due process and timeliness implications, parent attorneys should be appointed contemporaneously with the initial shelter care hearing. The following mechanisms may assist in this effort: (1) Parent attorneys should be immediately "on call" or in-person for the initial shelter care hearings on a rotational basis (e.g., weekly); including a back up in the event of attorney conflicts. (2) All court-appointed respondent parent attorney assignments would emanate from this initial shelter care hearing rotation schedule. (3) A right to counsel notice and affidavits of indigency should be included in all petition service packets directed to parents. (4) Parents should be noticed to appear 30 to 60 minutes prior to the initial shelter care hearing in order to submit indigency affidavit paperwork to the clerk of court; receive designation as indigent; check for conflicts with attorney on rotation schedule; and meet with court appointed counsel in advance of initial shelter care hearing.*

*10-C Plans should articulate guidelines for judges and magistrates to use in granting continuances, procedures for requesting continuances, means for documenting the frequency and reasons for continuances, and establish procedures for remediation of excessive continuances. Remediation may range from corrective procedures to be undertaken where a system deficiency causing excessive continuances is identified, to specific responses to the conduct of participants in the court process.*

### *Recommendation 11: Professionalism and Protocol*

*Attorneys should act and be treated as professionals. This includes professional dress and demeanor before the court, client, and community. Formality in the dependency court should be encouraged by the court and followed by counsel.*

*Recommendation 11- Implementation Strategies*

*11-A RPC training should stress the importance of professionalism and emphasize the elements that demonstrate professionalism in the courtroom – timeliness, preparation, respect for clients and other system stakeholders, maintaining client confidentiality, etc. RPC training should also stress that a problem-solving approach to handling dependency and neglect cases, or a “team” approach in the courtroom, does not mean that cases should not be handled with the appropriate degree of formality that these cases (and families) deserve. If a mentoring model for RPC training is adopted, mentor-attorneys should provide feedback to new attorneys about their level of professionalism and model professional practice.*

*11-B Judges should provide feedback about courtroom demeanor to all of the professionals that practice before them—judges should set high expectations for professional conduct by all parties and should clearly communicate those expectations.*

*11-C Formal complaint procedures should permit stakeholders to raise concerns about RPC professionalism in a safe and confidential environment. RPC for whom complaints about professionalism have been made should be at serious risk of losing their contract to serve as RPC in dependency and neglect cases.*

*Recommendation 12: Case Preparation*

*Proficient practice requires extensive preparation. Attorneys should take and be given the time to prepare their cases. Such preparation includes case analysis, preparation of case legal theory and persuasive theme, active participation in every stage of the proceeding, thorough investigation including full interviews with witnesses, and obtaining and reviewing of all relevant pleadings and documents including agency records.*

*Recommendation 12- Implementation Strategies*

*12-A RPC training should emphasize the critical importance of case preparation, the various elements involved in that preparation, and strategies to facilitate timely preparation.*

*12-B The Court should be encouraged to ensure that copies of court orders are distributed to all parties immediately after each hearing— RPC are then better able to follow-up immediately with their clients regarding what happened in the hearing and ensure their understanding.*

*Recommendation 13: Knowledge and Utilization of Community Services and Utilization of Tools*

*Attorneys should have knowledge of and advocate for services available and appropriate for their client's and their clients children. Attorneys should know and utilize legal resources and remedies available to their clients including discovery, motions, objections, trial briefs, writs, and appeals. They should also have a full understanding of dependency law and procedure, trial advocacy, child maltreatment and development, medicine, mental health, and family dynamics.*

*Recommendation 13-Implementation Strategies*

*13-A RPC training should include the myriad of dependency-neglect elements already discussed but should also stress litigation skills to better prepare RPC to take cases to trial if appropriate.*

*13-B The SCAO should develop written materials that describe the treatment and other services available locally to parents and those that can be accessed in other counties so that the RPCs have a better understanding of what is available, the nature of the services, and their appropriateness for certain clients.*

*13-C The SCAO and the Respondent Parents' Counsel Task Force should consider methods to expand legal services to parents in dependency court, thereby providing resources that should positively impact RPC practice, such as: obtaining drivers' licenses for clients, assisting clients to complete the restraining order process and filing those papers with the Court, expunging records; applying for child support and applying to have child support payments and arrearages reduced, assisting in issues related to legal guardianship, assisting parents to make Court appearances by providing transportation costs, and referring parents to local agencies for help with other legal services such as divorce and immigration.*

*Recommendation 14: Client and Party Communication*

*Successful representation is contingent upon a meaningful relationship with the client. Such a relationship cannot be built with casual and infrequent client contact. Attorneys should meet with clients meaningfully in advance of proceedings and throughout the case, counsel clients as to legal options given the universe of likely outcomes, and represent the client's directives and interests. Attorneys should have and take the time to prepare clients for proceedings and to communicate with opposing counsel.*

*Recommendation 14- Implementation Strategies*

*14-A At a minimum there should be designated spaces and private rooms for RPC to meet with parents outside the courtroom in each courthouse.*

*14-B The SCAO and Respondent Parents Counsel Task Force should explore the feasibility for local RPCs to hold "office hours" for parents to meet them at the courthouse rather than their offices. Generally, court houses are on bus lines or are easily accessible.*

*14-C The court should require that RPCs (and possibly other stakeholders) sign-in 15 minutes prior to hearings to afford at least 15 minutes to meet with clients before the hearing is convened.*

*14-D RPCs (and GALs) could be required to complete a form in advance of the hearing that notes when they last met with their client. This form would be handed in to the court—informing the court about extent of contact between attorneys and their clients as well as setting clear expectations that contact is occurring in-between hearings.*

14-E *The way in which cases are calendared before the court can be a barrier to RPCs meeting with their clients in the courthouse prior to hearings. The Court should examine its case calendaring practice to facilitate opportunities for counsel to meet with their clients prior to hearings in ways that are more meaningful (e.g., in a quiet location and for more than just a brief few minutes). Because lengthy meetings in the courthouse with clients prior to hearings may not always be warranted (e.g., because RPC have had an opportunity in between scheduled hearings to meet with their clients), the court may want to consider a brief "staffing" meeting at the beginning of each day's calendar. For example, prior to the beginning of each calendar day, the court can set a brief scheduling meeting in the courtroom for parties. During this meeting, the cases scheduled for that day can be discussed in terms of whether or not there is a need for additional time or re-ordering of hearings on the calendar call, to permit a meeting between attorney and client. The court can then consider building in some time before the case is called to facilitate that meeting. This "staffing" meeting can also be used to trouble-shoot attorney scheduling conflicts with other cases and courtrooms, as well as missing agency reports or the need to locate other parties who should be in attendance at hearings.*

#### *Recommendation 15: Courtroom/Trial Skills*

*The traditional art of trial advocacy including, direct and cross exam, opening statements, closing arguments, objections, and evidentiary foundations is critical to the dependency court process. Attorneys should acquire and use these skills.*

#### *Recommendation 15- Implementation Strategies*

15 *While there are multiple sources for substantive child welfare law and procedure training in Colorado and nationally, trial skills training, which is strongly desired by RPCs themselves, is harder to arrange and is expensive. The SCAO and the Respondent Parents' Counsel Task Force should consider the National Institute for Trial Advocacy regional training conducted with NACC in the Denver Area each May, or other learn-by-doing experiential trial training.*

APPENDIX A  
NCSC NATIONAL PARENT COUNSEL INFORMATION COMPENDIUM: JULY 2006



## National Parent Counsel Information Compendium: July 2006

State	Data	
<b>AR</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Undetermined
	<b>Number of Attorneys:</b>	Undetermined
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	<p>Attorney <i>ad Litem</i> Coordinator developed Attorney Performance Survey, distributed to judges and other child welfare system attorneys, caseworkers, CASAs. Attorneys complete self-survey to measure compliance with Attorney <i>ad Litem</i> standards.</p> <p>Performance measures and statewide averages based on standard of representation. Attorneys falling short are subject to site visits, court observations, case file reviews, and interviews with judges, caseworkers, and attorneys.</p> <p>Failure to comply with Standards or make improvement may result in non renewal of contract.</p>
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Undetermined
	<b>CA</b>	<b>Compensation:</b>
<b>Caseload:</b>		273 is current average in non-DRAFT [Dependency Representation, Administration, Funding, and Training] counties. DRAFT counties have a statewide caseload maximum of 141 per full-time attorney; based upon recommendations of recent study.
<b>Representation Model:</b>		New DRAFT pilot program switches responsibility for contract attorneys from local courts and to California Administrative Office of the Courts.
<b>Number of Attorneys:</b>		Undetermined
<b>Monetary Source:</b>		Undetermined
<b>Qualifications and CLE:</b>		Undetermined
<b>Application Process:</b>		Undetermined
<b>Duties:</b>		Undetermined
<b>Legal Authority:</b>	Undetermined	
<b>GA</b>	<b>Compensation:</b>	\$60 per hour is recommended minimum.
	<b>Caseload:</b>	Awaiting results of workload study.
	<b>Representation Model:</b>	Contract with county.
	<b>Number of Attorneys:</b>	Twelve in one large county; eight in the other large county. Other counties vary.
	<b>Monetary Source:</b>	County.
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Awaiting study results.
<b>Legal Authority:</b>	Kenny A.	



## National Parent Counsel Information Compendium: July 2006

<b>MA</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Undetermined
	<b>Number of Attorneys:</b>	Undetermined
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Standards for Investigations and Report Writing for Guardians <i>ad Litem</i> , effective January 2005.
<b>MI</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Undetermined
	<b>Number of Attorneys:</b>	Undetermined
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Parents named as respondents in abuse and neglect petitions entitled to representation. They must be advised of right to counsel [even if they cannot afford representation] at each hearing. If indigent, court will appoint attorney pursuant to MCL 712A.17c(4); MCR 5.915(B).



## National Parent Counsel Information Compendium: July 2006

<b>MO (22<sup>nd</sup> Circuit)</b>	<b>Compensation:</b>	\$1000 per month for attorneys representing mothers. \$750 per month for attorneys representing fathers. Difference due to fact that those representing fathers get far fewer cases and spend less time. Cases assigned upon standard rotation.
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Contract to provide services for one year at a rate of \$750 or \$1,000 per month [for those cases assigned on rotation day]. So if attorney is assigned to two days of rotation, payment is \$2,000 per month for all those mothers assigned to attorney on those particular days.
	<b>Number of Attorneys:</b>	Three in each courtroom (one mother attorney, one father attorney, one conflict attorney) for each day of week. They are on "standby" and agree to take all cases that come in on their day.
	<b>Monetary Source:</b>	Funding: \$123,000 from city's general fund (in court budget), \$83,630 from CIP, \$18K from family drug court grant. Attorneys may obtain other payment at later stages (TPR, adoption, etc.) in which case attorneys bill Children's Division or petitioner (in the case of adoption).
	<b>Qualifications and CLE:</b>	Judge and CIP Committee prefer attorneys with experience in the field; aim for diverse group to match population. Attorney who is leaving often finds own replacement; but, judge must approve.
	<b>Application Process:</b>	Interested attorneys submit their names to judge. If judge recommends they are hired by CIPC.
	<b>Duties:</b>	Attorneys agree to show up on a particular day(s) of week in certain courtroom and represent a particular party. Attorneys provide continuous representation. Attorneys contract to come in whenever needed (not just "on-call" days.). Out of court work listed in contract includes: investigation, responding to motions, researching and filing briefs, phone calls, etc. Attorneys are required to keep log of case contacts. Attorneys must comply with ASFA/CIP timelines.
	<b>Legal Authority:</b>	CIP timelines.



**National Parent Counsel Information Compendium: July 2006**

<b>MT</b>	<b>Compensation:</b>	As of July 2006, new statewide office of public defense (OPD) opened. Prior to this, attorneys paid \$60 per hour. This hourly rate is being continued for attorneys employed at one of the 11 regional OPD offices or contracted to provide services thru June 2007.
		Attorneys are offered cases at hourly rate of \$60 together with mileage and costs. Costs not exceeding \$200 per case do not need pre-approval. Costs for experts, etc. up to \$2,000 per function must be pre-approved on the regional level. For those exceeding \$2,000, pre-approval from state office is required.
		Proposed \$71/hr. for 2007. If approved by '07 legislature, would be effective July 1, 2007.
	<b>Caseload:</b>	Caseloads for each attorney whether OPD employee or contract attorney will be monitored and administered in accordance with Standards
	<b>Representation Model:</b>	OPD system is a combination of regional offices, who represent the mother in dependency and neglect cases and contract attorneys who represent the father. The OPD's office and Montana Legal Services Association are trying to finalize a contract for MTLA to provide counsel for all the children.
		OPD offices throughout the state in which they have full-time employees. In areas without regional OPD offices, OPD contracts with attorneys.
		Cases typically involve 3 attorneys; 1 each for child, mother, and father. OPD assigns either an employee or contract attorney to the custodial parent. If FTE assigned, then regional deputy assigns contract attorney and a conflict attorney for other two parties. Both contract and conflict attorneys are assigned from the same pool of contract attorneys, who have signed a Memorandum of Understanding (MOU). Contract attorney supervised by regional deputy; conflict attorney overseen by conflict coordinator. If contract attorney assigned to the custodial parent, then two conflict attorneys must be assigned. This is also the case where there are multiple dads or multiple children who have conflicts between themselves. OPD says, "we understand the oversight issue on multiple conflict attorneys and have restricted the conflict coordinator's influence in each case."
	<b>Number of Attorneys:</b>	Varies.
	<b>Monetary Source:</b>	OPD began assigning and funding attorneys in dependency and neglect cases July 1, 2006.
	<b>Qualifications and CLE:</b>	To be eligible for assignment, 16 hours if training required. Four hours of which must be devoted to ICWA. Standards outline areas in which "counsel shall be knowledgeable," including legislation; case law; causes and treatments of child abuse; services available to families; local experts; child development; substance abuse and mental health issues; disability; etc.
	Generally, attorneys must have a Juris Doctor and be licensed in Montana. Annual requirement of 15 CLE credits.	
<b>Application Process:</b>	OPD has database of attorneys in each of its 11 regions who have applied for contract assignments. Those that meet qualification criteria set forth in <u>Standards</u> have been offered a MOU in which attorney agrees to abide by Standards, training, monitoring and billing procedures. MOU does not guarantee assignment of cases, nor does it obligate attorney to accept cases when asked. Performance of a particular attorney dictates future assignments.	
<b>Duties:</b>	<u>Standards</u> provide duties for case preparation and handling. Case preparation must involve soliciting support of social workers; advising parent of all available options; using all standard means to locate parent; actively representing parent at all stages of proceeding; meeting w/parent as soon as assignment known; and using experts to communicate w/parent if necessary. Standards explain how to conduct initial meeting with client. Case handling must involve seeking "the most expedient and timely resolution of the proceeding possible" paired with "zealous advocacy;" familiarity with court; preparation for various types of proceedings; use of expert and lay witnesses; client; challenging "unnecessary supervision and restrictions on visitation;" maintaining contact with client; and in cases of termination, whether statutory grounds met, whether termination in child's best interest, whether agency made reasonable efforts, and whether treatment plan appropriate.	
<b>Legal Authority:</b>	<u>Standards</u> are set forth on the OPD website and have been adopted by the Commission for training purposes. They are a work in progress and can be modified as the need arises.	



## National Parent Counsel Information Compendium: July 2006

<b>NE</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	No statewide practice; all counties vary.
	<b>Number of Attorneys:</b>	Undetermined
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Undetermined
<b>NV</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Public Defender or court-appointed counsel. All indigent parents receive counsel (according to the ABA's CIP Progress Report). However, 2005 study noted that only 46% in Clark County, 42% in Washoe County, and 20% in Lyon County in cases where appointed for mother who was party in proceedings. 22% of Washoe, 26% in Clark County, and 5% in Lyon County where appointed for father. This study recommended increasing availability and earlier appointment of attorneys for parents.
	<b>Number of Attorneys:</b>	<p>Washoe County PD office hired additional attorneys to represent parents, and 2 full-time family court investigative specialists in March 2005 to investigate cases; help parents complete case plans; liaise to child welfare agency regarding reunification.</p> <p>Clark County PD office hired 2 full-time attorneys to represent parents. Clark County uses private attorneys when caseloads of these 2 exceed 80 or when conflict exists. Private attorneys usually appointed in conflict cases.</p>
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Undetermined



**National Parent Counsel Information Compendium: July 2006**

<b>OH</b>	<b>Compensation:</b>	Varies. Determined by local common pleas court. State PD reimburses county for about 25% of the costs for indigent defense work.
	<b>Caseload:</b>	Varies by county.
	<b>Representation Model:</b>	Again, varies by county. Some have contracts (in- and out-of-court rates are usually different); flat fee; PD office; and flat fees for different types of events.
	<b>Number of Attorneys:</b>	No data; but many counties report a shortage.
	<b>Monetary Source:</b>	County funded, with some reimbursement by the state PD office.
	<b>Qualifications and CLE:</b>	Local judge accepts an attorney for the assignment list.
		Anticipate new court rules to be approved by the Supreme Court establishing qualifications and standards for guardians <i>ad litem</i> .
		Must meet general requirements to be member of the bar in good standing (CLE, fees, etc.).
	<b>Application Process:</b>	Application process varies, but all must be members of the bar in good standing with fees and CLEs up to date. Supreme Court is taking a firmer stand on registration and CLEs by suspending those who do not meet the requirements.
<b>Duties:</b>	Some courts produce materials, but many do not.	
<b>Legal Authority:</b>	Proposed GAL standards are expected to be adopted.	
<b>PR (San Juan pilot)</b>	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	In June 2005, full-time attorney had 18 active cases.
	<b>Representation Model:</b>	Contract with Legal Services in San Juan.
	<b>Number of Attorneys:</b>	1 FT.
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Undetermined



## National Parent Counsel Information Compendium: July 2006

UT	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Undetermined
	<b>Number of Attorneys:</b>	Undetermined
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	Undetermined
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Office recommends that attorneys prepare for and attend all court hearings, including shelter hearings and mediation; fully advise client of nature of proceedings and of client's rights; fully advise client of settlement offers; be available to consult with client outside of court; attend meetings regarding client's case with one or more representatives of DCFS, OAG, and Office of the GAL; represent interest of client at all stages of proceedings; participate in training.
	<b>Legal Authority:</b>	Legislation created Office of Child Welfare Parental Defense (Office) to enter into contracts with attorneys; provide assistance and advice to attorneys; develop and provide educational and training programs; help attorneys comply with duties.
VT	<b>Compensation:</b>	Undetermined
	<b>Caseload:</b>	Undetermined
	<b>Representation Model:</b>	Public defender and contract attorneys.
	<b>Number of Attorneys:</b>	2004 report recommended Full-time conflict counsel and the use of case managers.
	<b>Monetary Source:</b>	Undetermined
	<b>Qualifications and CLE:</b>	2004 report recommended mandatory pre-service training for new contract attorneys and public defenders.
	<b>Application Process:</b>	Undetermined
	<b>Duties:</b>	Undetermined
	<b>Legal Authority:</b>	Undetermined



## National Parent Counsel Information Compendium: July 2006

<b>WA</b>	<b>Compensation:</b>	Compensation for full-time attorney is between \$100, 000 to \$120,000 per year, which is paid monthly to attorney once the attorney has provided OPD with the required monthly documentation-including an accounting of the attorney's current caseload and hours spent on cases. The attorney is expected to cover own overhead costs.
	<b>Caseload:</b>	<ul style="list-style-type: none"> <li>• Full-time attorney is allowed to have a maximum caseload of 80 cases. A caseload is the number of clients an attorney represents who have dependencies plus the number of clients an attorney represents who have termination of parental rights actions. For example: Attorney X represents a mother of 3 dependent children- a newborn and 2 older children. The state has filed petitions for termination of parental rights as to the older 2 children. If this is the attorney's entire caseload, the attorney has 2 cases, 1 for the children in dependency status and 1 for the children in termination status.</li> <li>• Pilot in 2000 (Benton-Franklin and Pierce Counties) had 90 full-time attorneys.</li> <li>• In 2003, OPD set the maximum caseload at 80 open cases per attorney.</li> </ul>
	<b>Representation Model:</b>	OPD contracts coincide with states' 2-yr budget cycle, which is currently running from July 1, 2005 to June 30, 2007. Those that start somewhere in the middle of the budget cycle contract with OPD until the end of the budget cycle. Contract with individual attorneys, as well as law firms and public defender firms.
		Benton-Franklin pilot juvenile court contracted with 4 part-time private attorneys (5 by 2005 report).
		Pierce pilot juvenile court contracted with PD's Department of Assigned Counsel (8 program attorneys by 2005 report).
		Kitsap and Snohomish issued Request for Proposals (RFP) for attorneys in 2006.
	<b>Number of Attorneys:</b>	Currently have 50 attorneys in program (some individual attorneys and some firms or public defender firms). However, some attorneys only K for partial caseload. Thus there are enough attorneys in smaller counties to still address conflicts. Once the program expands into the other 4 or 5 counties, they anticipate number of attorneys to be approximately 100.
		Benton County: 4 part-time attorneys.
		Pierce County: PD has 1 supervisor, 4 full-time parent attorneys, and added 2 paralegals and 2 social workers under the pilot.
	<b>Monetary Source:</b>	State program, funded by the Washington State Legislature.
Pilots funded by legislature in 2000, and OPD program has been re-funded.		
<b>Qualifications and CLE:</b>	Attorneys must have history of providing excellent representation to clients. Attorneys must have: history of reasonable case preparation and provision of adequate client advice; excellent litigation skills; be able to communicate well with indigent clients; be familiar with RCW 13.34 (Juvenile Court Act regarding dependency and termination of parent-child relationship) and court rules pertaining to dependency and termination cases; and be willing to provide time, activity and billing documentation required for Parents Representation Program. (See Kitsap County RFP, listing required qualifications of attorneys requesting contracts). Attorney must take part in CLEs offered by OPD, as well as informal training such as brainstorming cases in small groups of OPD attorneys or 1-on-1 with Parents Representation Managing Attorney.	
	Kitsap and Snohomish require experience representing a party in dependency or termination cases, or mentoring/supervision by attorney with significant experience. If new hires are anticipated, proposal from firm must include level of experience of attorneys to be hired.	
<b>Application Process:</b>	In each county with a program, attorneys are required to submit RFP. The attorneys may be required to submit to an interview with the hiring committee as part of the hiring process. See RFP for Kitsap County. OPD advises county's juvenile court of the attorneys who have been successful at obtaining contract to provide representation. The county juvenile court assigns cases to individual attorney, private firm or PD firm.	



## National Parent Counsel Information Compendium: July 2006

<b>WA Cont.</b>	<b>Duties:</b>	Duties are laid out in individual contracts and include: that attorney comply with Rules of Professional Conduct, as well as adhere to Proposed Dependency and Termination Defense Standards (see "Costs of Parent Representation," pp. 25-30) and "Adequate Representation Practice Guidelines: Duties of Parents' Counsel" (see "Practice Guidelines"). Under the contracts, attorneys are also required to: maintain an office suitable for meeting with clients; maintain client contact, keep client informed of progress of the case and offer effective legal advice; maintain staff to answer telephone during regular work hours; provide documentation of representation; follow the above-mentioned practice standards, including any amendments; and limit continuances due to over-scheduling on the part of the attorney. The attorney is also required to utilize experts for second opinion evaluations and defense social workers as needed. A full-time attorney is provided a 1/4 time social worker and a minimum of \$3000 per year for second opinion expert evaluations.)
	<b>Legal Authority:</b>	Legal authority of OPD codified under RCW 2.75. The mission of the Washington State Office of Public Defense (OPD) is "to implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state." RCW 2.70.005. Standards of practice are referenced under the "Duties of parent counsel" section.
<b>WY</b>	<b>Compensation:</b>	Varies by county.
	<b>Caseload:</b>	Varies by county.
	<b>Representation Model:</b>	Varies by county, but mostly hourly.
	<b>Number of Attorneys:</b>	Varies by county.
	<b>Monetary Source:</b>	County.
	<b>Qualifications and CLE:</b>	15 hours of CLE required annually by bar, but not specific to parent representation.
	<b>Application Process:</b>	Attorney needs to express interest; no formal procedure.
	<b>Duties:</b>	No specific duties beyond code of professional responsibility.
	<b>Legal Authority:</b>	By statute, an attorney may be appointed if the party is indigent.



## National Parent Counsel Information Compendium: July 2006

### State Summaries

#### Arizona

The state [CIP](#) published a [Handbook for Parents and Guardians in Dependency Cases](#).

#### Arkansas

Terri Hays, Ad Litem Coordinator, 501-682-2657, [terri.hays@arkansas.gov](mailto:terri.hays@arkansas.gov). Division of Dependency-Neglect Representation.

#### California

Leah Wilson 415-865-7977.

[Compiling and sending information to us—but noted that their statistics will be somewhat misleading for our purposes because most attorneys represent parents and children, and they do not cull these out separately in their reports.]

#### Connecticut

Effective 7-1-06, new statutorily created agency, the [Commission on Child Protection](#), handles child protection contracts.

Carolyn Signorelli, Chief Child Protection Attorney, 203-596-4144, [Carolyn.signorelli@po.state.ct.us](mailto:Carolyn.signorelli@po.state.ct.us).

#### Delaware

Loretta DeShields, Sr. Program Coordinator, CASA Program, 302-255-0071.

#### Florida

Kim Miller, 12<sup>th</sup> Judicial Circuit, 941-742-5947.

#### Georgia

Settlement of [Kenny A. v. Perdue](#), a class action brought against DeKalb and Fulton counties to comply with representation for children may affect representation for parents in Georgia as well. As part of the settlement, the court is undergoing a study of what a “case” is, including time/workload study, duties of attorneys, etc. The two counties being sued hired 12 and 8 new attorneys. The settlement also decided on a caseload of 130/attorney (child); contrast the ABA/NACC standard, which is 100 cases/child attorney.

They are awaiting the results of the study to determine caseload, duties, and other standards. Also awaiting ABA standards (due out in the Fall).

Two years ago, legislation (brought on by threat of several lawsuits) created the statewide [Public Defender Standards Council](#). The legislation that passed excluded juvenile cases from receiving any of the state funding (although they could obtain funding via the counties or other sources). The Supreme Court is now supporting an amended version of the legislation that would add juvenile cases. The court also wants to use CIP money (\$25-50K) to contract with the Council for parent counsel standards and training. Thirty counties



## National Parent Counsel Information Compendium: July 2006

have already done this using county funds to pay the Council. The Council has also already promulgated [standards](#) for various other issues, including [representing juveniles](#) and [public defender staffing and caseload](#).

State Supreme Court created the [Child Placement Project](#) in 1995. NCSC conducted their Phase I assessment (see [Final Report](#)).

Michelle Barclay (AOC), 404-657-9219.

### Hawaii

Sandie Kato, Program Specialist, First Judicial Circuit, 808-524-4429, [Sandie.H.Kato@courts.state.hi.us](mailto:Sandie.H.Kato@courts.state.hi.us).

### Michigan

Laura Hutzell, 517-373-4835, [hutzell@courts.mi.gov](mailto:hutzell@courts.mi.gov).

### Missouri

Karen Herman, 22<sup>nd</sup> Circuit, 314-552-2042, [kherman@courts.mo.gov](mailto:kherman@courts.mo.gov). Sent her old information to see if there are updates. Compensation seems to be the only major change.

### Montana

Larry Murphy (contract manager), c/o Sherri D. Rafter, Montana Supreme Court, Court Assessment Program Coordinator, 406-841-2970, [srafter@mt.gov](mailto:srafter@mt.gov).

### New Hampshire

Kristin Lamont, Permanency Planning Coordinator, 603-271-6418, [kqlamont@aspi.net](mailto:kqlamont@aspi.net).

### Ohio

Supreme Court is expected to adopt standards for GALs from the Advisory Committee on Children, Families and the Courts. *Report and Recommendations on Standards for Guardians ad Litem*. Columbus, OH: Advisory Committee, December 2005. Proposed standards involve training, duties, reporting, etc. Many of the parent counsel are also GALs, so the thought is that perhaps the system as a whole will improve if the standards are adopted.

### Rhode Island

Buddy Croft, Chief of Staff, 401-458-5320, [bcroft@courts.state.ri.us](mailto:bcroft@courts.state.ri.us).

PD office; legal services contract with court if conflict or more than 1 parent. If conflict with both, indigent defense list of rotating private attorneys who must meet qualifications. Funded by state funds (private attorneys); also CLE required. Application process—must be approved by the chief judge of the family court. Funded from general fund in court system. \$30 per hour for private; \$1,000 cap. Separate billing for review of case (\$60 per case). Task force on indigent defense a few years ago; family court uses majority of indigent defense monies so they did not increase funding.



## National Parent Counsel Information Compendium: July 2006

### Utah

[Utah Office of Child Welfare Parental Defense](#)

### Washington

In 2000, at the request of the legislature, the state [Office of Public Defense](#) (OPD) created a pilot program to improve representation of parents. A state appropriation of \$500,000 was given to the OPD to provide better representation to parents; decrease court delay caused by overburdened parents' attorneys; and increase compensation for parents' attorneys. Pilot programs were started in Benton-Franklin Juvenile Court and Pierce County Juvenile Court. Pilot attorneys were given specific roles/duties, attended specialized training, and had a caseload maximum of 90 cases per full-time attorney.

An evaluation of the pilot found that:

- The majority of cases in both courts were compliant with statutory timeframes, with a marked decrease in time between removal and shelter hearings
- The average number of days in foster care decreased from pre-pilot times
- Pre-pilot unification rate was 36.8 percent, compared with 56.4 percent in the pilot courts. This increase was possibly the result of better representation for parents

See Oetjen, Jason A. "[Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation](#)." NCJFCJ *Technical Assistance Bulletin* (August 2003).

Now the OPD's [Parents' Representation Program](#) is the central entity statewide, although counties still issue RFPs etc. In recent years the pilot has been re-funded and expanded to include the following counties: Clallam, Clark Cowlitz, Ferry, Grant, Grays Harbor, Kitsap, Kittitas, Pacific, Pend Oreille, Skagit, Snohomish, Spokane, Stevens, and Yakima.

2005 report notes that substance abuse accounts for much of the cases (60-85% of cases reviewed for evaluation of Pierce and Benton-Franklin pilots).

### Wyoming

Tara Ackerman, [tackerman@courts.state.wy.us](mailto:tackerman@courts.state.wy.us).

### Resources

[Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act](#). See VIII, Representation of Parents in Dependent/Neglect Cases.

The [Kenny A. v. Perdue Class Action page](#) maintained by the Barton Clinic/[ChildWelfare.net](#) at Emory includes a chronology of the case (June 6, 2002, thru March 23, 2006); documents related to the case; case summary; proposed standards; and other documentation.



## National Parent Counsel Information Compendium: July 2006

Dobbin, Shirley A., et al. [Nevada Court Improvement Project Re-Assessment: Final Report](#). Reno: NCJFCJ, 2005.

Harper, Carol J., Kathy Brennan, and Jennifer Szolnoki. [Dependency and Termination Parents' Representation Program Evaluation Report 2005](#). Olympia: Washington State Office of Public Defense, 2005.

[Feasibility of Evaluating the State Court Improvement Program](#). Vol. I. Final Report. Washington, DC: US DHHS, Administration for Children and Families, September 12, 2003. [Appendix C: Summary of Court Reform Evaluations](#) includes summaries for Arizona, Colorado, Connecticut, DC, Illinois, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Pennsylvania, and Wisconsin. See especially Vol. II, [Evaluability Assessment Site Visit Summaries: Final Report](#), which contains information about indigent parent counsel programs in Arkansas, Connecticut, Delaware, Kansas, Michigan, Oregon, Pennsylvania (Philadelphia), Texas, and Virginia.

Oetjen, Jason A. "[Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation](#)." *Technical Assistance Bulletin* (August 2003). (KFW104.6 O38 2003)

Bridge, Bobbe J., and Joanne I. Moore. "[Implementing Equal Justice for Parents in Washington: A Dual Approach](#)." *Juvenile and Family Court Journal*, i. 4 (Fall 2002): 31.

Hurst, Hunter, Jr., Gregory J. Halemba, Susanna Zawacki, and Rachael D. Gunn. [Pennsylvania Court Improvement Project: Assessment of 2001 Initiatives in the Philadelphia Dependency Court](#). Pittsburgh: NCJJ, 2002.

Gallagher, Daniel P. [Child Abuse and Neglect Cases in the Colorado Courts 1996-2000: A Reassessment](#). Denver: Colorado Judicial Branch, 2002.

North Carolina Juvenile court: Child Protection Hearings: A Handbook for Parents, Guardians, Custodians and Children. Raleigh: North Carolina AOC, North Carolina CIP, 2002.

Grasso, Kathi L., et al. [Michigan Court Improvement Program Assessment of Probate Courts' Handling of Child Abuse and Neglect Cases](#). Washington, DC: ABA, NCSC, 1997.

APPENDIX B  
ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING  
PARENTS IN ABUSE AND NEGLECT CASES

## American Bar Association

### Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

#### Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

## **SUMMARY: ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases**

Basic Obligations: The parent's attorney shall:

### **General:**

- 1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**
- 2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**
- 3. Understand and protect the parent's rights to information and decision making while the child is in foster care.**
- 4. Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction.**
- 5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.**
- 6. Cooperate and communicate regularly with other professionals in the case.**

### **Relationship with the Client:**

- 7. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.**
- 8. Act in accordance with the duty of loyalty owed to the client.**
- 9. Adhere to all laws and ethical obligations concerning confidentiality.**
- 10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.**
- 11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the**

pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.

12. Work with the client to develop a case timeline and tickler system.
13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.
15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.
18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.

**Investigation:**

19. Conduct a thorough and independent investigation at every stage of the proceeding.
20. Interview the client well before each hearing, in time to use client information for the case investigation.

**Informal Discovery:**

21. Review the child welfare agency case file.
22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

**Formal Discovery:**

23. When needed, use formal discovery methods to obtain information.

**Court Preparation:**

24. **Develop a case theory and strategy to follow at hearings and negotiations.**
25. **Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.**
26. **Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.**
27. **Aggressively advocate for regular visitation in a family-friendly setting.**
28. **With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**
29. **Thoroughly prepare the client to testify at the hearing.**
30. **Identify, locate and prepare all witnesses.**
31. **Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.**

**Hearings:**

32. **Attend and prepare for all hearings, including pretrial conferences.**
33. **Prepare and make all appropriate motions and evidentiary objections.**
34. **Present and cross-examine witnesses, prepare and present exhibits.**
35. **In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.**
36. **Request closed proceedings (or a cleared courtroom) in appropriate cases.**
37. **Request the opportunity to make opening and closing arguments.**
38. **Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.**

**Post Hearings/Appeals:**

39. **Review court orders to ensure accuracy and clarity and review with client.**
40. **Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.**
41. **Consider and discuss the possibility of appeal with the client.**

**42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.**

**43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.**

**44. Communicate the results of the appeal and its implications to the client.**

**Obligations of Attorney Managers:**

Attorney Managers are urged to:

- 1. Clarify attorney roles and expectations.**
- 2. Determine and set reasonable caseloads for attorneys.**
- 3. Advocate for competitive salaries for staff attorneys.**
- 4. Develop a system for the continuity of representation.**
- 5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.**
- 6. Establish a regular supervision schedule.**
- 7. Create a brief and forms bank.**
- 8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.**
- 9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.**
- 10. Develop and implement an attorney evaluation process.**
- 11. Work actively with other stakeholders to improve the child welfare system, including court procedures.**

**Role of the Court**

The Court is urged to:

- 1. Recognize the importance of the parent attorney's role.**
- 2. Establish uniform standards of representation for parents' attorneys.**

- 3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.**
- 4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.**
- 5. Ensure parents' attorneys receive fair compensation.**
- 6. Ensure timely payment of fees and costs for attorneys.**
- 7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.**
- 8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.**
- 9. Ensure all parties, including the parent's attorney, receive copies of court orders and other documentation.**
- 10. Provide contact information between clients and attorneys.**
- 11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.**

Basic Obligations: The parent's attorney shall:

### **General<sup>1</sup>**

- 1. Adhere to all relevant jurisdiction-specific training and mentoring requirements before accepting a court appointment to represent a parent in an abuse or neglect case.**

Action: The parent's attorney must participate in all required training and mentoring before accepting an appointment.

Commentary: As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A parent's fundamental liberty interest in the care and custody of his or her child is at stake, and the attorney must be adequately trained to protect this interest. Because the stakes are so high, the standards drafting committee recommends all parents' attorneys receive a minimum of 20 hours of relevant training before receiving an appointment and a minimum of 15 hours of related training each year. Training should directly relate to the attorney's child welfare practice.<sup>2</sup> This is further detailed in Attorney Managers Standard 5 below. In addition, the parent's attorney should actively participate in ongoing training opportunities. Even if the attorney's jurisdiction does not require training or mentoring, the attorney should seek it. Each state should make comprehensive training available to parents' attorneys throughout the state. Training may include relevant online or video training.

- 2. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**

Action: Parents' attorneys may come to the practice with competency in the various aspects of child abuse and neglect practice, or they need to be trained on them. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney must be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357
- Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
- Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)
- State Indian Child Welfare Act laws

- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998).
- Interstate Compact on Placement of Children (ICPC)
- Foster Care Independence Act of 1999 (FCIA), P.L. 106-169
- Individuals with Disabilities Education Act (IDEA), P.L. 91-230
- Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g
- Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part)
- Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2
- Immigration laws relating to child welfare and child custody
- State laws and rules of evidence
- State laws and rules of civil procedure
- State laws and rules of criminal procedure
- State laws concerning privilege and confidentiality, public benefits, education, and disabilities
- State laws and rules of professional responsibility or other relevant ethics standards
- State laws regarding domestic violence
- State domestic relations laws

Commentary: Although the burden of proof is on the child welfare agency, in practice the parent and the parent's attorney generally must demonstrate that the parent can adequately care for the child. The parent's attorney must consider all obstacles to this goal, such as criminal charges against the parent, immigration issues, substance abuse or mental health issues, confidentiality concerns, permanency timelines, and the child's individual service issues. To perform these functions, the parent's attorney must know enough about all relevant laws to vigorously advocate for the parent's interests. Additionally, the attorney must be able to use procedural, evidentiary and confidentiality laws and rules to protect the parent's rights throughout court proceedings.

### **3. Understand and protect the parent's rights to information and decision making while the child is in foster care.**

Action: The parent's attorney must explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in foster care. The parent's attorney should seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services. If necessary, the parent's attorney should intervene with the child welfare agency, provider agencies, medical providers and the school to ensure the parent

has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

**4. Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.**

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

**5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.<sup>3</sup>**

Action: The parent’s attorney should not request continuances unless there is an emergency or it benefits the client’s case. If continuances are necessary, the parent’s attorney should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client’s interests. The attorney must notify all counsel of the request. The parent’s attorney should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

Commentary: Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased or other requests by the parent may be granted. If a hearing is continued and the case is delayed, the parent may lose momentum in addressing the issues that led to the child’s removal or the parent may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act (ASFA) timelines continue to run despite continuances.

#### **6. Cooperate and communicate regularly with other professionals in the case.<sup>4</sup>**

Action: The parent’s attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent’s attorney should communicate with the caseworker, foster parents and service providers to learn about the client’s progress and their views of the case, as appropriate. The parent’s attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders and administrative determinations do not conflict with the client’s goals in the abuse and neglect case.

Commentary: The parent’s attorney must have all relevant information to try a case effectively. This requires open and ongoing communication with the other attorneys and service providers working with the client and family. Rules of professional ethics govern contact with represented and unrepresented parties. In some states, for instance, attorneys may not speak with child welfare caseworkers without the permission of agency counsel. The parent’s attorney must be aware of local rules on this issue and seek permission to speak with represented parties when that would further the client’s interests.

#### **Relationship with the Client<sup>5</sup>**

#### **7. Advocate for the client’s goals and empower the client to direct the representation and make informed decisions based on thorough counsel.<sup>6</sup>**

Action: Attorneys representing parents must understand the client’s goals and pursue them vigorously. The attorney should explain that the attorney’s job is to represent the client’s interests and regularly inquire as to the client’s goals, including ultimate case

goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

Commentary: Since many clients distrust the child welfare system, the parent's attorney must take care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment. The attorney should clearly explain the legal issues as well as expectations of the court and the agency, and potential consequences of the client failing to meet those expectations. The attorney has the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but the client is in charge of deciding the case goals and the attorney must act accordingly.

#### **8. Act in accordance with the duty of loyalty owed to the client.**

Action: Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

Commentary: Often attorneys practicing in abuse and neglect court are a close knit group who work and sometimes socialize together. Maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. The attorney, however, should be vigilant against allowing the attorney's own interests in relationships with others in the system to interfere with the attorney's primary responsibility to the client. The attorneys should not give the impression to the client that relationships with other attorneys are more important than the representation the attorney is providing the client. The client must feel that the attorney believes in him or her and is actively advocating on the client's behalf.

#### **9. Adhere to all laws and ethical obligations concerning confidentiality.<sup>7</sup>**

Action: Attorneys representing parents must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

Commentary: Confidential information contained in a parent's substance abuse treatment records, domestic violence treatment records, mental health records and medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which

the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

**10. Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.<sup>8</sup>**

Action: The parent's attorney should ensure the parent understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. For example, it may involve telephone contact, email or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

Commentary: Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the parent. The parent may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that parent. It is important that the parent's attorney, from the beginning of the case, is clear with the parent that the attorney works for the parent, is available for consultation, and wants to communicate regularly. This will help the attorney support the client, gather information for the case and learn of any difficulties the parent is experiencing that the attorney might help address. The attorney should explain to the client the benefits of bringing issues to the attorney's attention rather than letting problems persist. The attorney should also explain that the attorney is available to intervene when the client's relationship with the agency or provider is not working effectively. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client.

**11. Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.<sup>9</sup>**

Action: The parent's attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the parent can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client as well.

The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.

The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

Commentary: The parent's attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings, and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

## **12. Work with the client to develop a case timeline and tickler system.**

Action: At the beginning of a case, the parent's attorney and client should develop timelines that reflect projected deadlines and important dates and a tickler/calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The attorney and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way. The attorney should provide the client with a timeline/calendar, outlining known and prospective court dates, service appointments, deadlines and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (e.g., the 15 of 22 month point that would necessitate a termination of parental rights (TPR), if exceptions do not apply).

Commentary: Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps parents stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

**13. Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.<sup>10</sup>**

Action: The parent's attorney should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

Commentary: The parent's attorney should ensure the client is informed about what is happening in the case. Part of doing so is providing the client with written documents and reports relevant to the case. If the client has this information, the client will be better able to assist the attorney with the case and fulfill his or her parental obligations. The attorney must be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

**14. Be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.<sup>11</sup>**

Action: The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for conflicts of interests. In situations involving allegations of domestic violence the attorney should never represent both parents.

Commentary: In most cases, attorneys should avoid representing both parents in an abuse or neglect case. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests in the current case.

In analyzing whether a conflict of interest exists, the attorney must consider "whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised."<sup>12</sup>

**15. Act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.**

Action: The parent's attorney should learn about and understand the client's background, determine how that has an impact on the client's case, and always show the parent respect. The attorney must understand how cultural and socioeconomic differences impact interaction with clients, and must interpret the client's words and actions accordingly.

Commentary: The child welfare system is comprised of a diverse group of people, including the clients and professionals involved. Each person comes to this system with his or her own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The parent's attorney must be vigilant against imposing the attorney's values onto the clients, and should, instead, work with the parents within the context of their culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's advocate must strive to explain these expectations to the clients in a sensitive way. The parent's attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

**16. Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.<sup>13</sup>**

Action: Upon accepting an appointment, the parent's attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate regularly with the client, and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact the attorney, and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client's current whereabouts.

The parent's attorney should attempt to locate and communicate with missing parents to formulate what positions the attorney should take at hearings, and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If, after diligent steps, the attorney is unable to communicate with the client, the attorney should assess whether the client's interests are better served by advocating for the client's last clearly articulated position, or declining to participate in further court proceedings, and should act accordingly. After a prolonged period without contact with the client, the attorney should consider withdrawing from representation.

Commentary:

*Diligent Steps to Locate:* To represent a client adequately, the attorney must know what the client wishes. It is, therefore, important for parents' attorneys to take diligent steps to locate missing clients. Diligent steps can include speaking with the client's family, the caseworker, the foster care provider and other service providers. It should include contacting the State Department of Corrections, Social Security Administration, and

Child Support Office, and sending letters by regular and certified mail to the client's last known address. The attorney should also visit the client's last known address and asking anyone who lives there for information about the client's whereabouts. Additionally, the attorney should leave business cards with contact information with anyone who might have contact with the client as long as this does not compromise confidentiality.

*Unsuccessful Efforts to Locate:* If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases the client's interests may be better served by the attorney declining to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence.

**17. Be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.**

Action:

*Adoption and Safe Families Act (ASFA) Issues:* The parent's attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals. If this is the case, the attorney must be prepared to argue against such a motion, if the client opposes it. Even if no motion is made to waive the reasonable efforts requirement, in some jurisdictions the agency may not have the same obligations to assist parents who are incarcerated. Attorneys should counsel the client as to any effects incarceration has on the agency's obligations and know the jurisdiction's statutory and case law concerning incarceration as a basis for TPR. The attorney should help the client identify potential kinship placements, relatives who can provide care for the child while the parent is incarcerated. States vary in whether and how they weigh factors such as the reason for incarceration, length of incarceration and the child's age at the time of incarceration when considering TPR. Attorneys must understand the implications of ASFA for an incarcerated parent who has difficulty visiting and planning for the child.

*Services:* Obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult. The parent's attorney may need to advocate for reasonable efforts to be made for the client, and assist the parent and the agency caseworker in accessing services. The attorney must assist the client with these services. Without services, it is unlikely the parent will be reunified with the child upon discharge from prison.

If the attorney practices in a jurisdiction that has a specialized unit for parents and children, and especially when the client is incarcerated for an offense that is unrelated to the child, the attorney should advocate for such a placement. The attorney must learn about available resources, contact the placements and attempt to get the support of the agency and child's attorney.

*Communication:* The parent's attorney should counsel the client on the importance of maintaining regular contact with the child while incarcerated. The attorney should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

If the client cannot meet the attorney before court hearings, the attorney must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve that issue.

The parent's attorney should also communicate with the parent's criminal defense attorney. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

*Appearance in Court:* The client's appearance in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison. If the client wants to be present in court, the attorney should work with the court to obtain a writ of habeas corpus/bring-down order/order to produce or other documentation necessary for the client to be transported from the prison. The attorney should explain to any client hesitant to appear, that the case will proceed without the parent's presence and raise any potential consequences of that choice. If the client does not want to be present, or if having the client present is not possible, the attorney should be educated about what means are available to have the client participate, such as by telephone or video conference. The attorney should make the necessary arrangements for the client. Note that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

**18. Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.**

Action: Attorneys representing parents must be able to determine whether a client's mental status (including mental illness and mental retardation) interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental

health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney because if the client does not have that capacity, the attorney may have to ask that a guardian ad litem be appointed to the client. Since this action may have an adverse effect on the client's legal claims, the attorney should ask for a GAL only when absolutely necessary.

Commentary: Many parents charged with abuse and neglect have serious or long-standing mental health challenges. However, not all of those conditions or diagnoses preclude the client from participating in the defense. Whether the client can assist counsel is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent. While the attorney is not expected to be a mental health expert, the attorney should be familiar with mental health conditions and should review such records carefully. The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the client seems unable to assist the attorney in case preparation, the attorney should seek an assessment of the client's capacity from a mental health expert. If the expert and attorney conclude that the client is not capable of assisting in the case, the attorney should inform the client that the attorney will seek appointment of a guardian ad litem from the court. The attorney should be careful to explain that the attorney will still represent the client in the child protective case. The attorney must explain to the client that appointment of a GAL will limit the client's decision-making power. The GAL will stand in the client's shoes for that purpose.

## **Investigation<sup>14</sup>**

### **19. Conduct a thorough and independent investigation at every stage of the proceeding.**

Action: The parent's attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The parent's attorney can not rely solely on what the agency caseworker reports about the parent. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

Commentary: In some jurisdictions, parents' attorneys work with social workers or investigators who can meet with clients and assist in investigating the underlying issues that arise as cases proceed. The drafting committee recommends such a model of representation. However, if the attorney is not working with such a team, the attorney is still responsible for gaining all pertinent case information.

### **20. Interview the client well before each hearing, in time to use client information for the case investigation.<sup>15</sup>**

Action: The parent’s attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

Commentary: Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client’s trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

## **Informal Discovery<sup>16</sup>**

### **21. Review the child welfare agency case file.**

Action: The parent’s attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have, and will instruct the attorney on the agency’s case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because information is continually being added by the agency.

Commentary: While an independent investigation is essential, it is also important that the parent’s attorney understands what information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared, and important reports and information about both the child and parent that will be necessary for the parent’s attorney to understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the parent’s attorney will walk into court at a disadvantage.

### **22. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.**

Action: As part of the discovery phase, the parent’s attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan and the client’s strengths as a parent. The attorney should not limit the scope as information about past or present criminal, protection from abuse, private custody or

administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- social service records
- court records
- medical records
- school records
- evaluations of all types

The attorney should be sure to obtain reports and records from service providers.

Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

Commentary: In preparing the client's case, the attorney must try to learn as much about the parent and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and progress the parent is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with counsel. The attorney may be able to intercede and assist the client with service providers, agency caseworkers and others.

### **Formal Discovery<sup>17</sup>**

#### **23. When needed, use formal discovery methods to obtain information.**

Action: The parent's attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. The parent's attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party. The attorney should file timely motions for discovery and renew these motions as needed to obtain the most recent records.

The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

### **Court Preparation<sup>18</sup>**

#### **24. Develop a case theory and strategy to follow at hearings and negotiations.**

Action: Once the parent's attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

**25. Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.**

Action: The attorney must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case. These pleadings must be thorough, accurate and timely.

When a case presents a complicated or new legal issue, the parent's attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law, and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, the attorney will already have done the research and will be able to use it to argue the case well. If it would advance the client's case, the parent's attorney should present an unsolicited memorandum of law to the court.

Commentary: Actively filing motions, pleadings and briefs benefits the client. This practice puts important issues before the court and builds credibility for the attorney. In addition to filing responsive papers and discovery requests, the attorney should proactively seek court orders that benefit the client, e.g., filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable efforts obligations. When an issue arises, it is often appropriate to attempt to resolve it informally with other parties. When out-of-court advocacy is not successful, the attorney should not wait to bring the issue to the court's attention if that would serve the client's goals.

Arguments in child welfare cases are often fact-based. Nonetheless, attorneys should ground their arguments in statutory, regulatory and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. Attorneys should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level

## **26. Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.**

Action: The parent's attorney must advocate for the client both in and out of court. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

The attorney should actively engage in case planning, including attending major case meetings, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case. A major case meeting is one in which the attorney or client believes the attorney will be needed to provide advice or one in which a major decision on legal steps, such as a change in the child's permanency goal, will be made. The attorney should be available to accompany the client to important meetings with service providers as needed.

The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

When necessary, the parent's attorney should seek court orders to force the child welfare agency to provide services or visitation to the client. The attorney may need to ask the court to enforce previously entered orders that the agency did not comply with in a reasonable period. The attorney should consider whether the child's representative (lawyer, GAL or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

Commentary: For a parent to succeed in a child welfare case the parent must receive and cooperate with social services. It is therefore necessary that the parent's attorney does whatever possible to obtain appropriate services for the client, and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention or treatment

- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can attend services

**27. Aggressively advocate for regular visitation in a family-friendly setting.**

Action: The parent’s attorney should advocate for an effective visiting plan and counsel the parent on the importance of regular contact with the child. Preservation of parent-child bonds through regular visitation is essential to any reunification effort. Courts and child welfare agencies may need to be pushed to develop visiting plans that best fit the needs of the individual family. Factors to consider in visiting plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching – having someone at the visit who could model effective parenting skills

Commentary: Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the parent’s attorney seek a visitation order that will allow the best possible visitation. Effort should be made to have visits be unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy or other community members are recruited to supervise visits rather than caseworkers. Attorneys should advocate for visits to occur in the most family-friendly locations possible, such as in the family’s home, parks, libraries, restaurants, places of worship or other community venues.

**28. With the client’s permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.**

Action: The parent’s attorney should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the client’s goals. Parents’ attorneys should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the client’s position. When authorized to do so by the client, the parent’s attorney should share information about services in which the parent is engaged and provide copies of favorable reports from service providers. This information may impact settlement discussions. The attorney must communicate all settlement offers to the client and discuss their advantages and disadvantages. It is the client’s decision whether to settle. The attorney must be willing to try the case and not compromise solely to avoid the hearing. The attorney should use mediation resources when available.

Commentary: Negotiation and mediation often result in a detailed agreement among parties about actions the participants must take. Generally, when agreements have been thoroughly discussed and negotiated, all parties, including the parents, feel as if they had a say in the decision and are, therefore, more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated settlements generally happen more quickly than full hearings and therefore move a case along swiftly. The attorney should discuss all aspects of proposed settlements with the parent, including all legal effects of admissions or agreements. The attorney should advise the client about the chances of prevailing if the matter proceeds to trial and any potential negative impact associated with contesting the allegations. The final decision regarding settlement must be the client's.

A written, enforceable agreement should result from any settlement, so all parties are clear about their rights and obligations. The parent's attorney should ensure agreements accurately reflect the understandings of the parties. The parent's attorney should schedule a hearing if promises made to the parent are not kept.

### **29. Thoroughly prepare the client to testify at the hearing.**

Action: When having the client testify will benefit the case or when the client wishes to testify, the parent's attorney should thoroughly prepare the client. The attorney should discuss and practice the questions that the attorney will ask the client, as well as the types of questions the client should expect opposing counsel to ask. The parent's attorney should help the parent think through the best way to present information, familiarize the parent with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

Commentary: Testifying in court can be intimidating. For a parent whose family is the focus of the proceeding, the court experience is even scarier. The parent's attorney should be attuned to the client's comfort level about the hearing, and ability to testify in the case. The attorney should spend time explaining the process and the testimony itself to the client. The attorney should provide the client with a written list of questions that the attorney will ask, if this will help the client.

### **30. Identify, locate and prepare all witnesses.**

Action: The parent's attorney, in consultation with the parent, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the client.

The attorney should set aside time to fully prepare all witnesses in person before the hearing. The attorney should remind the witnesses about the court date.

Commentary: Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the parent. They may be service providers working with the parent, or individuals from the community who could testify generally about the family's strengths.

When appropriate, the parent's attorney should consider working with other parties who share the parent's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

Witnesses are often nervous about testifying in court. Attorneys should prepare them thoroughly so they feel comfortable with the process. Preparation will generally include rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination. Attorneys should provide written questions for those witnesses who need them.

**31. Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.**

Action: Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the parent needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advanced notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

When opposing counsel plans to call expert witnesses, the parent's attorney should file expert interrogatories, depose the witnesses or interview the witnesses in advance, depending on the jurisdiction's rules on attorney work product. The attorney should do whatever is necessary to learn what the opposing expert witnesses will say about the client during the hearing.

Commentary: By contacting opposing counsel's expert witnesses in advance, the parent's attorney will know what evidence will be presented against the client and whether the

expert has any favorable information that might be elicited on cross-examination. The attorney will be able to discuss the issues with the client, prepare a defense and call experts on behalf of the client, if appropriate. Conversely, if the attorney does not talk to the opposing expert in advance, the attorney could be surprised by the evidence and unable to represent the client competently.

## **Hearings**

### **32. Attend and prepare for all hearings, including pretrial conferences.**

Action: The parent's attorney must prepare for, and attend all hearings and participate in all telephone and other conferences with the court.

Commentary: For the parent to have a fair chance during the hearing, the attorney must be prepared and present in court. Participating in pretrial proceedings may improve case resolution for the parent. Counsel's failure to participate in the proceedings in which all other parties are represented may disadvantage the parent. Therefore, the parent's attorney should be actively involved in this stage. Other than in extraordinary circumstances, attorneys must appear for all court appearances on time. In many jurisdictions, if an attorney arrives to court late, or not at all, the case will receive a long continuance. This does not serve the client and does not instill confidence in the attorney. If an attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a short continuance. The parent's attorney should not have another attorney stand in to represent the client in a substantive hearing, especially if the other attorney is unfamiliar with the client or case.

### **33. Prepare and make all appropriate motions and evidentiary objections.**

Action: The parent's attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The parent's attorney should always be aware of preserving legal issues for appeal.

Commentary: It is essential that parents' attorneys understand the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts).

### **34. Present and cross-examine witnesses, prepare and present exhibits.**

Action: The parent's attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance and the attorney should know what evidence will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos and physical objects into evidence.

At each hearing the attorney should keep the case theory in mind, advocate for the child to return home and for appropriate services, if that is the client's position, and request that the court state its expectations of all parties.

Commentary: Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the parent's attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross examinations any information that would support the parent's position. Seasoned attorneys may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the parent's attorney must be comfortable.

**35. In jurisdictions in which a jury trial is possible, actively participate in jury selection and drafting jury instructions.**

Commentary: Several jurisdictions around the country afford parties in child welfare cases the right to a jury trial at the adjudicatory or termination of parental rights stages. Parents' attorneys in those jurisdictions should be skilled at choosing an appropriate jury, drafting jury instructions that are favorable to the client's position, and trying the case before jurors who may not be familiar with child abuse and neglect issues.

**36. Request closed proceedings (or a cleared courtroom) in appropriate cases.**

Action: The parent's attorney should be aware of who is in the courtroom during a hearing, and should request the courtroom be cleared of individuals not related to the case when appropriate. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family. The attorney should also be aware of whether the case is one in which there is media attention. Confidential information should not be discussed in front of the media or others without the express permission of the client.

Commentary: In many courts, even if they have a "closed court" policy, attorneys, caseworkers, and witnesses on other cases listed that day may be waiting in the courtroom. These individuals may make the client uncomfortable, and the parent's attorney should request that the judge remove them from the courtroom. Even in an "open court" jurisdiction, there may be cases, or portions of cases, that outsiders should not be permitted to hear. The parent's attorney must be attuned to this issue, and make appropriate requests of the judge.

**37. Request the opportunity to make opening and closing arguments.**

Action: When permitted by the judge, the parent’s attorney should make opening and closing arguments to best present the parent’s attorney’s theory of the.

Commentary: In many child abuse and neglect proceedings, attorneys waive the opportunity to make opening and closing arguments. However, these arguments can help shape the way the judge views the case, and therefore can help the client. Argument may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them. Making opening and closing argument is particularly important if the case is being heard by a jury.

**38. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court’s decision or may otherwise benefit the client.**

Action: Proposed findings of fact, conclusions of law, and orders should be prepared before a hearing. When the judge is prepared to enter a ruling, the judge can use the proposed findings or amend them as needed.

Commentary: By preparing proposed findings of fact and conclusions of law, the parent’s attorney frames the case and ruling for the judge. This may result in orders that are more favorable to the parent, preserve appellate issues, and help the attorney clarify desired outcomes before a hearing begins. The attorney should offer to provide the judge with proposed findings and orders in electronic format. If an opposing party prepared the order, the parent’s attorney should review it for accuracy before the order is submitted for the judge’s signature.

**Post Hearings/Appeals**

**39. Review court orders to ensure accuracy and clarity and review with client.**

Action: After the hearing, the parent’s attorney should review the written order to ensure it reflects the court’s verbal order. If the order is incorrect, the attorney should take whatever steps are necessary to correct it. Once the order is final, the parent’s attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

Commentary: The parent may be angry about being involved in the child welfare system, and a court order that is not in the parent’s favor could add stress and frustration. It is essential that the parent’s attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client. The attorney should counsel the client about all options, including appeal (see below).

Regardless of whether an appeal is appropriate, the attorney should counsel the parent about potential consequences of not complying with the order.

**40. Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.**

Action: The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

Commentary: The parent's attorney should play an active role in assisting the client in complying with court orders and obtaining visitation and any other social services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan. When the child welfare agency does not offer appropriate services, the attorney should consider making referrals to social service providers and, when possible, retaining a social worker to assist the client. The drafting committee of these standards recommends such an interdisciplinary model of practice.

**41. Consider and discuss the possibility of appeal with the client.<sup>19</sup>**

Action: The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal. In most jurisdictions, the decision whether to appeal is the client's as long as a non-frivolous legal basis for appeal exists. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

Commentary: When discussing the possibility of an appeal, the attorney should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent's goals. For instance, an appeal could delay the case for a long time. This could negatively impact both the parent and the child.

**42. If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.**

Action: The parent's attorney should carefully review his or her obligations under the state's Rules of Appellate Procedure. The attorney should timely file all paperwork, including a notice of appeal and requests for stays of the trial court order, transcript, and

case file. If another party has filed an appeal, the parent's attorney should explain the appeals process to the parent and ensure that responsive papers are filed timely.

The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's claim.

In jurisdictions in which a different attorney from the trial attorney handles the appeal, the trial attorney should take all steps necessary to facilitate appointing appellate counsel and work with the new attorney to identify appropriate issues for appeal. The attorney who handled the trial may have insight beyond what a new attorney could obtain by reading the trial transcript.

If appellate counsel differs from the trial attorney, the appellate attorney should meet with the client as soon as possible. At the initial meeting, appellate counsel should determine the client's position and goals in the appeal. Appellate counsel should not be bound by the determinations of the client's position and goals made by trial counsel and should independently determine his or her client's position and goals on appeal.

If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client. For example, in some jurisdictions appellate counsel may file a reply brief instead of oral argument. The attorney should weigh the pros and cons of each option.

Commentary: Appellate skills differ from the skills most trial attorneys use daily. The parent's attorney may wish to seek training on appellate practice and guidance from an experienced appellate advocate when drafting the brief and preparing for argument. An appeal can have a significant impact on the trial judge who heard the case and trial courts throughout the state, as well as the individual client and family.

**43. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.**

Action: If the state court allows, the attorney in a child welfare matter should always consider requesting an expedited appeal. In this request, the attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

**44. Communicate the results of the appeal and its implications to the client.**

Action: The parent's attorney should communicate the result of the appeal and its implications, and provide the client with a copy of the appellate decision. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

### **Obligations of Attorney Managers<sup>20</sup>**

Attorney Managers are urged to:

#### **1. Clarify attorney roles and expectations.**

Action: The attorney manager must ensure that staff attorneys understand their role in representing clients and the expectations of the attorney manager concerning all staff duties. In addition to in-office obligations staff attorneys may attend meetings, conferences, and trainings. The attorney may need to attend child welfare agency or service provider meetings with clients. The manager should articulate these duties at the beginning of and consistently during the attorney's employment. The manager should emphasize the attorney's duties toward the client, and obligations to comply with practice standards.

Commentary: All employees want to know what is expected of them; one can only do a high quality job when the person knows the parameters and expectations of the position. Therefore, the attorney manager must consistently inform staff of those expectations. Otherwise, the staff attorney is set up to fail. The work of representing parents is too important, and too difficult, to be handled by people who do not understand their role and lack clear expectations. These attorneys need the full support of supervisors and attorney managers to perform their highest quality work.

#### **2. Determine and set reasonable caseloads for attorneys.<sup>21</sup>**

Action: An attorney manager should determine reasonable caseloads for parents' attorneys and monitor them to ensure the maximum is not exceeded. Consider a caseload/workload study, review written materials about such studies, or look into caseload sizes in similar counties to accurately determine ideal attorney caseloads. When assessing the appropriate number of cases, remember to account for all attorney obligations, case difficulty, time required to prepare a case thoroughly, support staff assistance, travel time, experience level of attorneys, and available time (excluding vacation, holidays, sick leave, training and other non-case-related activity). If the attorney manager carries a caseload, the number of cases should reflect the time the individual spends on management duties.

Commentary: High caseload is considered a major barrier to quality representation and a source of high attorney turnover. It is essential to decide what a reasonable caseload is in your jurisdiction. How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. The standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards. The type of practice the attorney has,

e.g., whether the attorney is part of a multidisciplinary representation team also has an impact on the appropriate caseload size. It is part of the attorney manager's job to advocate for adequate funding and to alert individuals in positions of authority when attorneys are regularly asked to take caseloads that exceed local standards.

### **3. Advocate for competitive salaries for staff attorneys.**

Action: Attorney managers should advocate for attorney salaries that are competitive with other government and court appointed attorneys in the jurisdiction. To recruit and retain experienced attorneys, salaries must compare favorably with similarly situated attorneys.

Commentary: While resources are scarce, parents' attorneys deserve to be paid a competitive wage. They will likely not stay in their position nor be motivated to work hard without a reasonable salary. High attorney turnover may decrease when attorneys are paid well. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated.

### **4. Develop a system for the continuity of representation.**

Action: The attorney manager should develop a case assignment system that fosters ownership and involvement in the case by the parent's attorney. The office can have a one-attorney: one-case (vertical representation) policy in which an attorney follows the case from initial filing through permanency and handles all aspects of the case. Alternatively, the cases may be assigned to a group of attorneys who handle all aspects of a case as a team and are all assigned to one judge. If a team approach is adopted, it is critical to establish mechanisms to aid communication about cases and promote accountability.

The attorney manager should also hire social workers, paralegals and/or parent advocates (parents familiar with the child welfare system because they were involved in the system and successfully reunited with their child), who should be "teamed" with the attorneys. These individuals can assist the attorney or attorney team with helping clients access services and information between hearings, and help the attorney organize and monitor the case.

Commentary: Parents' attorneys can provide the best representation for the client when they know a case and are invested in its outcome. Continuity of representation is critical for attorneys and parents to develop the trust that is essential to high quality representation. Additionally, having attorneys who are assigned to particular cases decreases delays because the attorney does not need to learn the case each time it is scheduled for court, but rather has extensive knowledge of the case history. The attorney also has the opportunity to monitor action on the case between court hearings. This system also makes it easier for the attorney manager to track how cases are handled. Whatever system is adopted, the manager must be clear about which attorney has

responsibility for the case preparation, monitoring, and advocacy required throughout the case.

**5. Provide attorneys with training and education opportunities regarding the special issues that arise in the client population.**

Action: The attorney manager must ensure that each attorney has opportunities to participate in training and education programs. When a new attorney is hired, the attorney manager should assess that attorney's level of experience and readiness to handle cases. The attorney manager should develop an internal training program that pairs the new attorney with an experienced "attorney mentor." The new attorney should be required to: 1) observe each type of court proceeding (and mediation if available in the jurisdiction), 2) second-chair each type of proceeding, 3) try each type of case with the mentor second-chairing, and 4) try each type of proceeding on his or her own, with the mentor available to assist, before the attorney can begin handling cases alone.

Additionally, each attorney should attend at least 20 hours of relevant training before beginning, and at least 15 hours of relevant training every year after. Training should include general legal topics such as evidence and trial skills, and child welfare-specific topics that are related to the client population the office is representing, such as:

- Relevant state, federal and case law, procedures and rules
- Available community resources
- State and federal benefit programs affecting parties in the child welfare system (e.g., SSI, SSA, Medicaid, UCCJEA)
- Federal Indian Law including the Indian Child Welfare Act and state law related to Native Americans
- Understanding mental illness
- Substance abuse issues (including assessment, treatment alternatives, confidentiality, impact of different drugs)
- Legal permanency options
- Reasonable efforts
- Termination of parental rights law
- Child development
- Legal ethics related to parent representation
- Negotiation strategies and techniques
- Protection orders/how domestic violence impacts parties in the child welfare system
- Appellate advocacy
- Immigration law in child welfare cases
- Education law in child welfare cases
- Basic principles of attachment theory
- Sexual abuse
- Dynamics of physical abuse and neglect
  - Shaken Baby Syndrome

- Broken bones
- Burns
- Failure To Thrive
- Munchausen’s Syndrome by Proxy
- Domestic relations law

Commentary: Parents’ attorneys should be encouraged to learn as much as possible and participate in conferences and trainings to expand their understanding of child welfare developments. While parents’ attorneys often lack extra time to attend conferences, the knowledge they gain will be invaluable. The philosophy of the office should stress the need for ongoing learning and professional growth. The attorney manager should require the attorneys to attend an achievable number of hours of training that will match the training needs of the attorneys. The court and Court Improvement Program<sup>22</sup> may be able to defray costs of attorney training or may sponsor multidisciplinary training that parents’ attorneys should be encouraged to attend. Similarly, state and local bar associations, area law schools or local Child Law Institutes may offer education opportunities. Attorneys should have access to professional publications to stay current on the law and promising practices in child welfare. Child welfare attorneys benefit from the ability to strategize and share information and experiences with each other. Managers should foster opportunities for attorneys to support each other, discuss cases, and brainstorm regarding systemic issues and solutions.

#### **6. Establish a regular supervision schedule.**

Action: Attorney managers should ensure that staff attorneys meet regularly (at least once every two weeks) with supervising attorneys to discuss individual cases as well as any issues the attorney is encountering with the court, child welfare agency, service providers or others. The supervising attorney should help the staff attorney work through any difficulties the attorney is encountering in managing a caseload. Supervising attorneys should regularly observe the staff attorneys in court and be prepared to offer constructive criticism as needed. The supervising attorney should create an atmosphere in which the staff attorney is comfortable asking for help and sharing ideas.

Commentary: Parents’ attorneys function best when they can learn, feel supported, and manage their cases with the understanding that their supervisors will assist as needed. By creating this office environment, the attorney manager invests in training high quality attorneys and results in long-term retention. Strong supervision helps attorneys avoid the burnout that could accompany the stressful work of representing parents in child welfare cases.

#### **7. Create a brief and forms bank.**

Action: Develop standard briefs, memoranda of law and forms that attorneys can use, so they do not “reinvent the wheel” for each new project. For example, there could be sample discovery request forms, motions, notices of appeal, and petitions. Similarly, memoranda of law and appellate briefs follow patterns that the attorneys could use,

although these should always be tailored to the specific case. These forms and briefs should be available on the computer and in hard copy and should be centrally maintained. They should also be well indexed for accessibility and updated as needed.

**8. Ensure the office has quality technical and support staff as well as adequate equipment, library materials, and computer programs to support its operations.**

Action: The attorney manager should advocate for high quality technical and staff support. The office should employ qualified legal assistants or paralegals and administrative assistants to help the attorneys. The attorney manager should create detailed job descriptions for these staff members to ensure they are providing necessary assistance. For instance, a qualified legal assistant can help: research, draft petitions, schedule and prepare witnesses and more.

The attorney manager should ensure attorneys have access to working equipment, a user-friendly library conducive to research, and computer programs for word processing, conducting research (Westlaw or Lexis/Nexis), caseload and calendar management, Internet access, and other supports that make the attorney's job easier and enhances client representation.

Commentary: By employing qualified staff, the attorneys will be free to perform tasks essential to quality representation. The attorneys must at least have access to a good quality computer, voice mail, fax machine, and copier to get the work done efficiently and with as little stress as possible

**9. Develop and follow a recruiting and hiring practice focused on hiring highly qualified candidates.**

Action: The attorney manager should hire the best attorneys possible. The attorney manager should form a hiring committee made up of managing and line attorneys and possibly a client or former client of the office. Desired qualities of a new attorney should be determined, focusing on educational and professional achievements; experience and commitment to representing parents and to the child welfare field; interpersonal skills; diversity and the needs of the office; writing and verbal skills; second language skills; and ability to handle pressure. Widely advertising the position will draw a wider candidate pool. The hiring committee should set clear criteria for screening candidates before interviews and should conduct thorough interviews and post-interview discussions to choose the candidate with the best skills and strongest commitment. Reference checks should be completed before extending an offer.

Commentary: Hiring high quality attorneys raises the level of representation and the level of services parents in the jurisdiction receive. The parent attorney's job is complicated and stressful. There are many tasks to complete in a short time. It is often difficult to connect with, build trust and represent the parent. New attorneys must be aware of these challenges and be willing and able to overcome them. Efforts should be made to recruit staff who reflect the racial, ethnic, and cultural backgrounds of the clients. It is

particularly important to have staff who can communicate with the clients in their first languages, whenever possible.

### **10. Develop and implement an attorney evaluation process.**

Action: The attorney manager should develop an evaluation system that focuses on consistency, constructive criticism, and improvement. Some factors to evaluate include: communicating with the client, preparation and trial skills, working with clients and other professionals, complying with practice standards, and ability to work within a team.

During the evaluation process, the attorney manager should consider:

- observing the attorney in court;
- reviewing the attorney's files;
- talking with colleagues and clients, when appropriate, about the attorney's performance;
- having the attorney fill out a self-evaluation; and;
- meeting in person with the attorney.

Where areas of concern are noted, the evaluation process should identify and document specific steps to address areas needing improvement.

Commentary: A solid attorney evaluation process helps attorneys know what they should be working on, management's priorities, their strengths and areas for improvement. A positive process supports attorneys in their positions, empowers them to improve and reduces burnout.

### **11. Work actively with other stakeholders to improve the child welfare system, including court procedures.**

Action: The attorney manager should participate, or designate someone from the staff to participate, in multidisciplinary committees within the jurisdiction that are focused on improving the local child welfare system. Examples of such committees include: addressing issues of disproportional representation of minorities in foster care, improving services for incarcerated parents, allowing parents pre-petition representation, drafting court rules and procedures, drafting protocols about outreach to missing parents and relatives, removing permanency barriers and delays, and accessing community-based services for parents and children. Similarly, the attorney manager should participate in, and strongly encourage staff participation in, multidisciplinary training.

Commentary: Working on systemic change with all stakeholders in the jurisdiction is one way to serve the parents the office represents as well as their children. Active participation of parents' attorneys ensures that projects and procedures are equitably developed, protect parents' interests, and the attorneys are more likely to work on them over the long term. Collaboration can, and generally does, benefit all stakeholders.

#### **Role of the Court:**

The court is urged to:

## **1. Recognize the importance of the parent attorney's role.**

Commentary: The judge sets the tone in the courtroom. Therefore, it is very important that the judge respects all parties, including the parents and parents' counsel. Representing parents is difficult and emotional work, but essential to ensuring justice is delivered in child abuse and neglect cases. When competent attorneys advocate for parent clients, the judge's job becomes easier. The judge is assured that the parties are presenting all relevant evidence, and the judge can make a well-reasoned decision that protects the parents' rights. Also, by respecting and understanding the parent attorney's role, the judge sets an example for others.

## **2. Establish uniform standards of representation for parents' attorneys.**

Commentary: By establishing uniform representation rules or standards, the judge can put the parents' attorneys in the jurisdiction on notice that a certain level of representation will be required for the attorney to continue to receive appointments. The rules or standards should be jurisdiction specific, but should include the elements of these standards.

## **3. Ensure the attorneys who are appointed to represent parents in abuse and neglect cases are qualified, well-trained, and held accountable for practice that complies with these standards.**

Commentary: Once the standards are established, the court must hold all parents' attorneys accountable to them. A system should be developed that would delineate when an attorney would be removed from a case for failure to comply with the standards, and what actions, or inactions, would result in the attorney's removal from the appointment list (or a court recommendation to an attorney manager that an attorney be disciplined within the parent attorney office). The court should encourage attorneys to participate in educational opportunities, and the judge should not appoint attorneys who have failed to meet the minimum annual training requirements set out in the rules or standards.

## **4. Ensure appointments are made when a case first comes before the court, or before the first hearing, and last until the case has been dismissed from the court's jurisdiction.**

Commentary: The parent is disadvantaged in a child abuse and neglect case if not represented by a competent attorney throughout the life of the case. The attorney can explain the case to the parent, counsel the parent on how best to achieve the parent's goals with respect to the child, and assist the parent access necessary services. In most child welfare cases, the parent cannot afford an attorney and requires the court to appoint one. The court should make every effort to obtain an attorney for that parent as early in the case as feasible – preferably before the case comes to court for the first time or at the first hearing. In jurisdictions in which parents only obtain counsel for the termination of

parental rights hearing, the parent has little chance of prevailing. A family that may have been reunified if the parent had appropriate legal support is separated forever.

**5. Ensure parents' attorneys receive fair compensation.**

Commentary: While resources are scarce, parents' attorneys deserve a competitive wage. They should receive the same wage as other government and court-appointed attorneys for other parties in the child abuse and neglect case. Parents' rights to effective assistance of counsel may be compromised if parents' attorneys are not adequately compensated. In most jurisdictions, the court sets the attorneys' fees and individual judges can recommend to court administration that parents' attorneys should be well compensated.

**6. Ensure timely payment of fees and costs for attorneys.**

Commentary: Often judges must sign fee petitions and approve payment of costs for attorneys. The judges should do so promptly so parents' attorneys can focus on representing clients, not worrying about being paid.

**7. Provide interpreters, investigators and other specialists needed by the attorneys to competently represent clients. Ensure attorneys are reimbursed for supporting costs, such as use of experts, investigation services, interpreters, etc.**

Commentary: Attorneys can not provide competent representation for parents without using certain specialists. For instance, if the client speaks a language different from the attorney, the attorney must have access to interpreters for attorney/client meetings. Interpreter costs should not be deducted from the attorney's compensation. A parent should be permitted to use an expert of the parent's choosing in some contested cases. If the expert charges a fee, the court should reimburse that fee separate and apart from what the court is paying the attorney.

**8. Ensure that attorneys who are receiving appointments carry a reasonable caseload that would allow them to provide competent representation for each of their clients.**

Commentary: The maximum allowable caseload should be included in local standards of practice for parents' attorneys. This committee recommends no more than 50-100 cases for full time attorneys, depending on the type of practice the attorney has and whether the attorney is able to provide each client with representation that follows these standards. Once this number has been established, the court should not appoint an attorney to cases once the attorney has reached the maximum level. Attorneys can only do high quality work for a limited number of clients, and each client deserves the attorney's full attention. Of course, the caseload decision is closely tied to adequate compensation. If paid appropriately, the attorney will have less incentive to overextend and accept a large number of cases.

**9. Ensure all parties, including the parent’s attorney, receive copies of court orders and other documentation.**

Commentary: The court should have a system to ensure all parties receive necessary documentation in a timely manner. If the parent and parent attorney do not have the final court order, they do not know what is expected of them and of the other parties. If the child welfare agency, for example, is ordered to provide the parent with a certain service within two weeks, the parent’s attorney must know that. After two weeks, if the service has not been provided, the attorney will want to follow up with the court. In some jurisdictions, copies of court orders are handed to each party before they leave the courtroom. This is an ideal situation, and if it is not feasible, the court should determine what other distribution method will work.

**10. Provide contact information between clients and attorneys.**

Commentary: Often parties in child welfare cases are difficult to locate or contact. Some parents lack telephones. The court can help promote contact between the attorney and parent by providing contact information to both individuals.

**11. Ensure child welfare cases are heard promptly with a view towards timely decision making and thorough review of issues.**

Commentary: Judges should attempt to schedule hearings and make decisions quickly. Allotted court time should be long enough for the judge to thoroughly review the case and conduct a meaningful hearing.

When possible, judges should schedule hearings for times-certain to avoid delaying attorneys unnecessarily in court. When attorneys are asked to wait through the rest of the morning calendar for one brief review hearing, limited dollars are spent to keep the attorney waiting in hallways, rather than completing an independent investigation, or researching alternative placement or treatment options.

Judges should avoid delays in decision making. Delays in decision making can impact visitation, reunification and even emotional closure when needed. If a parent does not know what the judge expects, the parent may lack direction or motivation to engage in services.

These standards were drafted with the input of the following individuals:

Valerie Adelson  
Staff Director  
ABA Standing Committee on Substance Abuse  
Chicago, IL

Kris Berliant  
ABA Judicial Division Staff

Chicago, IL

Sharon Biasca  
Managing Attorney  
Juvenile Court Project  
Pittsburgh, PA

Terry Brooks  
Staff Director  
ABA Standing Committee on Legal Aid and Indigent Defendants  
Chicago, IL

Joanne Brown  
Consultant  
ABA Center on Children and the Law  
Washington, DC

Shante Bullock  
Program Administrator  
ABA Center on Children and the Law  
Washington, DC

Kate Chester  
Director  
Family Preservation Law Center  
Siler City, NC

Claire Chiamulera  
Communications Manager/Legal Editor  
ABA Center on Children and the Law  
Washington, DC

Andy Cohen  
Staff Counsel  
Children and Family Program  
Committee for Public Counsel Services  
Boston, MA

Emily Cooke  
Special Assistant for Court Improvement  
Children's Bureau  
Washington, DC

Howard Davidson  
Director  
ABA Center on Children and the Law  
Washington, DC

Alicia Davis  
Family Issues Unit Supervisor  
Division of Planning and Analysis  
Colorado State Court Administrator's Office  
Denver, CO

Amanda Donnelly  
Staff Attorney

National Association of Counsel for Children  
Denver, CO

Patsy Engelhard  
Staff Director  
ABA Litigation Division  
Chicago, IL

Debby Freedman  
Director, Family Advocacy Unit  
Community Legal Services  
Philadelphia, PA

Chris Gottlieb  
Co-Director  
NYU Family Defense Clinic  
New York, NY

Judge Ernestine Gray  
Orleans Parish Juvenile Court  
Representative, ABA Judicial Division  
New Orleans, LA

Bill Grimm  
Senior Attorney  
Child Welfare/Foster Care  
National Center for Youth Law  
Oakland, CA

Ann Haralambie  
Representative for ABA Family Law Division  
Tucson, AZ

Mark Hardin  
Director, Child Welfare  
ABA Center on Children and Law  
Washington, DC

Sue Jacobs  
Executive Director  
Center for Family Representation  
New York, NY

Judge William Jones  
Consultant  
ABA Center on Children and the Law  
Charlotte, NC

Candice Maze  
Representative, ABA Steering Committee on the  
Unmet Legal Needs of Children  
Miami, FL

Moreen Murphy  
Staff Director

ABA Steering Committee on the  
Unmet Legal Needs of Children

Joanne Moore  
WA State Office of Public Defense  
Olympia, WA

Christina Plum  
ABA Young Lawyer's Division Chair  
PO Box 11756  
Milwaukee, WI

Jennifer Renne  
Assistant Director, Child Welfare  
ABA Center on Children and the Law  
Washington, DC

Professor Catherine J. Ross  
George Washington University Law School  
Representative for ABA Individual  
Rights and Responsibilities Section  
Washington, DC

Don Saunders  
Director, Civil Legal Services  
National Legal Aid and Defender Association  
Washington, DC

Tanya Terrell-Collier  
Staff Director  
ABA Individual Rights and Responsibilities Section  
Washington, DC

Marvin Ventrell  
Executive Director  
National Association of Counsel for Children  
Denver, CO

Mary Walker  
Nashville, TN

Judge Joyce Warren  
Tenth Division Circuit Court  
Little Rock, AR

Sylvia Young  
Washington, DC

Their input was essential to this project, and their willingness to assist was extraordinary.

---

<sup>1</sup> Model Rules of Professional Conduct 1.1 (Competence).

---

<sup>2</sup> The National Association of Counsel for Children is accredited by the American Bar Association to certify attorneys as specialists in Child Welfare Law. The Certification Program is open to attorneys who represent children, parents, or agencies in child welfare proceedings.

<sup>3</sup> Model Rule 1.3 (Diligence).

<sup>4</sup> Model Rule 1.4 (Communication).

<sup>5</sup> Model Rule 2.1 (Advisor).

<sup>6</sup> Model Rule 1.2 (Scope of Representation and Allocation of Authority).

<sup>7</sup> Model Rule 1.6 (Confidentiality of Information).

<sup>8</sup> Model Rule 1.4 Communication

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Model Rules 1.7 (Conflict of Interest: Current Client); 1.8 (Conflict of Interest: Current Clients: Specific Rules); 1.9 (Duties to Former Clients).

<sup>12</sup> Renne, Jennifer L. Chapter 4, page 49, "Handling Conflicts of Interest," *Legal Ethics in Child Welfare Cases*. Washington, DC: American Bar Association, 2004.

<sup>13</sup> Model Rule 1.3 (Diligence).

<sup>14</sup> Model Rules 1.1 (Competence); 1.3 (Diligence).

<sup>15</sup> Model Rule 1.4 (Communication).

<sup>16</sup> Model Rules 1.1 (Competence); 1.3 (Diligence).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Model Rule 3.1 (Meritorious Claims and Contentions).

<sup>20</sup> Model Rule 5.1 (Responsibility of Partners, Managers and Supervisory Lawyers).

<sup>21</sup> Model Rule 1.1 (Competence).

<sup>22</sup> The Court Improvement Program (CIP) is a federal grant to each state's (as well as the District of Columbia and Puerto Rico) supreme court. The funds must be used to improve child abuse and neglect courts. States vary in how they allocate the dollars, but funds are often used for training, benchbooks, pilot projects, model courts and information technology systems for the courts.

APPENDIX C  
COLORADO JUDICIAL DEPARTMENT  
AGREEMENT FOR SERVICES BY INDEPENDENT CONTRACTORS AS  
RESPONDENT PARENT COUNSEL IN DEPENDENCY AND NEGLECT ACTIONS

**COLORADO JUDICIAL DEPARTMENT  
AGREEMENT FOR SERVICES BY INDEPENDENT CONTRACTOR AS  
RESPONDENT PARENT COUNSEL IN DEPENDENCY AND NEGLECT ACTIONS**

The parties to this Agreement are the State of Colorado Judicial Department (hereinafter "Department") whose principal location is at 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203, and «First\_Name» «Last\_Name» (hereinafter "Contractor"), an independent contractor engaged in the practice of law.

In consideration of their mutual promises and for their mutual benefit, Department and Contractor agree as follows:

1. TERM OF THE AGREEMENT

Subject to termination as provided herein and notwithstanding the date of execution of this Agreement, the term of this Agreement shall be from July 1, 2006 to June 30, 2007.

2. SCOPE OF THE AGREEMENT

The services to be provided under this Agreement shall be limited to proceedings in dependency and neglect actions and shall be further limited to proceedings in the following Districts or Courts: «district» Judicial District, (hereinafter "District(s)") for the following county(ies): «Field1»«Field2»«Field3»«Field4». Contractor shall provide services as Respondent Parent Counsel as assigned under C.R.S. 19-3-202(1), as amended. Department does not by this Contract guarantee the appointment of any cases to Contractor. Department does not require that the Contractor work exclusively for Department.

3. DUTIES OF CONTRACTOR

- A. Provide legal representation as Respondent Parent Counsel in all dependency and neglect cases, both within the scope of this Agreement and as described in paragraph 3H, that are assigned by a judge or magistrate of District(s) during the contract period. The number of Contractor's active dependency and neglect cases shall not exceed 100 at any time during the term of this Agreement. Active dependency and neglect cases are defined as those in which a permanency plan has not yet been established, or in which a motion to terminate parental rights has been filed and the court's decision regarding parental rights has not been made. The duration of appointments within the scope of this Agreement shall be 24 months from the date of appointment.
- B. Provide all representation and services required by this Agreement in a thorough, competent, and professional manner, subject to all applicable standards, rules, regulations, canons, statutes and case law. This duty specifically includes:
- Contacting the respondent parent client prior to all court hearings or having written documentation that contact was attempted and unsuccessful.
  - Communicating the results of court hearings to respondent parent client in person or if the person was not present at the hearing, in writing.
  - Representing respondent parent client wishes in hearings. Contractor's file should reflect documentation as to client respondent parent wishes and how and when those wishes were communicated to the Contractor.
  - Filing a notice of appeal, as requested.

By entering into this Agreement, Contractor attests that he or she is licensed to practice law in the state of Colorado and has the necessary qualifications and skills to competently fulfill the duties herein. In addition, the Contractor agrees to obtain at least 10 hours of continuing legal education pertaining to child and family matters per legal education period.

- C. Provide for competent legal counsel to assist Contractor in any matter related to a court appointment as may be necessary, or to substitute for Contractor during Contractor's absence due to illness, vacation, or problem in scheduling court appearances. Such substitutions must be approved by the judge or magistrate presiding over the case, and shall be at the Contractor's expense.
- D. Commence representation and services upon court appointment and continue providing such representation and services for a period of 24 months from the date of appointment through all trial court phases including, if necessary, the filing of a notice of appeal.
- E. Upon notification of appointment by the court, Contractor undertakes to prepare for and appear at: (1) all hearings prior to the filing of a petition in dependency and neglect; (2) adjudication; (3) disposition; (4) permanency planning hearings; (5) all review hearings; (6) reappointment to a case reopened for any reason; and (7) any other proceedings that occur within the 24 months following the date of appointment. With acceptance of court appointment, Contractor agrees to have reasonable calendar time available for all hearings and trials scheduled in the case. "Reasonable calendar time" specifically includes being available for termination of parental rights hearings within 120 days of the filing of a motion for termination of parental rights. This duty of representation may end, at the court's discretion, upon the appointment of a new attorney due to the filing of a motion to terminate parental rights, a change of venue, or the granting of a motion to withdraw due to Contractor's conflict. If the appointment has not concluded at the end of the 24-month duty, Contractor may bill Department on an hourly basis, in accordance with Chief Justice Directive 04-05, as amended, and/or any applicable Chief Justice Orders, for representation thereafter. If Contractor withdraws from the appointment prior to fulfilling the obligations described herein, the court shall appoint competent legal counsel to complete the obligation. If Contractor withdraws for reasons other than those stated above, the appointment of substitute counsel shall be at Contractor's expense. Contractor shall compensate substitute counsel directly or refund a portion of the contract fee as may be required by Department. Such substitutions must be approved by the judge or magistrate presiding over the case.
- F. Contractor may be required to periodically submit to Department updated lists of active dependency and neglect cases throughout the contract period for use by judges and magistrates in monitoring appointments.
- G. Notify Department on a monthly basis, in the format prescribed by Department, and in accordance with Department's instructions, by the 10<sup>th</sup> of the month, of the following information:
- All new appointments for a new client made in the previous month.
  - All new appointments for an existing client to a case that will be heard concurrently with a case to which Contractor is already appointed.
  - The commencement of proceedings concerning the termination of the client\_respondent's parental rights upon the filing of a motion to terminate parental rights or the setting of a termination hearing (excluding voluntary relinquishment).
  - Changes in appointments requiring a contract fee deduction under the terms of the contract, as described in paragraphs 3D and 3H.

Contractor shall request contract payments by the 10<sup>th</sup> of the month following the month of appointment in order to be considered in compliance with this Agreement. If such payment request is not made within six (6) months of appointment or within six (6) months of any action requiring additional payment under this Agreement, the Department will not honor the request unless Contractor applies for and receives an exception as outlined in paragraph 4F.

- H. Maintain records of time spent and submit bills to District(s) for time spent at the hourly rates established by the state and allowable expenses, in accordance with Chief Justice Directive 04-05, as

amended, and/or any applicable Chief Justice Orders, for the following representation outside of the scope of this Agreement:

- Any representation provided on an appointment after 24 months of the appointment (in addition to contract fee).
  - Any representation provided on an appointment if the department of social services does not file a petition in dependency and neglect, up to a maximum fee of \$845.00 (no contract fee will be paid).
  - Any appointment that ends within 60 days of appointment (no contract fee will be paid).
  - Any new appointment beginning after the establishment of a treatment plan or permanency plan, up to a maximum fee of \$1,032.00 (no contract fee will be paid).
  - Any appointment for which the respondent parent does not contact Contractor (no contract fee will be paid).
  - Any appointment as counsel for a special respondent who is joined as a party for the limited purposes of protective orders or inclusion in a treatment plan, unless that case will be heard concurrently with a case for which Contractor has already been appointed (no contract fee will be paid).
  - Any extraordinary circumstances for which Contractor has received pre-approval from Department. Such determination shall be on a case-by-case basis in the sole discretion of the Department (in addition to contract fee).
- I. For payment for extraordinary circumstances, Contractor shall submit billing directly to Department with an itemization of time spent on the appointment and a description of the circumstances requiring additional payment. For payment for all other representation described in paragraph 3H, Contractor shall submit bills to District(s) in accordance with the procedures for payment of court-appointed counsel found in Chief Justice Directive 04-05, as amended, and/or any applicable Chief Justice Orders.
- J. Contractor shall not bill Department on an hourly basis for any respondent parent counsel appointments in dependency and neglect cases except those described in paragraph 3H.
- K. Maintain records of all work performed relating to this Agreement, and make all such records available to Department for inspection, audit, and evaluation in such form and manner as Department in its discretion may require, subject to attorney/client privilege.
- L. The duties recited in this Section 3 shall survive the expiration or termination of this Agreement insofar as the said duties relate to appointments made during the effective term of this Agreement.
- M. Use the Department's on-line, World Wide Web based payment system, hereafter referred to as "Web-Based Payment System" to request payments and provide other appointment information as required by Department upon notification by Department that such system is ready for use. Once implemented, the Web-Based Payment System is intended to replace most and in many cases all of the paper submissions for reporting appointment information and billing under this Section 3.
- N. Contractor shall direct all questions or disputes concerning contract or hourly payment requests to the State Court Administrator's Office immediately when issues arise. Such questions or disputes are subject to the provisions set forth in paragraph 4G.
- O. The contractor shall have a duty throughout the term of this Agreement to notify the Department in the event that Contractor is receiving , or begins receiving, benefits as a retiree from the Public Employee Retirement Association (PERA) of Colorado. The Department shall not be liable for reimbursement to the Contractor for any reduction or loss of PERA retirement benefits that may occur as a result of this agreement.

#### 4. DUTIES OF THE DEPARTMENT

- A. Department shall compensate Contractor for services performed under this Agreement at a contract fee of \$855.00 for each new appointment within the scope of this Agreement, in accordance with the payment method set forth in Section 5 below. For purposes of this paragraph 4A, the term "new appointment" shall not include any appointment described in paragraph 3H, nor the re-appointment to a case previously assigned to Contractor, which has been closed and then reopened during the initial 24 month representation duty period described in paragraph 3D.
- B. Department shall compensate Contractor an additional \$959.00 for continued representation upon the commencement of proceedings concerning the termination of the client respondent's parental rights, upon notification by Contractor as described in paragraph 3G. No additional compensation will be paid for voluntary relinquishment of parental rights.
- C. Department shall review all requests for payment for extraordinary circumstances described in paragraphs 3H and 3I and shall consult with Contractor and the Court as necessary to determine appropriate payment. Department shall compensate Contractor for all other services performed as described in paragraph 3H in accordance with the rates and procedures established in Chief Justice Directive 04-05, as amended, and/or any applicable Chief Justice Orders.
- D. Department shall not provide additional compensation for appointment to a case heard concurrently with a case to which Contractor is already appointed and for which Department has compensated Contractor.
- E. Department reserves the right to modify the contract fees in accordance with paragraph 16C.
- F. Department reserves the right to deny payment on payment requests not made in the required format or by the deadlines outlined in this Agreement. Contractor may request an exception to the payment request deadline by providing a written request to Department that outlines in detail the extraordinary circumstances that prevented (or will prevent) Contractor from requesting payment by the deadline. The decision to approve or deny such request shall be made by the Director of Financial Services or the Director's designee, and shall be final.
- G. Department shall review and respond promptly to questions or disputes concerning a bill received, submitted, or paid except, due to research time and record retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the appointment date if the question or dispute concerns the initial appointment fee (paragraph 4A) or from the date of commencement of termination of parental rights (TPR) proceedings if the question or dispute concerns the additional TPR fee (paragraph 4B). If the question or dispute concerns an hourly billing, the two-year restriction starts from the activity date (date of service) that is in question.

#### 5. PAYMENT METHOD

- A. Upon receipt of the monthly report, Department shall make the appropriate payment for appointments to represent respondents on a contract fee basis. No compensation for expenses, including telephone calls, mileage, postage, and copies, will be paid in addition to the contract fee. Monthly contract fee payment shall, under normal circumstances, be processed by Department by the 20th of the month for appointments reported by the 10th of the month, as described in paragraph 3G. Department shall process only one payment per month for cases represented on a contract fee basis, under normal circumstances.
- B. The local judicial District(s) will reimburse Contractor for costs incurred for expert witnesses, depositions, psychiatric evaluations, psychological or other testing, and other items normally paid by

Department in indigent cases, if such expenses are approved in advance by the trial judge or magistrate and are not paid by District(s) directly to the party receiving payment. Expenses not so approved shall be paid by Contractor without reimbursement from the District. Contractor shall comply with District(s)' procedures for requesting reimbursement.

6. TRAINING

Department shall provide no training to Contractor, inasmuch as Contractor already possesses the skills needed to perform the work required under this Agreement.

7. PERFORMANCE SPECIFICATIONS

The parties agree that Contractor shall perform the services in accordance with the specifications set forth in Section 3 (Duties of Contractor) herein. Contractor's failure to meet performance expectations specified in this contract may result in termination of the contract.

8. STATUS AS INDEPENDENT CONTRACTOR

This Agreement does not constitute a hiring by either Party. It is the Parties' intention that Contractor shall be an independent contractor and not Department's employee for all purposes including, but not limited to, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, no federal, state or local income tax nor payroll tax of any kind, nor retirement contribution shall be withheld or paid by Department on behalf of the Contractor or any employees of the Contractor. By entering into the contract, the Department does not guarantee any cases, hours or work will be assigned to the Contractor. The Contractor has no right to be appointed by the court, or expectation of income by entering into the contract.

9. INCOME TAXES

Contractor understands and agrees that Contractor is responsible to pay, according to law, Contractor's federal, state and local income taxes. If Contractor is not a corporation, Contractor further understands and agrees to pay any self-employment (social security) tax that may be required by law.

10. UNEMPLOYMENT COMPENSATION

Contractor shall not be entitled to unemployment insurance benefits for work performed under this Agreement, unless unemployment compensation coverage is provided by Contractor or by some entity other than Department.

11. WORKERS' COMPENSATION

No workers' compensation insurance shall be obtained by Department concerning Contractor or the employees of contractor, if any. Contractor shall comply with workers' compensation law concerning Contractor and any employees of the Contractor.

12. FRINGE BENEFITS

Because Contractor is engaged in Contractor's own independent business, Contractor is not eligible for, and shall not participate in, any employer pension, health, or other fringe benefit plan of Department.

13. LIABILITY INSURANCE AND INDEMNIFICATION

Contractor shall maintain professional liability insurance for all work performed under the Agreement and shall furnish a carrier's certificate of such insurance upon execution of the Agreement. Contractor shall indemnify Department for any and all claims or lawsuits resulting from the performance by the Contractor of work under this Agreement.

14. BREACH

Breach of this Agreement shall occur upon, but not be limited to, failure of Contractor to carry out any duty required by this Agreement in a satisfactory manner, as determined in the sole discretion of Department.

15. LICENSE

Contractor declares that Contractor has complied with all federal, state and local laws and regulations regarding business permits and licenses.

16. TERMINATION

- A. Department may terminate this Agreement for cause, which shall include but not be limited to a breach of this Agreement as defined herein, effective immediately after receipt of written notice of termination, except that Department in its sole discretion may elect to permit Contractor to attempt to cure the breach within 15 calendar days following receipt of such notice of termination.
- B. Contractor may terminate this Agreement due to a major change in Contractor's circumstances, including by way of example but not as limitation such events as major illness or injury, physical or mental incapacity, change in location, or discontinuance of the practice of law, provided that Contractor first obtains the approval of Department, which approval shall be in the sole discretion of Department. Such approval by Department shall be contingent upon Contractor either providing at Contractor's expense for substitute counsel to carry out all of Contractor's unfulfilled contract obligations for all existing court appointments, or refunding a portion of the contract fee as may be required by Department. Contractor shall notify Department in writing of intent to terminate the Agreement and shall provide information describing arrangements for fulfilling contract obligations as requested by Department. Such written notice of termination shall be delivered to Department not less than thirty days before the effective date of the termination.
- C. In the event that the Department anticipates or experiences a shortage of funds to pay for any activity established by this Agreement, the Department may terminate this Agreement effective immediately upon receipt of written notice or at such other time as may be established in the notice. In lieu of such termination, the Department may elect to reduce the contract fees established in this Agreement for future appointments, effective immediately upon receipt of written notice or at such other time as may be established in the notice. Acceptance of any appointments after the effective date of such fee reduction shall be deemed to be Contractor's acceptance of the reduced contract fees, and of modification of the Agreement in accordance therewith. Contractor may elect to decline the fee reduction by written notice to Department, in which instance the Agreement will be terminated and Contractor shall cease acceptance of appointments under the Agreement. Such termination shall be effective upon receipt of notice by Department.
- D. Upon any termination of Agreement, Department shall remain liable for payment of all moneys due and owing up to the date of receipt of written notice by Contractor. Acceptance by Contractor of any appointments after the effective date of any termination shall not be governed by the terms of the Agreement.

E. Any notice required or permitted under this Section 16 shall be deemed to have been received five days after either 1) being placed in the United States mail, postage prepaid; or 2) sent by electronic mail.

17. CONFIDENTIALITY

In the event that Contractor shall obtain access to any records or files of Department in connection with this Agreement, or in connection with the performance of its obligations under this Agreement, Contractor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to Department.

Contractor shall notify his or her employees and agents, if any, that they are subject to the confidentiality requirements as set forth above, and shall provide each employee or agent with a written explanation of the confidentiality requirements before the employee or agent is permitted access to confidential data.

18. CHOICE OF LAW; VENUE

Any dispute under or related to this Agreement shall be decided in accordance with the laws of the State of Colorado, and venue shall be in the State of Colorado.

19. MODIFICATIONS

This writing contains the entire agreement between the parties, and no modification, amendment, novation, renewal, or other alteration of or to this Agreement shall be valid or of any force or effect unless mutually agreed in writing by the parties, except as provided in paragraph 16C.

20. SEVERABILITY

If any part of this Agreement shall be held unenforceable, the rest of this Agreement will nevertheless remain in full force and effect.

21. NON-WAIVER

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

IN WITNESS WHEREOF, the Parties have executed this agreement on the dates written below.

STATE OF COLORADO  
JUDICIAL DEPARTMENT

CONTRACTOR

By: \_\_\_\_\_  
Typed: Gerald A. Marroney  
Title: State Court Administrator  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Typed: «First Name» «Last Name»  
Attorney At Law  
Date: \_\_\_\_\_

APPENDIX D  
CASE FILE REVIEW DATA REPORT

## **RESPONDENT PARENTS' COUNSEL NEEDS ASSESSMENT Case File Review Data Report**

The state of Colorado is making efforts to improve the representation of parents accused of abuse and neglect. In this effort, the National Center for State Courts, The National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children, have conducted a study assessing the needs of respondent parents' counsel in the state of Colorado.

As part of this effort, child abuse and neglect case files were reviewed in four project sites (Denver, El Paso, Weld and Teller counties). This report provides a statewide picture of the case file review findings.

A total of 404 court files of child abuse and neglect cases that appeared before the Colorado Juvenile Court in 2004 and 2005 were reviewed to assist in this assessment of respondent parents' counsel.

In summary, the case file review analysis found that:

- In most cases reviewed (75%), parents were represented by counsel at the emergency or initial hearing.
- In most of the cases (88%), respondent parents received counsel the same date as they applied for counsel. For all of the cases coded, counsel was appointed an average of 2.4 days after submitting an application.
- In most of the cases (89%) respondent parents' counsel did not change during the life of the case.
- Few continuances requested and granted were specifically the result of respondent parents' counsel (3.5%).
- Parents' counsel filed a motion in 32.9% of the cases reviewed –with motions for expert witnesses and motions to withdraw as counsel being the most frequent of the types of motions filed.

### **I. Case Information Specific to Parent Counsel**

#### **When coding, which parent did counsel represent in the case?**

- Finding: Among the 404 cases coded, the counsel being coded represented the mother in 74.5% (n=301 of 404) of the cases, the father in 25.5% (n=102 of 404) of the cases, and in one case, counsel represented a married couple (.2%; n=1 of 404).

#### **In which hearing were parents most likely to *first* receive counsel?**

- Finding: Information about the hearing in which parents were first represented by counsel was available in 384 of the 404 (95%) cases coded. In most cases reviewed (75%), parents were represented by counsel at the emergency/initial hearing. The frequency of the hearings in which counsel **first** appear is listed below.
  - Emergency/Initial hearing: 75% (n= 288 of 384)
  - Adjudication: 17.4% (n=67 of 384)
  - Disposition: 3.6% (n=14 of 384)
  - Six Month Review: 2.9% (n=11 of 384)
  - Permanency: 1% (n=4 of 384)

**How long did it take for parents to receive representation after applying for counsel?**

- Finding: Information as to the date a respondent parent applied for counsel, and the date in which they received representation, was available in 258 of the 404 (63.9%) cases coded. Among these cases, the average length of time it took for parents to receive counsel after application was 2.4 days. Approximately 88% (n=227 of 258) of parents received counsel on the same day they applied. The maximum duration was 70 days, which occurred on two occasions (.9%; n=2 of 227).

**Did the parent’s counsel change during the course of their case?**

- Finding: Information pertaining to whether there was a change of counsel was available in 355 of the 404 (87.9%) cases coded. Among these cases, respondent parents’ counsel changed in 10.7% (n=38 of 355) of the cases, while the parent’s counsel was the same throughout the duration of the case in 89.3% (n=317) of the cases. In two cases (5.2%; n=2 of 38) the parent experienced a change of counsel twice. In one case, the parent experienced a change of counsel three times (7.9%; n=3 of 38).

**What is the total number of continuances due to parents’ counsel?**

- Finding: Information pertaining to whether hearings were continued due to respondent parents’ counsel was discernable in each of the 404 (100%; n=404 of 404) cases coded. Among these cases, only 3.5% (n=14 of 404) of all the hearings were continued specifically due to parents’ counsel.

**At what rate did respondent parents’ counsel file a motion contesting the TPR?**

- Finding: The petitioner filed for Termination of Parental Rights (TPR) in 43 of the 404 (13.7%) cases coded. Of these 43 cases, respondent parents’ counsel filed a motion contesting the TPR in 5 of the cases or 11.6% (n=5 of 43).

**How often did respondent parents’ counsel file motions in cases?**

- Finding: Information pertaining to whether parents’ counsel filed motions was available in each of the 404 (100%) cases coded. Among these cases, parents’ counsel filed a motion in 32.9% (n=133 of 404) of the cases. The frequency for the overall number of motions filed in a particular case by the respondent parents’ counsel is presented below.

<b>Frequency of the Number of Motions filed by RPC in One Case</b>	
<b>Number of Motions</b>	<b>Frequency and Proportion of Overall Motions</b>
1	68.4% (n=91 of 133)
2	15.8% (n=21 of 133)
3	10.5% (n=14 of 133)
4	3% (n=4 of 133)
5	0.8% (n=1 of 133)
6	0.8% (n=1 of 133)

### **What types of motions were filed by respondent parents' counsel?**

- Finding: The different types of motions filed by respondent parents' counsel and the frequency of those motions in the 133 cases in which motions were introduced by RPC are presented below.
  - Motion for Expert Witness: 24.1% (n=32 of 133)
  - Motion for Counsel to Withdraw: 23.3% (n=31 of 133)
  - Motion to Continue a TPR Hearing: 3.8% (n=5 of 133)
  - Motion Contesting TPR: 6% (n=8 of 133)
  - Confession to TPR: 4.5% (n=6 of 133)
  - Motion to Amend Visitation Plan: 5.3% (n=7 of 133)
  - Motion to Amend Service Plan: 3% (n=4 of 133)
  - Motion to Amend Treatment Plan: 5.3% (n=7 of 133)
  - Motion to Return Custody to Parent: 2.3% (n=3 of 133)
  - Motion Appealing for Dismissal of Case: 3.8% (n=5 of 133)
  - Motion Requesting Jury Trial: 3% (n=4 of 133)
  - Motion for Independent Psychological Evaluation of Parent: 1.5% (n=2 of 133)
  - Motion for Change of Placement Hearing: .8% (n=1 of 133)
  - Motion for ICWA Involvement: .8% (n=1 of 133)

### **Which factors associated with respondent parents' counsel were most related with a child remaining in the family?**

- Finding: A forward logistic regression was conducted to determine if factors associated with respondent parents' counsel were related to case outcomes. Case outcomes were categorized for this purpose as: children who remained with family (reunification with charged relative, reunification with non-charged relative placement) and children who did not remain with family (placement with non-relative, adoption, long term foster care). The variables entered into the model were (a) the time it took for the parents to receive counsel after application, (b) the hearing in which parents' counsel first appeared, (c) attorney change, (d) the total number of continuances due to parents' counsel, and (f) the number of motions filed by parents' counsel. Among these variables, only the total number of motions filed by parents' counsel was a significant predictor of whether a child remained with their family ( $e^B = 2.042$ ,  $p < .005$ ).

## **II. Case Characteristics (To examine whether the sample of case files reviewed is typical of child abuse and neglect cases)**

### **Type of Cases Coded for the Sample.**

- Finding: Among the 404 cases coded, 52% (n=210 of 404) were EEP cases, while 48% (n=194 of 404) were Dependency and Neglect cases.

### **Number of Children Removed in the Sample.**

- Finding: Information pertaining to whether the child was removed from the home was available in 393 of the 404 (97.3%) cases coded. Among these cases, 73.5% (n=289 of 393) of the children were removed from their home, while 26.5% (n=104 of 393) were allowed to remain in the home under the protective supervision of the Child Welfare Agency.

### **Family History with Agency.**

- Finding: Information pertaining to whether the family had a prior history with the Child Welfare Agency was available in 300 of the 404 (84.7%) cases coded in the sample. Among these cases, 80.7% (n=242 of 300) of the families did have a prior history with the agency, while 19.3% (n=58 of 300) of the families did not have a prior history with the agency.

### **Family History with Court.**

- Finding: Information pertaining to whether the family had a prior history with the Court was available in 274 of the 404 (67.8%) cases coded. Among these cases, 62.4% (n=171 of 274) of the families did have a prior history with the court, while 37.6% (n=103 of 274) had no prior history with the court.

### **Proportion of Petitions Amended.**

- Finding: Information pertaining to whether the original petition was amended was available in 338 of the 404 (83.7%) of the coded. Among these cases, the petition was amended in 27.2% (n=92 of 338) of the cases, while 72.8% (n=246 of 338) of the petitions were not amended.

### **Who Amended the Petition?**

- Finding: Information pertaining to who amended the petition was available in 88 of the 404 (21.8%) cases in which the petition was amended. In 92% (n=81 of 88) of the cases the petition was amended by the City/County Attorney, 4.5% (n=4 of 88) of the petitions were amended by the Child Welfare Agency, while 3.4% (n=3 of 88) were amended by respondent parents' counsel.

### **Why was the Petition Amended?**

- Finding: Information pertaining to why the petition was amended was available in each of the 42 (100%) cases that had the petition amended. The results indicate that the petition was amended for three primary reasons: (1) to add a respondent father to the petition (29.5%; n=26 of 88); (2) to correct the name/add the legal name of the parties involved in the case (15.7%; n=13 of 88); and (3) to add a party's name (special respondent) to the petition as a potential placement option (10.2%; n=9 of 88).

### **Allegations and presenting problems in the case.**

- Finding: Information pertaining to the allegations brought against the parent was available in each of the 404 cases (100%) coded in the sample. The proportions and frequencies for each type of allegation are presented below.  
Abandoned: Mother: 10.1% (n=41 of 404); Father: 8.2% (n=33 of 404)  
Physical Abuse: Mother: 24.3% (n=98 of 404); Father: 14.6% (n=59 of 404)  
Sexual Abuse: Mother: .7% (n=3 of 404); Father: 5.2% (n=21 of 404)  
Stepfather/Boyfriend: 4.2% (n=17 of 404)  
Emotional Abuse: Mother: 5.9% (n=24 of 404); Father: 2.5% (n=10 of 404)  
Neglect: Mother: 53.2% (n=215 of 404); Father: 24.5% (n=99 of 404)

- Finding: Information pertaining to the presenting problems was in each of the 404 cases (100%) coded in the sample. The proportions and frequencies for each type of problem are presented below.
  - Criminal Activity: Mother: 17.6% (n=71 of 404); Father: 23% (n=93 of 404)
  - Domestic Violence: Mother: 23.5% (n=95 of 404); Father: 25.7% (n=104 of 404)
  - Substance Abuse: Mother: 50.2% (n=203 of 404); Father: 26.7% (n=108 of 404)
  - Child Behavior Problems: Mother: 5.2% (n=21 of 404); Father: 0.4% (n=2 of 404)
  - Child: 10.9% (n=44 of 404)
  - Homelessness: Mother: 10.6% (n=43 of 404); Father: 4.5% (n=18 of 404)
  - Mental Health: Mother: 9.4% (n=38 of 404); Father: 2.2% (n=9 of 404)
  - Child: 2.2% (n=9 of 404)
  - Failure to Protect: Mother: 14.6% (n=59 of 404); Father: 5.7% (n=23 of 404)

#### **Was ICWA an issue?**

- Finding: Information pertaining to whether ICWA was an issue was available in 361 of the 404 (89.4%) cases coded in the sample. Among these cases, ICWA was an issue in 8.6% (n=31 of 361) of the cases, while ICWA was not an issue in 91.4% (n=330 of 361) of the cases.

#### **Was ICPC an issue?**

- Finding: Information pertaining to whether ICPC was an issue was available in 346 of the 404 (85.7%) cases coded. Among these cases, ICPC was an issue in 12.7% (n=44 of 346) of the cases, while ICPC was not an issue in 87.3% (n=302 of 346) of the cases.

#### **What was the average age of the children in the sample?**

- Finding: The date in which the child was born, as well as the date the petition was filed, are needed to calculate the age of a child at entry. This information was available in 389 of 404 (96.3%) cases coded. Among these cases, the average age of the child(ren) was 6.96 years, with the oldest being 17.9 years and the youngest being 1 day old.

#### **Ethnicity of the mothers.**

- Finding: Information pertaining to the ethnicity of the mother being represented was available in 166 of the 404 (41.1%) cases coded. Below is the frequency of the ethnicities listed for the mothers.
  - Caucasian: 45.8% (n=76 of 166)
  - Hispanic: 40.4% (n=67 of 166)
  - African American: 8.4% (n=14 of 166)
  - Native American: 3.6% (n=6 of 166)
  - Asian: 1.2% (n=2 of 166)

### **Ethnicity of the fathers.**

- Finding: Information pertaining to the ethnicity of the father being represented was available in 102 of the 404 (25.2%) cases coded. Below is the frequency of the ethnicities listed for the fathers.  
Caucasian: 39.2% (n=40 of 102)  
Hispanic: 39.2% (n=40 of 102)  
African American: 15.7% (n=15 of 102)  
Native American: 6.9% (n=7 of 102)  
Asian: 2% (n=2 of 102)  
Pacific Islander: 1% (n=1 of 102)  
Multi-ethnic (Hispanic /African American; Spanish/Caucasian): 2% (n=2 of 102)

## **III. Hearing Information**

### **A. Emergency/Shelter Care Hearing**

#### **How often was the Emergency/Shelter Care Hearing continued due to issues involving parents' counsel?**

- Finding: Information pertaining to whether the Emergency/Shelter Care hearing was continued due to issues involving the parents' counsel was available in 400 of the 404 (99%) cases coded. Among these cases, 1.2% (n=5 of 400) of the Emergency/Shelter Care hearings were continued due to issues with parent counsel. The reasons for the continuances are listed below.  
Waiting to Appoint Parent Counsel: 40% (n=2 of 5)  
Parent Failed to Appear: 40% (n=2 of 5)  
Parent needs time to meet with counsel: 20% (n=1 of 5)

#### **Appearances of parties at the Emergency/Shelter Care Hearings.**

- Finding: Information pertaining to the parties present at the Emergency/Shelter Care hearing was available in 401 of the 404 (99.3%) cases coded. The frequency in which each party was present at the Emergency/Shelter Care hearings is presented below.  
Mother: 77.3% (n=310 of 401)  
Father: 49.6% (n=199 of 401)  
Child: 2.5% (n=10 of 401)  
Social Worker: 91.8% (n=368 of 401)  
City/County Attorney: 97% (n=389 of 401)  
Attorney for Mother: 67.39% (n=270 of 401)  
Substitute for Mother's Attorney: 3% (n=12 of 401)  
Attorney for Father: 39.7% (n=159 of 401)  
Substitute for Father's Attorney: 1.5% (n=6 of 401)  
GAL: 96.5% (n=387 of 401)  
Attorney for Agency: 2.2% (n=9 of 401)  
Relative Caretaker: 4.7% (n=19 of 401)  
Attorney for Caretaker: 0.2% (n=1 of 401)  
Foster Parent: 0.7% (n=3 of 401)  
Attorney for Foster Parent: 0.5% (n=2 of 401)  
Grandparents: 2.5% (n=10 of 401)  
Stepfather/Boyfriend: 1.5% (n=6 of 401)  
Stepfather/Boyfriend's Counsel: 0.5% (n=2 of 401)

Special Respondent: 1.5% (n=6 of 401)  
Interpreter: 0.7% (n=3 of 401)  
Savio Treatment Center Representative: 1% (n=4 of 401)  
Aunt: 0.7% (n=3 of 401)  
Step Mother: 0.5% (n=2 of 401)  
Probation officer: 0.2% (n=1 of 401)

**How many parents were not represented by counsel at the Emergency/Shelter Care hearings?**

- Finding: Information pertaining to the parties present at the Emergency/Shelter Care hearing was available in 401 of the 404 (99.3%) cases coded. Among these cases, parents appeared without counsel in 15.5% (n=62 of 401) of the Emergency/Shelter Care hearings.

**How often did Parents' Counsel appear without their clients at the Emergency/Shelter Care hearings?**

- Finding: Information pertaining to the parties present at the Emergency/Shelter Care hearing was available in 401 of the 404 (99%) cases coded. Among these cases, counsel appeared without the parent in 5.5% (n=22 of 401) of the Emergency/Shelter Care hearings.

**B. Adjudication Hearing**

**How often was the Adjudication Hearing continued due to issues involving parents' counsel?**

- Finding: Information indicating there was an adjudication hearing was available in 343 of the 404 (84.9%) case coded. Among these cases, 81.6% (n=28 of 343) were continued due to issues with parents' counsel. The reasons for the continuance are listed below.  
Parent needs counsel appointed 25% (n=7 of 28)  
Parent needs time with counsel: 25% (n=7 of 28)  
Parent failed to appear in court: 25% (n=7 of 28)  
Parent's Counsel not Present: 17.9% (n=5 of 28)  
Parent not transported to court: 7.1% (n=2 of 28)

**Appearances of parties at Adjudication Hearings.**

- Finding: Information indicating an adjudication hearing was held was available in each of the 343 (100%) cases in which there was an Adjudication hearing. The frequency in which each party was present at the adjudication hearing is presented below.  
Mother: 79.3% (n=272 of 343)  
Father: 55.1% (n=189 of 343)  
Child: 3.2% (n=11 of 343)  
Social Worker: 92.4% (n=317 of 343)  
City/County Attorney: 95.9% (n=329 of 343)  
Attorney for Mother: 82.2% (n=282 of 343)  
Substitute for Mother's Attorney: 2.3% (n=8 of 343)  
Attorney for Father: 50.1% (n=172 of 343)  
Substitute for Father's Attorney: 1.8% (n=6 of 343)  
GAL: 93.9% (n=322 of 343)  
Attorney for Agency: 1.5% (n=5 of 343)  
Relative Caretaker: 5.8% (n=20 of 343)

Attorney for Caretaker: 0.6% (n=2 of 343)  
 Foster Parent: 0.3% (n=1 of 343)  
 Attorney for Foster Parent: 0.3% (n=1 of 343)  
 Grandparents: 4.7% (n=16 of 343)  
 Stepfather/Boyfriend: 1.7% (n=6 of 343)  
 Stepfather/Boyfriend's Attorney: 0.5% (n=2 of 343)  
 CASA: 1.1% (n=4 of 343)  
 Denver Indian Resource Center: 0.9% (n=3 of 343)  
 Interpreter: 0.9% (n=3 of 343)  
 Savio Treatment Center Representative: 1.5% (n=5 of 343)  
 Special Respondent: 0.9% (n=3 of 343)  
 Aunt: 0.5% (n=2 of 343)  
 Interested Party: 0.3% (n=1 of 343)

**How many parents were not represented by counsel at the Adjudication hearing?**

- Finding: Information indicating an adjudication hearing was held, and the parties present, were available in 343 of the 404 (85%) cases coded. Among these cases, parents appeared without counsel in 8.5% (n=29 of 343) of the Adjudication hearings.

**How often did counsel appear without their clients at the Adjudication hearing?**

- Finding: Information indicating an adjudication hearing was held, and the parties present, were available in 343 of the 404 (85%) cases coded. Among these cases, counsel appeared without the parent in 11.4% (n=39 of 343) of the Adjudication hearings.

**If parent was not present, did counsel know of the parent's whereabouts?**

- Finding: Among the 39 cases where counsel appeared without their client, the whereabouts of the parent was known by counsel in 9 cases (23.1%), the frequencies of which are listed below.  
 Parent had not been transported from jail (77.8%; n=7 of 9)  
 Death in the family (11.1%; n=1 of 9)  
 Parent in Hospital (11.1%; n=1 of 9)

**C. Disposition Hearing**

**How often was the Disposition Hearing continued due to issues involving parent counsel?**

- Finding: Information indicating there was an Disposition hearing was available in 182 of the 404 (45%) case coded. Among these cases, 1.1% (n=2 of 182) were continued due to issues with the parent counsel. In one case the parent needed time to meet with counsel, and the other was because parent's counsel failed to appear.

**Appearances of parties at Disposition Hearings.**

- Finding: Information indicating the parties present was available in each of the 182 (100%) cases coded as having a disposition hearing. The frequency in which each party was present at the disposition hearing is presented below.  
 Mother: 73.1% (n=133 of 182)  
 Father: 51.1% (n=93 of 182)  
 Child: 6% (n=11 of 182)

Social Worker: 92.9% (n=169 of 182)  
 City/County Attorney: 91.2% (n=166 of 182)  
 Attorney for Mother: 89.6% (n=163 of 182)  
 Substitute for Mother's Attorney: 2.2% (n=4 of 182)  
 Attorney for Father: 59.3% (n=108 of 182)  
 Substitute for Father's Attorney: 2.7% (n=5 of 182)  
 GAL: 91.8% (n=167 of 182)  
 Attorney for Agency: 5.5% (n=10 of 182)  
 Relative Caretaker: 0.2% (n=1 of 182)  
 Attorney for Caretaker: 0.2% (n=1 of 182)  
 Foster Parent: 0% (n=0 of 182)  
 Attorney for Foster Parent: 0% (n=0 of 182)  
 Grandparents: 5.5% (n=10 of 182)  
 Interpreter: 2.7% (n=5 of 182)  
 CASA: 1.6% (n=3 of 182)  
 Savio Represented: 0.5% (n=1 of 182)  
 Attorney for School District: 0.5% (n=1 of 182)  
 Relative Placement: 0.5% (n=1 of 182)  
 Special respondent: 0.5% (n=1 of 182)  
 Interested Party: 0.5% (n=1 of 182)

**How many parents were not represented by counsel at the Disposition hearing?**

- Finding: Information indicating a Disposition hearing was held and the parties present were available in 182 of the 404 (45%) cases coded. Among these cases, parents appeared without counsel in 5.5% (n=10 of 182) of the disposition hearings.

**How often did counsel appear without their clients at the Disposition hearing?**

- Finding: Information indicating an Disposition hearing was held and the parties present were available in 182 of the 404 (45%) cases coded. Among these cases, counsel never appeared without the parent they represent (0%; n=0 of 182).

**If parent was not present, did counsel know of the parent's whereabouts?**

- Finding: The parent was present with counsel in each of the disposition hearings coded.

**D. Six Month Review Hearing**

**How often was the Six Month Review Hearing continued due to issues involving parent counsel?**

- Finding: Information indicating there was a six month review hearing was available in 173 of the 404 (42.6%) case coded. Among these cases, 2.9% (n=5 of 173) were continued due to issues with the parent's counsel. The reasons given are listed below.
  - Mother not transported from jail (n=1)
  - Change in parent's counsel (n=1)
  - Counsel Unavailable (n=1)
  - Parent not Present (n=1)
  - Attorney was attending a "Domestic Relation Conference" (n=1)

### **Appearances of parties at the Six Month Review Hearings.**

- Finding: Information pertaining to the parties present at the six month review hearing was available in each of the 173 (100%) cases coded as holding a six month review. The frequency in which each party was present at the six month review hearing is presented below.
  - Mother: 33.4% (n=135 of 173)
  - Father: 48.6% (n=84 of 173)
  - Child: 5.8% (n=10 of 173)
  - Social Worker: 95.4% (n=165 of 173)
  - City/County Attorney: 97.7% (n=169 of 173)
  - Attorney for Mother: 87.3% (n=151 of 173)
  - Substitute for Mother's Attorney: 5.7% (n=10 of 173)
  - Attorney for Father: 61.8% (n=107 of 173)
  - Substitute for Father's Attorney: 5.2% (n=9 of 173)
  - GAL: 93.6% (n=162 of 173)
  - Attorney for Agency: 2.3% (n=4 of 173)
  - Relative Caretaker: 2.9% (n=5 of 173)
  - Attorney for Caretaker: 0% (n=0 of 173)
  - Foster Parent: 0% (n=0 of 173)
  - Attorney for Foster Parent: 0% (n=0 of 173)
  - CASA: 5.8% (n=10 of 173)
  - Interpreter: 2.3% (n=4 of 173)
  - Probation Officer: 1.2% (n=2 of 173)
  - Boyfriend: 1.2% (n=2 of 173)
  - Boyfriend's Attorney: 0.5% (n=1 of 173)
  - Denver Indian Resource Center: 0.5% (n=1 of 173)
  - Bridges Family Services: 0.5% (n=1 of 173)
  - Counselor: 0.5% (n=1 of 173)

### **How many parents were not represented by counsel at the Six Month Review hearing?**

- Finding: Information indicating a Six Month Review hearing was held and the parties present were available in 173 of the 404 (42.6%) cases coded. Among these cases, parents appeared without counsel in 5.8% (n=10 of 173) of the six month review hearings.

### **How often does counsel appear without their clients at the Six Month Review hearing?**

- Finding: Information indicating a Six Month Review hearing was held and the parties present were available in 173 of the 124 (42.6%) cases coded. Among these cases, counsel appeared without the parent in 15% (n=26 of 173) of the six month review hearings.

### **If parent was not present, did counsel know of the parent's whereabouts?**

- Finding: Among the 26 cases in which respondent counsel appeared without the parent at the six month review hearing, counsel knew the whereabouts of the parents in one case (15.4%; n=4 of 26), in which the parent was not transported from jail.

## E. Permanency Hearing

### How often was the Permanency Hearing continued due to issues involving parent counsel?

- Finding: Information indicating there was a permanency hearing was available in 320 of the 404 (79.2%) cases coded. Among these cases, 1.9% (n=6 of 320) were continued due to issues with the parent counsel. The reasons for the continuance are listed below.
  - Parent's Counsel not Present: 66.6% (n=4 of 6)
  - Parent failed to appear: 16.7% (n=1 of 6)
  - Parent not transported to court: 16.7% (n=1 of 6)

### Appearances of parties at the Permanency Hearings.

- Finding: Information pertaining to the parties present at the permanency hearing was available in each of the 320 (100%) cases coded as holding a permanency hearing. The frequency in which each party was present is presented below.
  - Mother: 73.8% (n=236 of 320)
  - Father: 50% (n=160 of 320)
  - Child: 5% (n=16 of 320)
  - Social Worker: 92.2% (n=295 of 320)
  - City Attorney: 94.1% (n=301 of 320)
  - Attorney for Mother: 82.2% (n=263 of 320)
  - Substitute for Mother's Attorney: 3.1% (n=10 of 320)
  - Attorney for Father: 60.6% (n=194 of 320)
  - Substitute for Father's Attorney: 3.1% (n=10 of 320)
  - GAL: 93.1% (n=298 of 320)
  - Attorney for Agency: 4.4% (n=14 of 320)
  - Relative Caretaker: 7.8% (n=25 of 320)
  - Attorney for Caretaker: 0.6% (n=2 of 320)
  - Foster Parent: 1.3% (n=4 of 320)
  - Attorney for Foster Parent: 0.9% (n=3 of 320)
  - Grandparents: 5% (n=16 of 320)
  - CASA: 4% (n=13 of 320)
  - Aunt: 1.5% (n=5 of 320)
  - Bridges Family Services: 0.3% (n=1 of 320)
  - Interpreter: 7% (n=8 of 320)
  - Savio Treatment Center Representative: 1.2% (n=4 of 320)
  - Special Respondent: 1.7% (n=2 of 320)
  - Probation Officer: 0.3% (n=1 of 320)
  - Stepfather: 1.7% (n=2 of 320)
  - Stepfather's Attorney: 1.7% (n=2 of 320)

### How many parents were not represented by counsel at the Permanency hearing?

- Finding: Information indicating a Permanency hearing was held and the parties present were available in 320 of the 404 (79.2%) cases coded. Among these cases, parents appeared without counsel in 4.3% (n=29 of 320) of the permanency hearings.

### **How many counsel appeared without their clients at the Permanency hearing?**

- Finding: Information indication a Permanency Hearing was held and the parties present were available in 320 of the 124 (92.7%) cases coded. Among these cases, counsel appeared without the parent in 17.5% (n=56 of 320) of the permanency hearings.

### **If parent was not present, did counsel know of the parent's whereabouts?**

- Finding: Among the 56 cases in which counsel appeared without their client, the whereabouts of the parents were known in 10.7% (n=6 of 56) of the cases. The whereabouts of the parent given are listed below.
  - Parent failed to be transported from jail (50%; n=3 of 6)
  - Mom had to watch children (16.7; n=1 of 6)
  - Mother in hospital after suicide attempt (16.7; n=1 of 6)
  - Mother refuses to participate any longer (16.7; n=1 of 6)

### **What was the Permanency Goal?**

- Finding: The primary permanency goal was available in 300 of the 404 (74.3%) cases that held a permanency hearing. The frequency of each permanency goal is listed below.
  - Reunification with Charged Relative: 65% (n=195 of 300)
  - Reunification with Non-Charged Relative: 10% (n=30 of 300)
  - Relative Placement: 11.6% (n=35 of 300)
  - Adoption/TPR: 8.6% (n=26 of 300)
  - Guardianship: 0.3% (n=1 of 300)
  - Age Out: 3.3% (n=10 of 300)
  - Long Term Foster Care: 1% (n=3 of 300)

### **What was the Concurrent Permanency Goal?**

- Finding: A concurrent permanency goal was available in 53 of 404 (13.1%) cases that held a permanency hearing. The frequency of each permanency goal is listed below.
  - Relative Placement: 52.8%; (n=28 of 53)
  - Adoption/TPR: 41.5% (n=22 of 53)
  - Placement with Non Charged Relative: 5.7% (n=3 of 53)

## **IV. Post Disposition Events and Case Outcomes Status of the cases**

- Finding: Approximately 399 of the 404 (98.8%) cases coded in the sample indicated whether a case remained open or was closed. Approximately 48.4% (n=193 of 404) of the cases remained open, while 51.6% (n=206 of 404) of the cases were closed.

### **What was the outcome of the cases?**

- Finding: The outcome was available in each of the 206 closed cases (100%). The frequency of the different case outcomes is listed below.
  - Reunification with Charged Relative: 51% (n=105 of 206)
  - Reunification with Non Relative: 13.6 % (n=28 of 206)
  - Relative Placement: 18.9% (n=39 of 206)
  - TPR/Adoption: 5.3% (n=11 of 206)
  - Age Out: 1.9% (n=4 of 206)
  - Dismissed: Unable to Prove: 3.9% (n=8 of 206);
  - Dismissed: Conditions Ameliorated: 1% (n=2 of 206)

APPENDIX E  
COURT OBSERVATION DATA REPORT

## **RESPONDENT PARENTS' COUNSEL NEEDS ASSESSMENT Court Observation Data Report**

The state of Colorado is making efforts to improve the representation of parents accused of abuse and neglect. In this effort, the National Center for State Courts, The National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children, have conducted a study assessing the needs of respondent parents' counsel in the state of Colorado.

As part of this effort, child abuse and neglect court hearings were observed in four project sites (Denver, El Paso, Weld and Teller counties). This report provides a statewide summary regarding child abuse and neglect hearing observations conducted by members of the research team.

A total of 151 child abuse and neglect hearings were observed (during July, 2006) to assist in this assessment of respondent parents' counsel. Observers used a structured court observation instrument to assess respondent parents' counsel hearing practice. Although more than one respondent parents' counsel may be present in a hearing, coders focused on one counsel for coding purposes. Hearings were observed by two coders, who then compared observations for reliability. Any discrepancies in coded observations were fully discussed and coding decisions made only if consensus was achieved on what was observed.

In summary, these structured observations found that:

- The majority of respondent parents' counsel were on time for hearings and came prepared for those hearings. Very few respondent parents' counsel requested a continuance of hearings observed.
- The majority of respondent parents' counsel were active participants during hearings, directly communicating with the court and with other counsel. However, respondent parents' counsel were rarely observed to communicate directly with their clients during hearings.
- The majority of respondent parents' counsel comported themselves professionally during the hearings observed.
- Most respondent parents' counsel appeared to have discussed the issues with their clients prior to the hearing, advocated for their client's position during hearings, and clearly articulated that position during hearings (the majority of respondent parents' counsel also demonstrated effective oratory skills).
- Most respondent parents' counsel appeared to have participated in case planning and advocated for appropriate social services.

The observation findings are presented in more detail below, organized around domains or categories of performance (i.e., timeliness, preparedness, communication, advocacy, and professionalism). In addition, findings related to specific skill sets are also presented (i.e., oratory skills), and basic hearing demographics are presented to provide context for the observation.

## **I. Respondent Parents' Counsel Performance Measures**

- **Timeliness**

**How often were RPC on time for the hearings observed?**

- Finding: Overall, respondent parents' counsel was on time in 97% (n=146 of 151) of the observed hearings.

- **Preparedness**

**How often did it appear that RPC had reviewed the relevant files/documents prior to the observed hearing?**

- Finding: Overall, it appeared that respondent parents' counsel had reviewed the relevant files/documents prior to the hearing in 98.4% (n=148 of 151).

- **Communication**

**How often did it appear that RPC had discussed the issues pertaining to the case with the parents prior to the hearing?**

- Finding: Overall, it appeared that respondent parents' counsel had discussed the issues pertaining to the case with their client prior to the hearing in 89.2% of the hearings observed (n=134 of 151).

**How often did RPC communicate with their client during the hearing?**

- Finding: Respondent parents' counsel were observed to directly communicate with their client(s) during hearings in 15.6% of the hearings observed (n=23 of 151).

**How often did RPC communicate with the court during the hearing?**

- Finding: Respondent parents' counsel were observed to communicate directly with the court in 95.2% of the hearings observed (n=144 of 151).

**How often did parent representatives communicate with other counsel during the hearing?**

- Finding: Respondent parents' counsel were observed to communicate with other counsel during 93.9% of the hearings observed (n=142 of 151).

- **Advocacy**

**How often did RPC clearly advocate for their client's position?**

- Finding: Respondent parents' counsel were observed to clearly advocate for their clients' position in 92.3% (n=139 of 151) of the observed hearings.

**How often did parent representatives clearly articulate their client's position?**

- Finding: Respondent parents' counsel clearly articulated their clients' position in 93.3% (n=141 of 151).

**How often did it appear that the RPC was engaged in case planning and advocated for the appropriate social services?**

- Finding: Respondent parents' counsel appeared to have engaged in case planning and advocated for appropriate social services in 89% of the hearings observed (n=134 of 151).

- **Professionalism**

- How often did RPC present him or herself professionally?**

- Finding: Respondent parents' counsel behaved professionally in 98.3% (n=148 of 151).

## **II. Parent Representative Skills Measures**

- **Oratory skills**

- How often did RPC display oratory skills?**

- Finding: Respondent parents' counsel displayed effective oratory skills in 97.1% of the hearings observed (n=147 of 151).

## **III. Demographics of the Cases Observed**

- What were the frequencies in which each type of hearing was observed?**

- Finding: Information pertaining to the type of hearing observed was available in 85% (n=128 of 151) of the hearings coded. The frequencies of each type of hearing observed are presented below.

- Emergency/Shelter Care: 1.47% (n=2 of 151)
- Initial: 4.3% (n=6 of 151)
- Pre-Trial Conference: 11.4% (n=16 of 151)
- Adjudication: 5.0% (n=7 of 151)
- Disposition: 3.6% (n=5 of 151)
- Motion: 2.1% (n=3 of 151)
- Review: 43.6% (n=61 of 151)
- Permanency: 15% (n=21 of 151)
- Pre-Trial Conference: 1.4% (n=2 of 151)
- Termination of Parental Rights: 5.0% (n=7 of 151)
- Post- Termination of Parental Rights: 0.7% (n=1 of 151)
- Visitation Hearing: 0.7% (n=1 of 151)
- Status Hearing: 0.7% (n=1 of 151)
- Child Support: 0.7% (n=1 of 151)
- Treatment Plan: 0.7% (n=1 of 151)
- Advisement: 0.7% (n=1 of 151)

- What was the average length of the hearings observed?**

- Finding: Information pertaining to the length of the hearing was available in 85% (n=128 of 151) of the observed hearings. The average duration of the observed hearings was 12 minutes, with the shortest hearing lasting 2 minutes and the longest hearing lasting 45 minutes. The average length of cases by type of hearing is presented below.

- Emergency/Shelter Care: Average=12 min (n=1)
- Initial: Average=13.6 min (min=7 min, max=25 min; n=6)
- Pre-Trial Conference: Average= 9.8 min (min=2 min, max=20 min; n=13)
- Adjudication: Average= 9.2 min (min=5 min, max=20 min; n=6)
- Disposition: Average=16.4 min (min=5 min, max=45 min; n=5)
- Review: Average= 11.3 min (minimum=2 min, maximum=30 min; n=59)
- Permanency: Average=12.4 min (minimum=4 min, maximum=25 min; n=16)
- Pre-Trial Conference-Termination of Parental Rights: Average= 11 min (minimum=7 min, maximum=15 min; n=2)

Termination of Parental Rights: Average= 25 min (minimum=20 min, maximum=30 min)  
Post –Termination of Parental Rights: Average=2 min (n=2)  
Motions=15 min (min=5 min, max=25 min; n=2)

**How often did the observed hearing begin late?**

- Finding: Among the 151 cases observed, 146 (96.7%) listed the time the hearing was scheduled to start as well as the time the hearing actually started. Approximately, 86.3% (n=126 of 146) began late, while 13.7% (n=20 of 146) began on time or slightly early. Among the 126 hearings that were late, 30.2% (n=38 of 126) started within 10 minutes of its scheduled time. In no case was a respondent parents' counsel responsible for a delay between scheduled and start times.

**How often was the hearing being observed continued?**

- Finding: Information pertaining to whether the observed case was continued was coded in 62 of the 151 (41.1%) hearings. Among these hearings, 12.9% (n=8 of 62) were continued, while 87.1% (n=54 of 62) were not continued. Of the continued hearings, 62.5% (n=5 of 8) were requested by respondent parent counsel, twice by respondent parents' counsel who were appointed on the same day as the hearing.

**Parties present at observed hearings.**

- Finding: The following is a list of the frequencies in which the following parties were present during hearings observed:
  - Mother: 63.3% (n=95 of 150)
  - Father: 43.3% (n=65 of 150)
  - Child: 4% (n=6 of 150)
  - Social Worker: 89.3% (n=134 of 150)
  - City/County Attorney: 92% (n=138 of 150)
  - Respondent Mother's Counsel: 82% (n=123 of 150)
  - Respondent Father's Counsel: 54.7% (n=82 of 150)
  - GAL/Counsel for Child: 94.6% (n=142 of 150)
  - CASA: 4% (n=6 of 150)
  - Grandparents: 5.3% (n=8 of 150)
  - Special Respondents: 6% (n=9 of 150)
  - Interpreter: 2% (n=3 of 150)
  - Counsel for Agency: 0% (n=0 of 150)
  - Caretaker: 0% (n=0 of 150)
  - Counsel for Caretaker: 0% (n=0 of 150)
  - Foster Parent: 0% (n=0 of 150)

APPENDIX F  
STATEWIDE RESPONDENT PARENTS' COUNSEL ONLINE SURVEY  
DATA REPORT

**RESPONDENT PARENTS' COUNSEL NEEDS ASSESSMENT**  
**Statewide Respondent Parents' Counsel Online Survey Data Report**

The State of Colorado is making efforts to improve the representation of parents accused of abuse and neglect. In this effort, the National Center for State Courts, The National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children, have conducted a study assessing the needs of respondent parents' counsel in the State of Colorado.

As part of this effort, an internet survey was administered to respondent parents' counsel throughout the state. This report provides a statewide summary of internet respondent parents' counsel survey findings.

A total of 44 respondent parents' counsel responded to the survey, providing their perceptions of their own experience.

In summary, the respondent parents' counsel internet survey analysis found that:

- Over 50% of the counsel (57.9%) reported they preferred hourly compensation structure, as they felt they were underpaid and unfairly compensated for the work they did. Money and funding seem to be a common and serious issue for many counsel.
- The majority of the counsel reported not having access to the same resources as social workers and GALs have (e.g., expert witnesses, investigators).
- Many counsel feel the system is biased against the parents, and that leads to less time for the counsel to prepare.
- Most counsel agreed there were enough respondent parents counsel available to handle the caseload demand in their jurisdictions.
- More than 50% of the counsel responded they were not aware of or they did not see any effort made by the court to recruit more respondent parents' counsel.
- In most cases, legal representation did not change throughout the case proceedings.
- In most cases, counsel reported they met with respondent parents privately before hearings.
- Most counsel appeared to have taken steps to locate the clients (e.g., calling them at home, contacting social workers) when they were unable to contact them.

The survey analysis is presented in more detail below in the order of the survey questionnaire.

**I. Background Information**

**1. Do respondents currently work as a respondent parents' counsel in abuse and neglect cases? (n=44)**

- Finding: Among the 44 (100%) completed surveys, 42 (95.5%) counsel reported they currently work as a respondent parents' counsel, whereas two (4.5%) reported they practiced as a respondent parents' counsel more than two years ago.

**2. With respect to the counsel's professional role as respondent parents' counsel, in which judicial district do they spend *most* of their time? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, there were more counsel to the survey from the 2<sup>nd</sup> Judicial District than other judicial districts (21.4%; n=9). The judicial district the counsel reported spending most of their time is noted below.

Judicial District	Frequency (n=42)
1 <sup>st</sup>	11.9% (n=5 of 42)
2 <sup>nd</sup>	21.4% (n=9 of 42)
4 <sup>th</sup>	11.9% (n=5 of 42)
5 <sup>th</sup>	2.4% (n=1 of 42)
7 <sup>th</sup>	2.4% (n=1 of 42)
9 <sup>th</sup>	2.4% (n=1 of 42)

Judicial District	Frequency (n=42)
12 <sup>th</sup>	7.1% (n=3 of 42)
13 <sup>th</sup>	2.4% (n=1 of 42)
14 <sup>th</sup>	2.4% (n=1 of 42)
16 <sup>th</sup>	2.4% (n=1 of 42)
17 <sup>th</sup>	4.8 % (n=2 of 42)
18 <sup>th</sup>	2.4% (n=1 of 42)
19 <sup>th</sup>	9.5% (n=4 of 42)
20 <sup>th</sup>	14.3% (n=6 of 42)
22 <sup>nd</sup>	2.4% (n=1 of 42)

**3. With respect to the counsel’s professional role as respondent parents’ counsel, in which county do they spend most of their time? (n=43)**

- Finding: Among the 43 (97.7%) surveys returned, there were more counsel to the survey from Denver County than other counties (23.3%; n=10). The county the counsel reported spending most of their time is noted below.

County	Frequency (n=43)
Adams	2.3% (n=1 of 43)
Alamosa	7.0% (n=3 of 43)
Arapahoe	2.3% (n=1 of 43)
Boulder	14.0% (n=6 of 43)
Denver	23.3% (n=10 of 43)
El Paso	11.6% (n=5 of 43)
Garfield	2.3% (n=1 of 43)
Gunnison	2.3% (n=1 of 43)
Jefferson	11.6% (n=5 of 43)
Lake	2.3% (n=1 of 43)
Logan	2.3% (n=1 of 43)
Moffat	2.3% (n=1 of 43)
Montezuma	2.3% (n=1 of 43)
Otero	2.3% (n=1 of 43)
Weld	11.6% (n=5 of 43)

**Part II. Experience**

**4. What types of organization do respondent parents’ counsel work for? (n=44)**

- Finding: Among the 44 (100%) surveys returned, 37 (84.1%) counsel indicated they practice “solo,” whereas four (9.1%) counsel indicated they work for a contracted law firm. The remainder of the respondents (6.8%; n=3) reported they work for other types of organization. (No data were obtained to specify what other type(s) of organization these counsel were referring to.)

**5. How long have respondent parents’ counsel been in their current role? (n=43)**

- Finding: Among the 43 (97.7%) surveys returned, eight (18.6%) counsel were fairly experienced with 7-10 years serving in their current role and another eight (18.6%) counsel serving 15-18 years in their current role. The durations the counsel reported serving in their current role is presented below.

<b>Years in current role</b>	<b>Frequency (n=43)</b>
Less than 1 year	0% (n=0 of 43)
1-3 years	16.3% (n=7 of 43)
4-6 years	11.6% (n=5 of 43)
7-10 years	18.6% (n=8 of 43)
11-14 years	14.0% (n=6 of 43)
15-18 years	18.6% (n=8 of 43)
19-22 years	14.0% (n=6 of 43)
23-25 years	4.7% (n=2 of 43)
More than 25 years	2.3% (n=1 of 43)

**6. On average, how many cases do respondent parents' counsel carry on their caseload? (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsel reporting having 30 to 39 cases on average (18.2%; n=8). Seven (15.9%) counsel indicated they carry more than 100 cases, five of which reported they practice "solo" in the previous question (Q4). This seems to be a very large caseload to handle concurrently as a solo practitioner, regardless of the percentage of abuse and neglect cases they carry. The number of cases the counsel reported carrying is as follows.

<b>#s of caseload</b>	<b>Frequency (n=44)</b>
Less than 10	0% (n=0 of 44)
10-19	9.1% (n=4 of 44)
20-29	13.6% (n=6 of 44)
30-39	18.2% (n=8 of 44)
40-49	6.8% (n=3 of 44)
50-59	9.1% (n=4 of 44)
60-69	6.8% (n=3 of 44)
70-79	2.3% (n=1 of 44)
80-89	13.6% (n=6 of 44)
90-99	2.3% (n=1 of 44)
100	2.3% (n=1 of 44)
More than 100	15.9% (n=7 of 44)

**7. What percent of the counsel's overall caseload are abuse and neglect cases? (n=44)**

- Finding: Among the 44 completed surveys, there were nine (20.5%) counsel reporting as 70 to 79% of their caseload being abuse and neglect. There were four (9.1%) counsel indicating they were dedicated to abuse and neglect cases. The percentage of abuse and neglect cases the counsel reported carrying out of total caseload is presented below.

<b>% of abuse and neglect cases</b>	<b>Frequency (n=44)</b>
Less than 10%	2.3% (n=1 of 44)
10-19%	13.6% (n=6 of 44)
20-29%	4.5% (n=2 of 44)
30-39%	2.3% (n=1 of 44)
40-49%	2.3% (n=1 of 44)
50-59%	15.9% (n=7 of 44)
60-69%	4.5% (n=2 of 44)
70-79%	20.5% (n=9 of 44)
80-89%	6.8% (n=3 of 44)
90-99%	18.2% (n=8 of 44)
100%	9.1% (n=4 of 44)

**8. Are there enough parents' attorneys available to handle the caseload demand in the counsel's jurisdictions? (n=44)**

- Finding: Among the 44 (100%) completed surveys, 38 (86.4%) counsel reported there were enough respondent parents' counsel available to handle the caseload demand. The remainder of the counsel reported there is not (13.6%; n=6).

**9. What percentage of respondent parents has legal counsel for all abuse and neglect case proceedings? (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsels indicating 90 to 99% of respondent parents has legal counsel for all abuse and neglect case proceedings (31.8%; n=14). Only one (2.3%) counsel responded 100%. Three (6.8%) counsel indicated less than 10%. The percentage of respondent parents the counsel reported having legal counsel for all the proceedings is presented below.

<b>% of having legal counsel</b>	<b>Frequency (n=44)</b>
Less than 10%	6.8% (n=3 of 44)
10-19%	0% (n=0 of 44)
20-29%	0% (n=0 of 44)
30-39%	0% (n=0 of 44)
40-49%	0% (n=0 of 44)
50-59%	6.8% (n=3 of 44)
60-69%	4.5% (n=2 of 44)
70-79%	6.8% (n=3 of 44)
80-89%	15.9% (n=7 of 44)
90-99%	31.8% (n=14 of 44)
100%	2.3% (n=1 of 44)
Don't Know	25.0% (n=11 of 44)

**10. What percentage of respondent parents has one legal counsel for all child abuse and neglect case proceedings? (n=43)**

- Finding: Among the 43 (97.7%) surveys returned, 16 (37.2%) counsel indicated 90 to 99% of the respondent parents has one legal counsel throughout the case proceedings. Only one (2.3%) counsel responded 100%. There was more than 50% of the counsel (59.2%; n=26) reporting over 80% of the parents had one legal counsel during the case lifecycle. The percentage of respondent parents the counsel reported having one legal counsel throughout the life of the child abuse and neglect case is presented below.

<b>% of having one counsel throughout the case</b>	<b>Frequency (n=43)</b>
Less than 10%	2.3% (n=1 of 43)
10-19%	2.3% (n=1 of 43)
20-29%	2.3% (n=1 of 43)
30-39%	0% (n=0 of 43)
40-49%	0% (n=0 of 43)
50-59%	9.3% (n=4 of 43)
60-69%	0% (n=0 of 43)
70-79%	4.7% (n=2 of 43)
80-89%	20.9% (n=9 of 43)
90-99%	37.2% (n=16 of 43)
100%	2.3% (n=1 of 43)
Don't Know	18.6% (n=8 of 43)

**11. What percentage of respondent parents has legal representation that changes between initial assignment and the end of the case in the counsel's jurisdictions? (n=44)**

- Finding: Among the 44 (100%) surveys returned, half (50%; n=22) of the counsel reported legal representation changed less than 10% during the case lifecycle. The percentage of respondent parents the counsel reported having legal representation that changed during the case proceedings is presented below.

<b>% of having more than one counsel throughout the case</b>	<b>Frequency (n=44)</b>
Less than 10%	50% (n=22 of 44)
10-19%	13.6% (n=6 of 44)
20-29%	9.1% (n=4 of 44)
30-39%	2.3% (n=1 of 44)
40-49%	0% (n=0 of 44)
50-59%	4.5% (n=2 of 44)
60-69%	0% (n=0 of 44)
70-79%	2.3% (n=1 of 44)
80-89%	0% (n=0 of 44)
90-99%	0% (n=0 of 44)
100%	0% (n=0 of 44)
Don't Know	18.2% (n=8 of 44)

**12. How frequently are substitute attorneys used to fill in as parent representatives at hearings? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, there were more counsel indicating substitute attorneys were rarely used other than emergency situations (38.1%; n=16). There were only two (4.8%) counsel to the survey indicating substitute attorneys were never used to fill in for any situation. The frequency of substitute attorney coverage the counsel reported having is presented below.

<b>% of substitute attorney use</b>	<b>Frequency (n=42)</b>
Several times over the course of a parents case	19.0% (n=8 of 42)
Typically once over the course of a parents case	19.0% (n=8 of 42)
Sparingly, perhaps one out of three parents cases	19.0% (n=8 of 42)
Rarely, only in emergency situations	38.1% (n=16 of 42)
Substitute attorneys are never used to cover for hearings	4.8% (n=2 of 42)

**13. How often do respondent parents' counsel have substitute attorneys cover hearings which they are not able to attend? (n=43)**

- Finding: Among the 43 (97.7%) surveys returned, there were 22 (51.2%) counsel reporting rarely having substitute attorneys to fill in except for emergencies. There were nine (20.9%) counsel indicating they never used substitute attorneys to cover. The frequency of substitute attorney coverage the counsel reported having is presented below.

<b>% of substitute attorney use</b>	<b>Frequency (n=43)</b>
Several times over the course of a parents case	2.3% (n=1 of 43)
Typically once over the course of a parents case	9.3% (n=4 of 43)
Sparingly, perhaps one out of three parents cases	16.3% (n=7 of 43)
Rarely, only in emergency situations	51.2% (n=22 of 43)
Substitute attorneys are never used to cover for hearings	20.9% (n=9 of 43)

**Part III. Training**

**14. How many hours of abuse and neglect hearing practice did respondent parents' counsel receive before being appointed to represent parents in abuse and neglect cases? (n=43)**

- Finding: Among the 43 (97.7%) surveys returned, 17 (39.5%) counsel indicated they received no hours of hearing practice on child abuse and neglect cases before being appointed. There were 11 (25.6%) counsel reporting receiving more than 30 hours of hearing practice. There seems no consensus with regard to the numbers of hours of hearing training on abuse and neglect. The percentage of the training hours the counsel reported receiving before being appointed was presented below.

<b>Hours of abuse and neglect hearing practice prior to the appointment</b>	<b>Frequency (n=43)</b>
0 hours	39.5% (n=17 of 43)
1-5 hours	20.9% (n=9 of 43)
6-10 hours	4.7% (n=2 of 43)
11-15 hours	7.0% (n=3 of 43)
16-20 hours	2.3% (n=1 of 43)
More than 30 hours	25.6% (n=11 of 43)

**15. Type of training available to respondent parents' counsel prior to being appointed to abuse and neglect cases. (n=44)**

- Finding: Among the 44 (100%) surveys returned, 26 surveyed counsel (59.1%) indicated training for general litigation skills was available prior to the appointment. With regard to any training specific to child dependency, there seems fewer counsel reporting of the training availability prior to the appointment (e.g., ASFA, ICPC, ICWA, Appropriate Motions in Abuse and Neglect cases, Legal Permanency Options, Termination of Parental Rights) than other general topics and family law (see the table below). The types of training the counsel reported available prior to the appointment are presented below:

<b>Type of Training Availability prior to the appointment</b>	<b>Frequency (n=44)</b>
State Law	43.2% (n=19 of 44)
ASFA	4.5% (n=2 of 44)
ICPC	2.3% (n=1 of 44)
ICWA	15.9% (n=7 of 44)
Ethics	36.4% (n=16 of 44)
Litigation Skills Generally	59.1% (n=26 of 44)
Litigation Skills specific to abuse and neglect cases	15.9% (n=7 of 44)
Introduction and Presentation of Evidence	47.7% (n=21 of 44)
Appropriate Motions in Abuse and Neglect cases	13.6% (n=6 of 44)
Questioning of Witnesses	45.5% (n=20 of 44)
Domestic Violence	40.9% (n=18 of 44)
Substance Abuse	43.2% (n=19 of 44)
Legal Permanency Options	13.6% (n=6 of 44)
Reasonable Efforts	13.6% (n=6 of 44)
Termination of Parental Rights	22.7% (n=10 of 44)
Child Development	29.5% (n=13 of 44)
Sexual Abuse	45.5% (n=20 of 44)
Federal Indian Law	13.6% (n=6 of 44)
Mediation	27.3% (n=12 of 44)
Family Group Conferencing	6.8% (n=3 of 44)
Other	18.2% (n=8 of 44)

- Finding: Other types of training available to the respondent parents' counsel prior to being appointed were gathered from 11 (25%) of the 44 counsel. The following is a list of other training.

**Types of Other Training (n=11)**  
 Abuse and neglect procedures (GAL focus)  
 I began representing RP3 months after passing the bar  
 I had been a trial attorney for at least 10 years  
 Judge Wakefield's Juvenile Law Class at DU  
 Law school courses  
 Mentoring and observing other cases  
 My general training as a former public defender  
 Trial training in the DA's Office  
 Prior experience as GAL, asst. county attorney, elected DA  
 There is no specific training provided. The training available is CO CLE or 4<sup>th</sup> judicial district.  
 None. This was 22 years ago

**16. How many hours of training related to abuse and neglect cases do respondent parents' counsels receive per year? (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsel reporting receiving 1-5 hours of abuse and neglect training annually (27.3%; n=12). There were also 11 (25.0%) counsel indicating receiving 11-15 hours of abuse and neglect training annually. Three (6.8%) counsel reported they received no hours of training related to abuse and neglect cases. The hours of training the counsel reported receiving per year are presented below:

<b>Hours of abuse and neglect training per year</b>	<b>Frequency (n=44)</b>
0 hours	6.8% (n=3 of 44)
1-5 hours	27.3% (n=12 of 44)
6-10 hours	11.4% (n=5 of 44)
11-15 hours	25.0% (n=11 of 44)
16-20 hours	15.9% (n=7 of 44)
21-25 hours	6.8% (n=3 of 44)
26-30 hours	4.5% (n=2 of 44)
More than 30 hours	2.3% (n=1 of 44)

**17. Types of training respondent parents' counsels received after being appointed. (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsel indicating they were trained in Ethics (75.0%; n=33) than other topics after the appointment. Substance Abuse and State Law received 31 responses (70.5%), which are among the highest frequencies. The types of training the counsel reported receiving after being appointed are noted below.

<b>Types (Topics) of Training</b>	<b>Frequency (n=44)</b>
State Law	70.5% (n=31 of 44)
ASFA	25.0% (n=11 of 44)
ICPC	36.4% (n=16 of 44)
ICWA	61.4% (n=27 of 44)
Ethics	75.0% (n=33 of 44)
Litigation Skills Generally	50% (n=22 of 44)
Litigation Skills specific to abuse and neglect cases	52.3% (n=23 of 44)
Introduction and Presentation of Evidence	45.5% (n=20 of 44)
Appropriate Motions in abuse and neglect cases	27.3% (n=12 of 44)
Questioning of Witnesses	47.7% (n=21 of 44)
Domestic Violence	65.9% (n=29 of 44)
Substance Abuse	70.5% (n=31 of 44)
Legal Permanency Options	47.7% (n=21 of 44)
Reasonable Efforts	38.6% (n=17 of 44)
Termination of Parental Rights	47.7% (n=21 of 44)
Child Development	54.5% (n=24 of 44)
Sexual Abuse	54.5% (n=24 of 44)
Federal Indian Law	20.5% (n=9 of 44)
Mediation	43.2% (n=19 of 44)
Family Group Conferencing	27.3% (n=12 of 44)
Other	18.2% (n=8 of 44)

- Finding: Types of other training the counsel reported receiving after being appointed were gathered from eight (18.2%) of the 44 counsel. Three (38%) counsel reported they received Guardian Ad Litem training. The following is a list of other types of training.

<b>Types of Other Training (n=8)</b>	
GAL training	38% (n=3 of 8)
Brain Development	
HIPPA	
Meth effects on children	
Transitioning adolescents in foster care	

#### **Part IV. Resources**

##### **18. At what stage of abuse and neglect cases are parents most likely to be appointed counsel in your jurisdiction? (n=44)**

- Finding: Among the 44 (100%) surveys returned, the consensus seems to be that counsel was most likely to be appointed to parents at Emergency Shelter/Temporary Custody Hearing phase (81.8%; n=36). There were six (13.6%) counsel indicating the likelihood of the counsel appointment at Pre-Trial Conference phase. There were only two (4.5%) counsel indicating the appointment at Adjudication phase. No counsel responded to Disposition, Review, and/or Permanency phase(s).

##### **19. Types of resources available to assist respondent parents' counsel in handling abuse and neglect caseload (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsel indicating that Expert Witnesses were available as a resource to them (75.0%; n=33). Interpreters were also available to 30 (68.2%) counsel. There were only two (4.5%) counsel indicating investigators were available. The types of resources the counsel reported available to assist them in handling the child dependency caseload are presented below.

<b>Types of Resources</b>	<b>The Frequency</b>
Clerical	56.8% (n=25 of 44)
Paralegals	15.9% (n=7 of 44)
Investigators	4.5% (n=2 of 44)
Social Workers	47.7% (n=21 of 44)
Expert Witnesses	75.0% (n=33 of 44)
Interpreters	68.2% (n=30 of 44)
Parent-focused services such as visitation	52.3% (n=23 of 44)
Parent-focused services such as in-patient treatment resources	40.9% (n=18 of 44)
Private Interview rooms in the courthouse	47.7% (n=21 of 44)
Office space at the courthouse to conduct business between hearings	11.4% (n=5 of 44)
Other	15.9% (n=7 of 44)

- Finding: Types of other resources were gathered from 9 (20.5%) of the 44 counsel. The results are as follows:

<b>Types of Other Resources (n=9)</b>
GALs
Law students
Office Space at courthouse

**20. What resources do respondent parents' counsel think should be increased to assist them in representing parents accused of abuse and neglect? (n=44)**

- Finding: Among the 44 (100%) surveys returned, there were more counsel indicating that investigators should be increased in order to assist counsel in representing respondent parents (63.6%; n=28). This reflects the responses to the previous question (Q19) asking resources available to the counsel in handling abuse and neglect cases, as only two counsel answered investigators were available as a resource. There were 27 (61.4%) counsel indicating Expert Witnesses should also be increased although many counsel indicated in Q19 that Expert Witnesses were available as a resource for them. The types of resources the counsel reported being increased are noted below.

<b>Types of Resources</b>	<b>Frequency (n=44)</b>
Clerical	13.6% (n=6 of 44)
Paralegals	15.9% (n=7 of 44)
Investigators	63.6% (n=28 of 44)
Social Workers	34.1% (n=15 of 44)
Expert Witnesses	61.4% (n=27 of 44)
Interpreters	34.1% (n=15 of 44)
Parent-focused services such as visitation	40.9% (n=18 of 44)
Parent-focused services such as in-patient treatment resources	40.9% (n=18 of 44)
Private Interview rooms in the courthouse	40.9% (n=18 of 44)
Office space at the courthouse to conduct business between hearings	31.8% (n=14 of 44)
Other	15.9% (n=7 of 44)

- Finding: Types of other resources to be increased were gathered from 7 (16%) of 44 counsel. There were four (57%) counsel indicating more money/funds should be increased for compensation and/or expert witnesses.

**Types of other resources to be increased (n=7)**

More money/funds for compensation, investigators, expert witnesses (57%; n=4)  
Counseling for parents after termination  
More expert witnesses

**21. Does the court make efforts to recruit respondent parents' attorneys to your jurisdiction? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, half (50%; n=21) of the surveyed counsel reported having no awareness of any efforts made by the court to recruit more respondent parents' counsel, whereas 16 (38.1%) counsel indicated that the court makes efforts to recruit more respondent parents' counsel. The remainder of the surveyed (11.9%; n=5) reported no efforts are made.

**22. What recruitment efforts are made? (n=14)**

- Finding: Among the 16 counsel who are aware of efforts made by the court for RPCs recruitment (38.1%; n=16), 14 counsel responded with specific examples of such efforts. Half (50.0%; n=7) of those counsel reported position availability was posted in various ways including flyers in the courthouse. Three (21.0%) counsel reported judge appointment. There were two (14.0%) counsel indicating Discussion at local bar meetings.

**23. Awareness of any outreach programs offered by local law schools designed to educate and interest students in this specific area of the law. (n=32)**

- Finding: Among the 32 (72.7%) surveys returned, 28 (87.5%) counsel indicated having no awareness with regard to outreach programs offered by local law schools on child abuse and neglect. There were four (12.5%) counsel reporting being aware of outreach programs offered by local law schools. Among the 4 (12.5%) of the counsel who had an awareness, two (50%) counsel stated University of Colorado School of Law, whereas the remainder of the surveyed (50%; n=2) stated University of Denver College of Law.

**24. Do the local law schools offer symposiums or seminars discussing issues of abuse and neglect or the juvenile and family court system? (n=34)**

- Finding: Among the 34 (77.3%) surveys received, 16 counsel (47.1%) indicated the local law schools offered symposiums or seminars on these issues. There were 18 (52.9%) counsel indicating the local law school did not offer symposiums or seminars on abuse and neglect. Among the 16 (47.1%) counsel who were aware of symposiums/seminars offered by local law schools, 11 (69.0%) counsel indicated symposiums or seminars on abuse and neglect offered by University of Denver College of Law, while two (13.0%) counsel responded University of Colorado School of Law. Half (50%; n=8) of the 16 counsel indicated they attended those symposiums/seminars. The topics of the symposium/seminar indicated by the surveyed counsel are listed below:

**Topics of Symposium/Seminar attended by counsel**

General information regarding process and consequences of dependency and neglect proceedings  
Juvenile Law  
The Process of D&N cases and law  
Sexual abuse  
Domestic violence  
CASA  
Adoption  
GAL

**25. How often do respondent parents' counsel meet with, cooperate, and communicate with the following professionals?**

- Finding: The surveyed counsel ranked the professionals as to how often they meet with, cooperate, and communicate with the listed. The question was answered by the scale of 1 to 5 (1=Never; 2=Rarely; 3=Sometimes; 4=Often; 5=Always) and Don't Know for each professional. The following is the frequency and proportion for each response, the average of the responses with 5 point scale, and the total number of responses to the question.

Professional	Never	Rarely	Sometimes	Often	Always	Don't Know	Avg.	n
CASA	12.5% n=5	20.0% n=8	27.5% n=11	27.5% n=11	12.5% n=5	0% n=0	3.08	40
GAL	0% n=0	0% n=0	14.0% n=6	25.6% n=11	60.5% n=26	0% n=0	4.47	43
City/County Attorneys	0% n=0	0% n=0	7.0% n=3	23.3% n=10	69.8% n=30	0% n=0	4.63	43
Other Parents Counsel	2.3% n=1	2.3% n=1	14.0% n=6	27.9% n=12	53.5% n=23	0% n=0	4.28	43
Service Providers	4.8% n=2	11.9% n=5	35.7% n=15	31.0% n=13	16.7% n=7	0% n=0	3.43	42
Caseworkers	0% n=0	2.3% n=1	14.0% n=6	14.0% n=6	69.8% n=30	0% n=0	4.51	43
Foster parents	23.3% n=10	55.8% n=24	18.6% n=8	0% n=0	2.3% n=1	0% n=0	2.02	43
Relative/kinship placements	19.0% n=8	19.0% n=8	47.6% n=20	11.9% n=5	2.4% n=1	0% n=0	2.60	42
Judges/Magistrates	9.8% n=4	17.1% n=7	7.3% n=3	24.4% n=10	41.5% n=17	0% n=0	3.71	41
Court Clerks	9.5% n=4	7.1% n=3	21.4% n=9	23.8% n=10	38.1% n=16	0% n=0	3.74	42
Court improvement collaborative groups	28.2% n=11	23.1% n=9	20.5% n=8	15.4% n=6	7.7% n=3	5.1% n=2	2.49	39
Community leaders to promote system reform	50.0% n=21	28.6% n=12	14.3% n=6	2.4% n=1	0% n=0	4.8% n=2	1.69	42

- Finding: The following is a list of comments received.

**CASAs** (11.4%; n=5 of 44)

- Generally the information CASAs have is not different from the information the social worker has
- Not helpful
- Communicated if CASAs appointed
- Not appointed in our cases

**Foster Parents** (18.2%; n=8 of 44)

- Not usually open to RPC 37.5% (n=3 of 8)
- Their identities are rarely revealed 37.5% (n=3 of 8)
- Aren't allowed to

**Relative/kinship placements** (6.8%; n=3 of 44)

- Especially if DSS not considering for placement
- Often if they will speak to RPC

**Judges/Magistrates** (18.2%; n=8 of 44)

- Ex parte is unethical 37.5% (n=3 of 8)
- Only in court hearings 37.5% (n=3 of 8)
- As appropriate

**Court Clerks** (4.6%; n=2 of 44)

- As appropriate
- For missing documents

**Court improvement collaborative groups** (4.6%; n=2 of 44)

- We meet once per year, on average
- We don't have them in Denver

**Community leaders to promote system reform** (2.3%; n=1 of 44)

- We have none I am aware of

**26. How appropriate is this standard?**

- Finding: The surveyed counsel ranked the professionals as to how appropriate to conduct the listed standards/tasks. The question was answered by the scale of 1 to 5 (1=Very Inappropriate; 2=Inappropriate; 3=Neutral; 4=Appropriate; 5=Very Appropriate) and Don't Know. The following is a frequency and proportion for each standard, the average of the responses with 5 point scale, and the total number of responses to the questions.

Standard	Very Inappropriate	In-appropriate	Neutral	Appropriate	Very Appropriate	Don't Know	Avg.	n
Families' Case File Review	2.3% n=1	0% n=0	13.6% n=6	22.7% n=10	59.1% n=26	2.3% n=1	4.40	44
Conduct Independent Investigations	0% n=0	2.4% n=1	19.0% n=8	47.6% n=20	31.0% n=13	0% n=0	4.07	42
Discuss allegations against the parent with the parent	0% n=0	0% n=0	0% n=0	2.3% n=1	97.7% n=43	0% n=0	4.98	44
Discuss the service plan with parent	0% n=0	0% n=0	0% n=0	2.3% n=1	97.7% n=43	0% n=0	4.98	44
Work with parents to develop a case timeline	0% n=0	2.3% n=1	13.6% n=6	31.8% n=14	50.0% n=22	2.3% n=1	4.33	44
Ask the court to provide services for accused parents	0% n=0	0% n=0	0% n=0	15.9% n=7	81.8% n=36	2.3% n=1	4.84	44
Advocate for visitations	0% n=0	0% n=0	0% n=0	6.8% n=3	93.2% n=41	0% n=0	4.93	44
Keep client's information confidential	0% n=0	0% n=0	2.3% n=1	0% n=0	95.5% n=42	2.3% n=1	4.95	44
Discuss orders entered into the court with parent	0% n=0	0% n=0	0% n=0	4.8% n=2	95.2% n=40	0% n=0	4.95	42
Explain the client's rights in each hearing	0% n=0	2.3% n=1	2.3% n=1	14.0% n=6	79.1% n=34	2.3% n=1	4.72	43
Provide your contact information to facilitate open communications with your client	0% n=0	2.3% n=1	0% n=0	4.7% n=2	93.0% n=40	0% n=0	4.88	43

Provide copies of petitions, court orders, and other relevant case documents	0% n=0	0% n=0	11.4% n=5	18.2% n=8	70.5% n=31	0% n=0	4.59	44
Timely filing of the pleadings to the court to prevent continuances	2.3% n=1	0% n=0	0% n=0	11.6% n=5	86.0% n=37	0% n=0	4.79	43

➤ Finding: The following is a list of comments received.

**Review Families' Case File** (13.8%; n=6 of 44)

- The answer will change depending on whether the case file refers to the DSS file or court file
- Not necessary in most cases

**Conduct Independent Investigations** (25%; n=11 of 44)

- No funding available (45.5%; n=5 of 11)
- No resources available (18.2%; n=2 of 11)
- Depends on the case (18.2%; n=2 of 11)

**Work with parents to develop a case timeline** (11.5%; n=5 of 44)

- As a general matter, the legislature already took care of that. Specifically, it is generally better to discuss goals and objectives, rather than allow parents to get fixated on timelines.
- For case resolution? For court process? Unclear question.
- The case "timeline" would depend on the parent's level of cooperation with the treatment plan.
- Timeline is not driven by the parent.
- We need the assistance of social workers to do this. We are not social workers and we are not paid enough to provide these services.

**Ask the court to provide services for accused parents** (6.9%; n=3 of 44)

- Accused of a criminal act?
- Don't use the word accused.
- The court will tell you it has no money and services are not provided for by statute.

**Advocate for visitations** (4.6%; n=2 of 44)

- DDHS has all the "experts" so what they say goes. You never in these issues because you have no evidence to present. DDHS limits the amount of visitation based on their workers' availability so parents never get the amount of parenting time they need to improve things.
- It is called "parenting time."

**Keep clients' information confidential** (4.6%; n=2 of 44)

- Let's see, as a parent I have the choice of keeping information confidential or getting my kids back. Which will my attorney recommend that I do?
- We are lawyers. Of course, we need to keep our client's information confidential.

**Discuss orders entered into the court with parent** (4.6%; n=2 of 44)

- Does this mean orders that the court has issued?
- What are orders entered into the court? Our courts enter orders.

**Explain the client's rights in each hearing (4.6%; n=2 of 44)**

- Clients do not really have any rights in these cases. I do an initial advisement and give my clients written information including a written explanation of each hearing and the timeline. I give another advisement if the case is set for TPR.
- Do you mean repeat the explanation at every hearing or give a general explanation that covers most hearings?

**Provide your contact information to facilitate open communications with client (2.3%; n=1 of 44)**

- If agreed to by parent.

**Provide copies of petitions, court orders, and other relevant case documents (4.6%; n=2 of 44)**

- But not more than two times during the case. Clients often lose their documents numerous times.
- Upon request of client, and if reimbursed by SCAO when appointed.

**Timely filing of copies of all petitions, court orders, and other relevant case documents to the court to prevent continuances (9.1%; n=4 of 44)**

- I file documents timely because there are rules that govern the filing of documents. I am an advocate for my client and sometimes continuances are warranted.
- It is appropriate because that is what you are expected to do; not because it may prevent continuances.
- Sometimes I want continuances, but I wouldn't delay a filing only for the purpose of forcing a continuance.
- Would like to have Social Services reports prior to the day of the hearing.

**27. How often do the counsel do the following task?**

- Finding: The surveyed counsel ranked the tasks as to how often they conduct the listed. The question was answered by the scale of 1 to 5 (1=Never; 2=Rarely; 3=Sometimes; 4=Often; 5=Always) and Don't Know. The following is the frequency and proportion for each task, the average of the responses with 5 point scale, and the total number of responses to the questions.

Tasks	Never	Rarely	Sometimes	Often	Always	Don't Know	Avg.	n
Review Families' Case File	0% n=0	4.5% n=2	15.9% n=7	25.0% n=11	52.3% n=23	2.3% n=1	4.28	44
Conduct Independent Investigations	4.5% n=2	18.2% n=8	38.6% n=17	18.2% n=8	20.5% n=9	0% n=0	3.32	44
Discuss allegations against the parent with the parent	2.3% n=1	0% n=0	0% n=0	2.3% n=1	95.5% n=42	0% n=0	4.89	44
Discuss the service plan with parent	2.3% n=1	4.5% n=2	0% n=0	0% n=0	93.2% n=41	0% n=0	4.86	44
Work with parents to develop a case timeline	4.5% n=2	11.4% n=5	11.4% n=5	34.1% n=15	38.6% n=17	0% n=0	3.91	44
Ask the court to provide services for accused parents	2.3% n=1	2.3% n=1	9.3% n=4	23.3% n=10	60.5% n=26	2.3% n=1	4.40	43
Advocate for visitations	2.3% n=1	0% n=0	0% n=0	20.9% n=9	76.7% n=33	0% n=0	4.70	43
Keep client's information confidential	0% n=0	0% n=0	2.3% n=1	2.3% n=1	95.3% n=41	0% n=0	4.93	43
Discuss orders entered into the court with parent	2.3% n=1	0% n=0	2.3% n=1	2.3% n=1	90.7% n=39	2.3% n=1	4.83	43

Tasks	Never	Rarely	Sometimes	Often	Always	Don't Know	Avg.	n
Explain the client's rights in each hearing	0% n=0	2.3% n=1	4.5% n=2	13.6% n=6	79.5% n=35	0% n=0	4.70	44
Provide your contact information to facilitate open communications with your client	2.3% n=1	2.3% n=1	2.3% n=1	0% n=0	93.0% n=40	0% n=0	4.79	43
Provide copies of petitions, court orders, and other relevant case documents	2.3% n=1	9.3% n=4	7.0% n=3	14.0% n=6	65.1% n=28	2.3% n=1	4.05	43
Timely filing of the pleadings	0% n=0	0% n=0	0% n=0	12.5% n=5	85.0% n=34	2.5% n=1	4.89	40

➤ Finding: The following is a list of comments received.

**Review Families' Case File** (9.1%; n=4 of 44)

- Department ROC notes.
- I don't know what that is. Do you mean the Court file? Or DDHS's file?
- I rarely look at the department's file unless a termination is pending. I review my personal file prior to every hearing.
- If this means entire DSS file, I would say rarely.

**Conduct Independent Investigations** (18.2%; n=8 of 44)

- No funding available (25.0%; n=2 of 8)
- No resources available (25.0%; n=2 of 8)
- I always consult with other personnel connected to the case; I rarely would employ an independent investigator

**Discuss the service plan with parent** (2.3%; n=1 of 44)

- Only on the record

**Work with parents to develop a case timeline** (9.1%; n=4 of 44)

- A timeline is often misunderstood by my clients. If the social worker tells them something should be completed by a specific date, they believe it is set in stone. When it comes to children, nothing is set in stone. I do tell them about the EPP guidelines, if the case is an EPP case.
- If you mean showing them the court process.
- It is more advantageous to discuss goals and objectives. It is very risky to create circumstances where a parent may fixate on time and lose sight of goals. Once circumstances are right for modification of treatment plan or goals, then can discuss timeframes to make change.
- Timing depends on issues in case and client's motivation.

**Ask the court to provide services for accused parents** (15.9%; n=7 of 44)

- Accused of a criminal act?
- If not being provided/those offered by the Department are inadequate. (29.0%; n=2 of 7)
- Never get any help unless DDHS agrees to provide the service and then it is with their providers.
- No funds/time.

**Advocate for visitations** (11.4%; n=5 of 44)

- Huge issue for most
- If not being provided

- Only when requested or appropriate
- When it is advantageous for the client to do so

**Keep clients' information confidential** (6.8%; n=3 of 44)

- Unless cleared with parent
- When it is advantageous for the client to do so

**Discuss orders entered into the court with parent** (6.8%; n=3 of 44)

- If my client doesn't discuss a court's order, I try to explain the order to them in words they will understand. Are there other orders that can be "entered into the court?"
- Only on the record.

**Explain the client's rights in each hearing** (6.8%; n=3 of 44)

- As needed
- Especially if not represented by counsel
- When it is relevant to do so

**Provide your contact information to facilitate open communications with client** (4.5%; n=2 of 44)

- Only if cleared with parent
- When unrepresented; they receive only information relative to the clerks of court

**Provide copies of petitions, court orders, and other relevant case documents** (13.6%; n=6 of 44)

- Only if requested by client (50%; n=3 of 6)
- Unless no valid address (33%; n=2 of 6)
- Varies depending on what the client wants me to do

**Timely filing of copies of all petitions, court orders, and other relevant case documents to the court to prevent continuances** (13.6%; n=6 of 44)

- As best as able.
- Clients generally think it should have been filed yesterday!
- I try to file motions for my clients on a timely basis. Often, a continuance is in my client's best interest, whereas others may believe a continuance is not appropriate. The longer a case lasts, the more chance my clients have to comply with their treatment plans. Respondent parents' counsel never file petitions, and rarely file court orders.

**28. How often do respondent parents' counsel do the following tasks?**

- Finding: The surveyed counsel ranked the tasks as to how often they conduct the listed. The question was answered by the scale of 1 to 5 (1=Never; 2=Occasionally in some cases; 3=Usually once during a typical case; 4=More than once in a typical case; 5=Regularly in every case). The following is the frequency and proportion for each task, the average of the responses with 5 point scale, and the total number of responses to the questions.

Task	Never	Occasion-ally	Usually	More than once	Regularly	Avg.	n
Prepare the clients to testify	3.2% n=1	45.2% n=14	32.3% n=10	9.7% n=3	9.7% n=3	2.77	31
Locate Expert Witnesses	2.8% n=1	63.9% n=23	30.6% n=11	2.8% n=1	0% n=0	2.33	36
Prepare Witnesses	5.6% n=2	47.2% n=17	22.2% n=8	13.9% n=5	11.1% n=4	2.78	36
Cross-examine Witnesses	0% n=0	48.4% n=15	22.6% n=7	9.7% n=3	19.4% n=6	3.00	31

- Finding: The following is a list of comments received.

**Prepare the client to testify** (31.8%; n=14 of 44)

- Only for contested hearings (36%; n=5 of 14)
- As needed (29%; n=4 of 14)
- If set for hearing/trial.
- Most hearings the client does not take the witness stand.
- These questions are not well tailored to D&N cases. A better way to address this would be first to establish the percentage of D&N cases that include contested hearings, then proceed with questions regarding contested hearings. My answer to all of the related questions regarding contested hearings would be “always” except for expert witnesses.

**Locate Expert Witnesses** (36.4%; n=16 of 44)

- TPR/Termination only (69%; n=11 of 16)
- As needed (19%; n=3 of 16)

**Prepare Witnesses** (27.3%; n=12 of 44)

- As needed (50%; n=6 of 12)
- If headed to contested hearing (33%; n=4 of 12)
- When there is a witness

**Cross Examine Witnesses** (29.5%; n=13 of 44)

- If set for (contested) hearing/trial (38%; n=5 of 13)
- As needed (31%; n=4 of 13)
- When there is a witness
- Not cross-examination so much as questions designed to clarify testimony.

**29. How often do respondent parents’ counsel meet with parents privately before hearings? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, 22 (52.4%) counsel reported meeting with parents privately before most hearings. There were 18 (42.9%) counsel reporting they meet with parents before every hearing. The remainder of the surveyed counsel (4.8%; n=2) indicated they do not typically meet with parents before hearings.

**30. Where do these meetings typically take place? (n=40)**

- Finding: Among the 40 (90.9%) surveys returned, there were more counsel reporting meeting with parents outside the courtroom (47.5%; n=19) than any other venue options. Four (10.0%) counsel responded they meet at their own office, while another four (10.0%) counsel indicated they meet in the courtroom before the hearing. There were 15 (34.1%) counsel responding with specific examples of other venues to meet with a client. Among those 15 counsel, five (33%) stated telephone calls, whereas four (27%) reported using all the venues listed depending on the phase of the case.

**31. When respondent parents’ counsel are not able to contact a client, what steps do they take to locate them? (n=40)**

- Finding: Among the 44 (100%) surveys returned, 42 (95.5%) counsel reported calling clients at home and another 42 (95.5%) indicated contacting social worker. There were only five (11.4%) counsel indicating visiting clients at home. The steps the counsel reported taking to locate clients are presented below.

<b>Steps to locate clients</b>	<b>The Frequency</b>
Call client at home	95.5% (n=42 of 44)
Visit client at home	11.4% (n=5 of 44)
Attempt contact through mail	90.9% (n=40 of 44)
Contact family members	65.9% (n=29 of 44)
Call relatives	40.9% (n=18 of 44)

<b>Steps to locate clients</b>	<b>The Frequency</b>
Contact service providers	50.0% (n=22 of 44)
Contact social worker	95.5% (n=42 of 44)
Contact the Court	13.6% (n=6 of 44)
Other	11.4% (n=5 of 44)

There were six (13.8%) counsel reporting specific examples of steps to locate clients. The following is a list of other steps.

- Call/contact/web-search jail
- Contact County Attorney and GAL

**32. Is there any assistance available to respondent parents' counsel when representing non-English speaking parents? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, 39 (92.9%) counsel responded the assistance was available when representing non-English speaking parents. Among the 39 counsel who indicated the assistance was available, 38 (97%) counsel reported specific examples of assistance. All of them (100%; n=38) mentioned interpreters including bilingual social workers as the type of assistance. Of the 39 counsel who indicated assistance was available, 23 (59.0%) counsel reported the assistance was adequate and readily accessible while 16 (41.0%) mentioned it was not.

**33. Is any assistance available to the counsel when representing mentally ill parents? (n=42)**

- Finding: Among the 42 (95.5%) surveys returned, 15 (35.7%) counsel reported the assistance was available when representing mentally ill parents, while 27 (64.3%) counsel indicated no assistance was available. Among the 15 counsel who responded assistance availability, 10 (67.0%) counsel reported GALs appointment, while 4 (27%) responded mental health professionals. Of the 15 counsel, 18 (40.9%) counsel responded to whether the assistance was adequate. Nine (50%) counsel indicated the assistance was adequate and readily accessible, while another nine (50%) reported it wasn't. The summary of the other types of assistance is presented below.

**Types of Assistance**

- GALs (helpful as they seldom have mental health expertise).
- Mental health professionals including therapists and psychiatrists.
- Treatment plan. Services from Social Services. Real therapist that does not have to share info with SS.

**Part VI. Compensation**

**34. Fee Structure (n=38)**

- Finding: Among the 38 (86.4%) surveys returned, there were 22 (57.9%) counsel reporting that they prefer hourly compensation structure, whereas 16 (42.1%) counsel prefer flat fee structure. There were 40 (90.9%) counsel responding with specific examples as to why they prefer hourly or flat fee. For flat fee preference (42.1%; n=16), the consensus is that the flat fee structure requires less paperwork and billing time spent for bookkeeping (81.0%; n=13). Arguments were made against flat fee structure by those who prefer hourly billing. The consensus is that the counsel get paid for the actual work done and fairly (91.0%; n=20). Many counsel who prefer hourly billing feel that the flat fee is never enough to cover all the cost and unfair compensation. Some stated that flat fee structure encourages attorneys to do less work.

**35. Improvement Recommendations for Respondent Parents Counsel Representation (n=38)**

- Finding: Among the 38 (86.4%) surveys returned, the counsel reported specific examples of the recommendations for improvement for respondent parents' counsel representation. The following is a compilation of recommendations received.

### **Recommendations for improvement for RPC representation**

- Increase compensation (37.0%; n=14 of 38)
- More funding for expert witnesses and allow them before termination hearing (29.0%; n=11 of 38)
- More funding for investigators (18%; n=7 of 38)
- More training and CLE specific to RPC (18%; n=7 of 38)

### **36. What would respondent parents' counsel do more of (spend more time doing) if they had additional time and resources? (n=34)**

- Finding: Information pertaining to what respondent parents' counsel would do if additional time and resources were available was gathered from 34 (77.3%) counsel. The following is a compilation of comments received.

#### **Time spent if additional time available**

- Communicate with clients to keep parents on track (47%; n=16 of 34)
- Investigation (26%; n=9 of 34)
- Training
- Attend staffing meetings with social workers and other professionals

### **37. Is there anything else respondent parents' counsels would like to add? (n=18)**

- Finding: Additional comments were collected from 18 (40.9%) surveys returned. The comments were presented below:
  - The parents did not arrive at their situation overnight usually. They need lots of support, mentoring, pushing/pulling to turn their lives around long-term. That means more involvement with their attorneys, independent experts/professionals, and role models.
  - Too much time wasted waiting for too large a docket.
  - Good attorneys will leave this field, if better pay is not made available or at a minimum looser requirements for payments in excess, trial hardened attorneys will not do this work if it is a mere numbers game ... do not add additional investigation requirements without supporting compensation ... I would love to reduce my caseload and spend more time with each client but cannot do so and make a living at current pay structure ... in the private world I would be charging \$200 per hour but yet I choose to help my community and be paid at the too low rate of \$57 per hour ... this is very difficult, emotional, and unrewarding work ... that need to be recognized and we should not be mandated to work harder than our clients or drag them into court or compliance.
  - Some of the answers to questions are affected by the fact that I have parents who do not respond to telephone calls or letters so it is very difficult to give them good representation. MY caseload (about 60) is my entire caseload and is 90 percent GAL, both for parents and children. I answered this survey based on doing RP work in the 5th JD. We are fortunate to have excellent judges and attorneys working there.
  - The Department of Social Services has numerous opportunities to investigate, the GAL's have independent resources through OCR to investigate and obtain assistance in representation of their clients. There is virtually no support for Respondent parent attorneys. Where an evaluation appears biased or incorrect we have no way to obtain an independent expert except for termination hearings. No funds are available to retain professionals for testimony prior to termination. This prevents an adequate opportunity to be heard. I have even had a judicial officer state on the record, "how will you get that doctor to testify on your client's behalf when there are no funds available to get them here to testify."
  - Thank you for being involved. This is important. These are people who have utterly no voice in the system, except as the respondents' parent counsel give them.
  - The system is currently biased against the parents. The DHS has all of the resources, data base access, in house and tax paid service providers, respondent parent's counsel

has few or none. The change in the appellate rules is discriminatory against respondent parents by limiting the time to prepare the appeal.

- Pay us more. If we are going to an hourly system of payment, it won't be cost effective to still do these cases unless we are paid substantially more. Any competent attorney is able to perform well under the current method of payment. While most cases now don't go to adjudicatory trial, I believe that it is predictable that the courts will see a substantial increase in adjudicatory trials, if payment becomes hourly. Under the current system, payment only becomes an issue when there are contested custody trials, or contested termination trials at the end of a case. If you pay us hourly, PLEASE make the payment system easier. It is terribly time consuming as it is. Despite opinions to the contrary, it is NOT comparable to regular hourly billing for private clients. I know, I do both.
- The system is stacked against parents. All benefits of doubt go to the kids. This is OK, but system does not appear fair from a parent's viewpoint. The procedure appears/feels to a parent to be similar to a criminal case but without the protections and standards of a criminal case.
- There should be a jury trial right for termination proceedings instead of only a bench trial.
- The training that I have done since becoming a RP counsel has largely been the result of training I have done through the Office of Child Rep., which I have done because I also work as a GAL. (Doing both is required in my district.) It would be very beneficial to have more formal training specifically targeted to RP counsel.
- The permanency guidelines are not realistic when addressing parents who abuse meth. The road to recovery is longer but people do recover. There has to be a realization that an occasional hot UA is not the end of the world and is, in fact, a normal part of recovery. Also, a lot of the providers and caseworkers are pretty white bread and, all too often, appear to be elitist. On the other hand, our clients tend to be ethnically diverse and in the lower socio-economic strata. This doesn't mean they are not worthy of respect! The law doesn't require we imbue them with middle class white values! We need a lot of diversity training and, please, more diversity in the professionals. A pet peeve of mine is when I'm forced to keep an ineffective, judgmental, etc. caseworker or treatment provider because that's just the way it is, connect care has control of the contract and the judge cannot or will not do anything about it. We loose too many families because of this. It is sad to think that I know more about how a case will turn out based on who the caseworker is than on my contact with my client.
- Parents are either in touch with us or they're not; my clients who return calls/letters and reach me with problems are represented very well; it is the parents who fail to return calls/letters, don't show up to court, or don't call me when they run into problems that get short-changed. I have to be aware of an issue in order to address it.
- I believe my jurisdiction actually has one too many regulat (contract) respondent parent attorneys.
- I think it would be good to communicate the following to judges and magistrates. Every time judges and magistrates new to the D&N process are rotated onto the D&N bench, they're positive they can improve the docketing process and make it more efficient. Because the majority of time attorneys spend on D&N cases is in court, the docket controls, totally, the amount of time attorneys can spend in their offices communicating with clients and completing other work outside of court. One magistrate almost doubled the amount of time we spent in court by simply spreading out hearings over the week. She did not consider that the amount of office work to be done outside of court did not decrease at all. It made it extremely difficult to connect with clients or complete any other work outside of court. Because that work still had to be conducted and in Colorado RPC are compensated by flat fee, her docketing cut our compensation almost in half, literally. Ridiculous, considering how low compensation is to begin with. Had she continued the same schedule for much longer, I would not have asked my contract to be renewed because it was impossible to maintain the workload.
- An office of the Respondent counsel would never work due to conflicts. The bar needs to be raised for everyone in the D and N process but you've got to provide resources and

time. The only way to provide more time is to pay more. Respondent counsel deal with a very difficult population. It's not easy to try to guide and encourage the drug addicted, mentally ill and violent. Several times I've wondered why I do this work when my life or my staffs have been threatened by clients. I do it because I care, but the system needs to realize it will eventually run out of caring dedicated attorneys and be left only with inexperienced uncaring lawyers who do this work only because they have no clients.

- The pay scale for respondent parent counsel needs to be increased.

APPENDIX G  
STATEWIDE STAKEHOLDER ONLINE SURVEY DATA REPORT

## **RESPONDENT PARENTS' COUNSEL NEEDS ASSESSMENT Statewide Stakeholder Online Survey Data Report**

The state of Colorado is making efforts to improve the representation of parents accused of abuse and neglect. In this effort, the National Center for State Courts, The National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children, have conducted a study assessing the needs of respondent parents' counsel in the state of Colorado.

As part of this effort, an internet survey was administered to stakeholders throughout the state. A total of 118 stakeholders responded to the survey, providing their perceptions of respondent parents' counsel practice, based on their own experiences. This report provides a summary of the survey responses.

In summary, the stakeholders reported that:

- Sixty percent of respondents (70 of 115) believe there is a sufficient number of parents' counsel to handle jurisdictional needs.
- Most respondents reported (72.3%; n=81 of 112) that the court does not make active efforts to recruit respondent parents' counsel.
- Half of the respondents ranked parents' counsel lack of preparation for hearings as "sometimes" the source of court delay—compared to child welfare agency caseworkers and county attorneys whose lack of preparation were more likely to be ranked as "rarely" the source of court delay.
- Almost half of the respondents reported that the unavailability of parents' counsel was a typical source of court delay.
- At least half of all survey respondents reported that they "often" see the same parents' attorney participating in every stage of the case, come prepared for hearings, communicates with their clients during hearings, clearly articulates their clients' position, presents himself/herself professionally, demonstrates professionalism and respect in the courtroom, treats their client respectfully in the courtroom, and keeps their client's information confidential.
- Almost half of the respondents reported that respondent parent counsel "rarely" request continuances that are unwarranted.
- Approximately 40 percent of respondents reported that respondent parents' counsel "rarely" meet with foster parents and relative/kinship placements.
- Respondents were mixed with respect to whether respondent parents' counsel appears to have exhausted all of their legal options and opportunities (34% reported that they typically do and 33 percent reporting that they typically do not; 33 percent had no opinion).
- While most respondents reported that respondent parents' counsel are sufficiently well-trained and knowledgeable about child abuse and neglect case practice and issues (68.5%), 31.5 percent did not feel respondent parents' counsel are sufficiently well-trained.
- Respondents noted that respondent parents' counsel, prior to beginning to practice in this area of law, should receive basic training as to how the child abuse and neglect hearing process works and the statutes involved, training on specific issues such as ICWA, the ICPC and domestic violence, and training on how to be more proactive in assisting parents toward reunification.

- With respect to continuing education, stakeholders reported that respondent parents' counsel need to receive training that reinforces the need to communicate and meet more with their clients and other parties in the case, and more training regarding investigating the petition allegations.

### **Who responded to the survey?**

- Finding: Approximately 114 of 118 (96.6%) respondents indicated their role within the child abuse and neglect system. Most of the respondents were County Attorneys (18.6%) and CASAs (18.6%), followed by Social Service Administrators (16.1%) and Judges (9.3%).  
 Judge: 9.3% (n=11 of 114)  
 Magistrate: 5.1% (n=6 of 114)  
 Juvenile Family Court Facilitator: 5.9% (n=7 of 114)  
 CASA: 18.6% (n=22 of 114)  
 CASA Supervisor: .9% (n=1 of 114)  
 Caseworker: 5.1% (n=6 of 114)  
 Social Service Administrator: 16.1% (n=19 of 114)  
 Prosecutors: 18.6% (n=22 of 114)  
 GAL: 16.1% (n=19 of 114)  
 Child Welfare Supervisor: .9% (n=1 of 114)

### **Which Judicial Districts were represented in the sample?**

- Finding: Approximately 115 of 118 (97.5%) respondents indicated the Judicial District they primarily work in. The following is a list of the frequencies of the judicial districts represented in the survey.  
 1<sup>st</sup> Judicial District: 13.9% (n=16 of 115)  
 2<sup>nd</sup> Judicial District: 10.4% (n=12 of 115)  
 3<sup>rd</sup> Judicial District: 0% (n=0 of 115)  
 4<sup>th</sup> Judicial District: 13% (n=15 of 115)  
 5<sup>th</sup> Judicial District: 3.5% (n=4 of 115)  
 6<sup>th</sup> Judicial District: 1.7% (n=2 of 115)  
 7<sup>th</sup> Judicial District: 2.6% (n=3 of 115)  
 8<sup>th</sup> Judicial District: 3.5% (n=4 of 115)  
 9<sup>th</sup> Judicial District: 0% (n=0 of 115)  
 10<sup>th</sup> Judicial District: 4.3% (n=5 of 115)  
 11<sup>th</sup> Judicial District: 0% (n=0 of 115)  
 12<sup>th</sup> Judicial District: .9% (n=1 of 115)  
 13<sup>th</sup> Judicial District: 8.7% (n=13 of 115)  
 14<sup>th</sup> Judicial District: 3.5% (n=4 of 115)  
 15<sup>th</sup> Judicial District: 1.7% (n=2 of 115)  
 16<sup>th</sup> Judicial District: 1.7% (n=2 of 115)  
 17<sup>th</sup> Judicial District: 7.8% (n=9 of 115)  
 18<sup>th</sup> Judicial District: 12.2% (n=14 of 115)  
 19<sup>th</sup> Judicial District: 5.2% (n=6 of 115)  
 20<sup>th</sup> Judicial District: 1.7% (n=2 of 115)  
 21<sup>st</sup> Judicial District: 1.7% (n=2 of 115)  
 22<sup>nd</sup> Judicial District: 1.7% (n=2 of 115)

### **Which Counties were represented in the survey sample?**

- Finding: Approximately 114 of 118 (96.6%) respondents indicated the counties they primarily work in. The following is a list of the frequencies of the counties represented in the survey.

Adams: 5.3% (n=6 of 114)  
Alamosa: 1.8% (n=2 of 114)  
Arapahoe: 9.6% (n=11 of 114)  
Bent: 0.9% (n=1 of 114)  
Boulder: 1.8% (n=2 of 114)  
Broomfield: 3.5% (n=4 of 114)  
Clear Creek: 0.9% (n=1 of 114)  
Crowley: 0.9% (n=1 of 114)  
Denver: 12.3% (n=14 of 114)  
Douglas: 1.8% (n=2 of 114)  
El Paso: 13.2% (n=15 of 114)  
Gilpin: 0.9% (n=1 of 114)  
Grand: 0.9% (n=1 of 114)  
Gunnison: 1.8% (n=2 of 114)  
Jefferson: 13.2% (n=15 of 114)  
Kit Carson: 0.9% (n=1 of 114)  
La Plata: 1.8% (n=2 of 114)  
Larimer: 3.5% (n=4 of 114)  
Logan: 1.8% (n=2 of 114)  
Mesa: 1.8% (n=2 of 114)  
Moffat: 1.8% (n=2 of 114)  
Montezuma: 1.8% (n=2 of 114)  
Morgan: 1.8% (n=2 of 114)  
Otero: 0.9% (n=1 of 114)  
Prowers: 1.8% (n=2 of 114)  
Pueblo: 3.5% (n=4 of 114)  
Routt: 0.9% (n=1 of 114)  
Sedgwick: 0.9% (n=1 of 114)  
Summit: 1.8% (n=2 of 114)  
Washington: 0.9% (n=1 of 114)  
Weld: 5.3% (n=6 of 114)  
Yuma: 0.9% (n=1 of 114)

### **How long have the respondents been in their professional role?**

- Finding: Approximately 115 of 118 (97.5%) respondents indicated how long they have served in their professional role. Most of the survey respondents had between 1-3 years in their professional role or 4-6 years in their professional role. The following is a list of the frequencies, and proportion of the durations, in which stakeholders reported serving in their professional role.

Less than 1 year: 6.1% (n=7 of 115)  
1 – 3 years: 27.8% (n=32 of 115)  
4 – 6 years: 25.2% (n=29 of 115)  
7 – 10 years: 17.4% (n=20 of 115)  
11 – 14 years: 8.7% (n=10 of 115)  
15 – 18 years: 5.2% (n=6 of 115)  
19 – 22 years: 3.5% (n=4 of 115)

23 – 25 years: 3.5% (n=4 of 115)  
More than 25 years: 2.6% (n=3 of 115)

**What was the percent of the overall child abuse and neglect caseload among the stakeholders?**

➤ Finding: Approximately 115 of 118 (97.5%) respondents indicated what percent of their overall workload involved child abuse and neglect cases. Most survey respondents reported that their caseload was made up of primarily child abuse and neglect cases (although 19.1% of the survey respondents were not required to carry an active caseload, indicating more administrative functions). The following is a list of the frequencies, and proportion of stakeholders, whose caseloads fall within the following categories.

Less than 10%: 3.5% (n=4 of 115)  
10-19%: 1.7% (n=2 of 115)  
20-29%: 1.7% (n=2 of 115)  
30-39%: 2.6% (n=3 of 115)  
40-49%: .9% (n=1 of 115)  
50-59%: 10.4% (n=12 of 115)  
60-69%: 3.5% (n=4 of 115)  
70-79%: 6.1% (n=7 of 115)  
80-89%: 2.6% (n=3 of 115)  
90-99%: 13% (n=15 of 115)  
100%: 34.8% (n=40 of 115)  
Not required to carry an active caseload: 19.1% (n=22 of 115)

**Did the respondents believe there are enough respondent parents' attorneys to handle the caseload demand in their jurisdiction?**

➤ Finding: Approximately 97.5% (n=115 of 118) of the respondents answered this question. The responses indicated that 60.9% (n=70 of 115) of stakeholders believe there is a sufficient number of parent attorney, while 39.1% (n=45 of 115) of stakeholders do not believe there is a sufficient number of parent attorneys.

**Do the respondents see the court taking active steps to recruit respondent parent counsel?**

➤ Finding: Approximately 94.9% (n=112 of 118) of the respondents answered this question. The responses indicated that 23.2% (n=26 of 112) of stakeholders report that the court takes active steps to recruit respondent parents' counsel, 4.5% (n=5 of 112) of stakeholders reported they were not aware of any efforts, while 72.3% (n=81 of 112) report that the court does not make efforts to recruit respondent parents' counsel.

**What efforts are made to recruit respondent parents' counsel?**

➤ Finding: Among the respondents who reported that they were aware of recruitment efforts, 14 offered specific examples of such efforts. The following is a list of efforts used to recruit respondent parents' counsel.  
"District Administrator sends notifications to the bar about open positions" 28.6% (n=4 of 14)  
"Judges are proactive in asking lawyers to accept appointments" 21.4% (n=3 of 14)

“Informal inquiry by the courts to relevant stakeholders (e.g., a Bar Luncheons; in the courthouse)” 21.4% (n=3 of 14)  
“Flyers” 14.3% (n=2 of 14)  
“Advertisements” 7.1% (n=1 of 14)  
“Email Notifications” 7.1% (n=1 of 14)

**Are stakeholders aware of outreach programs offered by local law schools designed to educate and interest students in this specific area of the law?**

- Finding: Approximately 97.5% (n=115 of 118) of the respondents answered this question. The responses indicated that 17.4% (n=20 of 115) of stakeholders report that yes, they are aware of outreach programs, while 82.6% (n=95 of 115) of stakeholders report that no, they are not aware of such outreach programs.

**Of the respondents aware of outreach programs, which schools offer the programs they are familiar with?**

- Finding: Of the 20 respondents who answered that they were aware of outreach programs, the following is the proportion and frequencies for each school  
University of Colorado School of Law: 40% (n=8 of 20)  
University of Denver College of Law: 40% (n=8 of 20)  
Both: 15% (n=3 of 20)  
Unsure: 5% (n=1 of 20)

**Are the respondents aware of symposia or seminars offered by the local law schools?**

- Finding: Approximately 83.1% (n=98 of 118) of the respondents answered this question. The responses indicated that 33.7% (n=33 of 98) of stakeholders report that yes, they are aware of seminars offered by local law schools, while 66.3% (n=65 of 98) of stakeholders report that no, they are not aware of seminars offered by local law schools.

**Of the respondents aware of symposia or seminars offered by local law schools, which schools offer the programs they are familiar with?**

- Finding: Of the 33 respondents who reported that they were aware of symposia or seminars, the following is a list of the frequencies, and proportion, of which schools offer seminars the stakeholders are aware of.  
University of Colorado School of Law: 18.2% (n=6 of 33)  
University of Denver College of Law: 54.5% (n=18 of 33)  
Both: 3% (n=1 of 33)  
Unsure: 24.2% (n=8 of 33)

**Have respondents attended a symposium or seminars offered by local law schools?**

- Finding: Of the 33 respondents who answered that they are aware of symposia or seminars, only 33% (n=11 of 33) have attended one.

**Which of the following factors most frequently produce court delay according to the stakeholders?**

- Finding: Respondents ranked which factors are most likely to produce court delays in their county. What follows is the frequency and proportions for each response, the mean average of the responses along the 5 point scale, and the total number of responses to the question.

Factor	Never	Rarely	Sometimes	Often	Always	Don't Know	Avg.	Total n
Lack of preparation-Child Welfare Agency	10.5% n=12	49.1% n=56	36.8% n=42	35.1% n=4	0% n=0	0% n=0	2.36	114
Caseworker Not Available	21.7% n=25	54.8% n=63	21.7% n=25	1.7% n=2	0% n=0	0% n=0	2.03	115
Lack of preparation-Parent's Counsel	3.5% n=4	26.3% n=30	51.8% n=59	15.8% n=18	1.8% n=2	0.9% n=1	2.76	114
Lack of preparation-City/County Attorney	16.5% n=19	59.1% n=68	21.7% n=25	1.7% n=2	0% n=0	.9% n=1	2.00	115
Lack of preparation-GAL/CASA	13.9% n=16	64.3% n=74	19.4% n=22	2.6% n=2	0% n=0	0% n=0	2.10	115
High volume of cases on calendar	5.2% n=6	17.4% n=20	33.9% n=39	34.8% n=40	6.1% n=7	1.7% n=2	2.90	115
Parents' Attorney not available	4.3% n=5	32.2% n=37	47% n=54	13.9% n=16	0.9% n=1	1.7% n=2	2.56	115
Parent not available	1.7% n=2	19.1% n=22	51.3% n=59	27% n=31	0% n=0	0.9% n=1	2.95	115
Parents' Attorney file pleadings late	5.2% n=6	46.1% n=53	38.3% n=44	5.2% n=6	1.7% n=2	3.5% n=4	2.08	115
Parents' Attorney turnover	6.1% n=7	61.7% n=71	21.7% n=25	5.2% n=6	0.9% n=1	4.3% n=5	2.65	115
Caseworker turnover	7% n=8	36.5% n=42	40% n=46	13% n=15	2.6% n=3	0.9% n=1	2.58	115
Late reports	8.7% n=10	41.7% n=48	36.5% n=42	12.2% n=14	0% n=0	0.9% n=1	2.43	114
Incarcerated parent not transported	8.7% n=10	33% n=38	46.1% n=53	9.6% n=11	0% n=0	2.6% n=3	2.30	114
Process of notification & response from Native American tribes (ICWA)	15.8% n=18	46.5% n=53	21.1% n=24	7% n=8	0% n=0	9.6% n=11	3.18	114
Interstate Compact on the Placement of Children (ICPC)	3.5% n=4	22.8% n=26	32.5% n=37	29.8% n=34	7% n=8	4.4% n=5	2.72	111

**Which of the following factors have the highest degree of impact in producing court delays according to the stakeholders?**

- Finding: Respondents ranked the factors as to which sources are the most likely to have the highest degree of impact in producing court delays in their county. What follows is the frequency and proportions for each response, the mean average of the responses along the 5 point scale, and the total number of responses to the question.

Factor	No Impact	Low Impact	Some Impact	High Impact	Very High Impact	Don't Know	Avg.	n
Lack of preparation-Child Welfare Agency	11.8% n=13	31.8% n=35	21.8% n=24	23.6% n=26	9.1% n=10	1.8% n=2	2.66	110
Caseworker not Available	17.3% n=19	36.4% n=40	25.5% n=28	16.4% n=18	2.7% n=3	1.8% n=2	2.51	109
Lack of preparation-Parent's Counsel	1.8% n=2	24.8% n=27	34.9% n=38	28.4% n=31	10.1% n=11	0% n=0	3.20	110
Lack of preparation-City/County Attorney	14.5% n=16	38.2% n=42	21.8% n=24	21.8% n=24	3.6% n=4	0% n=0	2.62	110
Lack of preparation-GAL/CASA	13.6% n=15	44.5% n=49	21.8% n=24	15.5% n=17	4.5% n=5	0% n=0	2.54	110
High volume of cases on calendar	4.5% n=5	15.5% n=17	33.6% n=37	25.5% n=28	19.1% n=21	1.8% n=2	3.17	110
Parents' Attorney not available	3.6% n=4	28.2% n=31	26.4% n=29	30.9% n=34	10% n=11	0.9% n=1	3.07	110
Parent not available	0.9% n=1	27.3% n=30	41.8% n=46	21.8% n=24	8.2% n=9	0% n=0	3.09	109
Parents' Attorney file pleadings late	6.4% n=7	40.4% n=44	35.8% n=39	11% n=12	2.8% n=3	3.7% n=4	2.24	111
Parents' Attorney turnover	8.2% n=9	43.6% n=48	29.1% n=32	13.6% n=15	0.9% n=1	4.5% n=5	2.06	110
Caseworker turnover	12.7% n=14	35.5% n=39	22.7% n=25	20% n=22	7.3% n=8	1.8% n=2	2.54	109
Late reports	7.3% n=8	37.6% n=41	32.1% n=35	21.1% n=23	0.9% n=1	0.9% n=1	2.62	109
Incarcerated parent not transported	8.3% n=9	29.4% n=32	43.1% n=47	14.7% n=16	2.8% n=3	1.8% n=2	2.32	109
Process of notification & response from Native American tribes (ICWA)	15.6% n=17	40.4% n=44	22% n=24	10.1% n=11	0.9% n=1	11% n=12	2.19	111
Interstate Compact on the Placement of Children (ICPC)	7.3% n=8	19.1% n=21	27.3% n=30	30% n=33	9.1% n=10	7.3% n=8	3.42	118

**Stakeholders ranked how often the court does the following activities.**

- Finding: Respondents ranked how often the court does the following activities. What follows is the frequency and proportions for each response, the mean average of the responses along the 5 point scale, and the total number of responses to the question.

Factor	Never	Rarely	Some-times	Often	Always	Don't Know	Avg.	n
Inform parents of their rights to representation	0% n=0	0% n=0	0.9% n=1	11% n=12	87.2% n=95	0.9% n=1	4.87	109
Appoint a representative for the parents accused of child abuse and neglect prior to the first (emergency or temporary custody) hearing	16.7% n=18	8.3% n=9	5.6% n=6	17.6% n=19	49.1% n=53	2.8% n=3	3.58	109
Ensure parents are being represented fairly in each case	0% n=0	3.7% n=4	8.3% n=9	29.4% n=32	53.2% n=58	5.5% n=6	4.17	109
Follow a firm, effective, continuance policy that does not allow for continuances based on inconvenience or stipulation of the parties	0% n=0	10.1% n=11	29.4% n=32	32.1% n=35	22% n=24	6.4% n=7	3.59	109
Continue cases due to respondent parents' counsel missing from court	3.7% n=4	33.9% n=37	33% n=36	17.4% n=19	9.2% n=10	2.8% n=3	2.84	109
Continue cases to allow parents to meet with counsel	2.8% n=3	17.4% n=19	42.2% n=46	25.7% n=28	9.2% n=10	2.8% n=3	2.77	108
Allow parents to go through their case without an attorney	9.3% n=10	36.1% n=39	36.1% n=39	11.1% n=12	4.6% n=5	2.8% n=3	2.98	109
Inform parents of their rights to representation	0.9% n=1	6.4% n=7	12.7% n=14	49.1% n=54	29.1% n=32	0.9% n=1	2.51	109

**Stakeholders ranked how often respondent parents' counsel does the following in child abuse and neglect hearings?**

- Finding: Respondents ranked how often respondent parents' counsel does the following in child abuse and neglect hearings. What follows is the frequency and proportions for each response, the mean average of the responses along the 5 point scale, and the total number of responses to the question.

<b>Factor</b>	<b>Never</b>	<b>Rarely</b>	<b>Some- times</b>	<b>Often</b>	<b>Alway s</b>	<b>Don't Know</b>	<b>Avg.</b>	<b>n</b>
After being assigned to a case, that same attorney participates in every stage of the proceedings throughout the entirety of the case	0.9% n=1	6.4% n=7	12.7% n=14	49.1% n=54	29.1% n=32	0.9% n=1	4.10	109
Comes to court prepared for hearings	0% n=0	8.3% n=9	28.7% n=31	54.6% n=59	8.3% n=9	0% n=0	3.73	108
Appears to have reviewed files/relevant documents prior to hearings	1.9% n=2	9.3% n=10	35.2% n=38	45.4% n=49	8.3% n=9	0% n=0	3.58	108
Appears to have discussed issues with their client prior to hearings	2.8% n=3	13% n=14	40.7% n=44	37% n=40	6.5% n=7	0% n=0	3.40	108
Uses substitute counsel to represent their client	4.6% n=5	27.8% n=30	43.5% n=47	22.2% n=24	0.9% n=1	0.9% n=1	2.86	108
Requests continuances that appear unwarranted	8.3% n=9	47.2% n=51	33.3% n=36	9.3% n=10	0% n=0	1.9% n=2	2.17	108
Requests continuances for legitimate reasons	0% n=0	12% n=13	65.7% n=71	18.5% n=20	0.9% n=1	2.8% n=3	3.11	108
Communicates with their client during hearings	0% n=0	0% n=0	12% n=13	64.8% n=70	23.1% n=25	0% n=0	4.16	108
Clearly articulates their client's position during hearings	0% n=0	0% n=0	15.7% n=17	63% n=68	20.4% n=22	0.9% n=1	4.09	108
Communicates with the court (judge/magistrate) during hearings	0% n=0	0% n=0	46.3% n=5	48.1% n=52	46.3% n=50	0% n=0	4.36	108
Presents herself/himself professionally	0% n=0	0% n=0	10.4% n=11	62.3% n=66	26.6% n=29	0% n=0	4.23	106
Demonstrates professionalism and respect for other professionals in the courtroom	0% n=0	0.9% n=1	5.6% n=18	56% n=60	26.2% n=28	0% n=0	4.14	107
Treats their client respectfully in the courtroom	0% n=0	0% n=0	4.7% n=5	59.4% n=63	35.8% n=38	0% n=0	4.34	106
Keeps their client's information confidential	0% n=0	0% n=0	4.7% n=5	58.3% n=63	35.8% n=38	5.7% n=6	4.18	106
Files motions on behalf of their client	1.9% n=2	17.6% n=19	20.4% n=22	38.9% n=42	18.5% n=20	0% n=0	3.58	108
Presents independent information or evidence	3.7% n=4	25.9% n=28	28.7% n=31	31.5% n=34	8.3% n=9	1.9% n=2	3.17	108
Presents a position or response to a continuance	1.9% n=2	13% n=14	24.1% n=26	38% n=41	18.5% n=20	4.6% n=5	3.75	108
Introduces witnesses	1.9% n=2	16.7% n=18	36.1% n=39	36.1% n=39	7.4% n=8	1.9% n=2	3.36	108
Appeals court orders	5.7% n=6	30.1% n=32	36.8% n=39	19.8% n=21	1.9% n=2	5.7% n=6	3.31	106
Engages in case planning and advocates for appropriate social services	1.9% n=2	25.9% n=28	25% n=27	40.7% n=44	3.7% n=4	2.8% n=3	4.13	108
Facilitates non-traditional participation such as a problem-solving approach or mediation	4.7% n=5	27.1% n=29	37.4% n=40	24.3% n=26	3.7% n=4	2.8% n=3	3.11	107

**Stakeholders ratings of how often they believe respondent parents’ counsel meet with, cooperate, and communicate with the following professionals.**

- Finding: Respondents ranked how often respondent parents’ counsel meets with, cooperate with, and communicate with the following professionals. What follows is the frequency and proportions for each response, the mean average of the responses along the 5 point scale, and the total number of responses to the question.

<b>Factors</b>	<b>Never</b>	<b>Rarely</b>	<b>Sometimes</b>	<b>Often</b>	<b>Always</b>	<b>Don’t Know</b>	<b>Avg.</b>	<b>n</b>
CASA	5.8% n=6	25.2% n=26	26.2% n=27	13.6% n=14	0.9% n=1	28.2% n=29	1.07	103
GAL	0.9% n=1	9.1% n=10	35.5% n=39	28.2% n=31	10% n=11	16.4% n=18	3.32	110
City/County Attorneys	0% n=0	10% n=11	24.5% n=27	39.1% n=43	11.8% n=13	14.5% n=16	3.49	110
Service Providers	7.3% n=8	26.6% n=29	32% n=35	14.7% n=16	1.8% n=2	17.4% n=19	2.74	109
Caseworkers	0.9% n=1	14.5% n=16	31.8% n=35	33.6% n=37	9.1% n=10	10% n=11	3.42	110
Foster parents	21.8% n=24	39.1% n=43	12.7% n=14	9.1% n=10	0.9% n=1	16.4% n=18	1.86	110
Relative/kinship placements	6.4% n=7	38.6% n=39	21.8% n=24	14.5% n=16	0.9% n=1	20.9% n=23	2.51	110
Judges/Magistrates	0.9% n=1	7.3% n=8	19.1% n=21	30.9% n=34	16.4% n=18	25.4% n=28	1.42	110
Court clerks	1.9% n=2	7.4% n=8	20.4% n=22	27.8% n=30	10.2% n=11	32.4% n=35	3.40	108
Court improvement collaborative groups	6.5% n=7	15.9% n=17	18.7% n=20	11.2% n=12	3.7% n=4	46.7% n=50	2.63	107
Community leaders to promote system reform	14% n=15	18.7% n=20	11.2% n=12	3.7% n=4	0% n=0	52.36% n=56	2.18	107

**Do stakeholders believe that respondent parents’ counsel exhaust all of their legal options and opportunities while representing their client?**

- Finding: Approximately 96.6% (n=114 of 118) of the respondents answered this question. The responses indicated that 34.2% (n=39 of 114) of stakeholders report that yes, they do believe that respondent parent counsel exhaust their legal options, while 32.5% (n=37 of 114) of stakeholders report that no, they do not believe that respondent parent counsel exhaust their legal options. Approximately, 33.3% (n=38 of 114) responded that they did not know or had no opinion.

**Do stakeholders believe that respondent parents’ counsel are sufficiently well-trained and knowledgeable about child abuse and neglect case practice and issues?**

- Finding: Approximately 94.1% (n=111 of 118) of the respondents answered this question. The responses indicated that 68.5% (n=76 of 111) of stakeholders report that yes, they do believe that respondent parent counsel are sufficiently well-trained and knowledgeable, while 31.5%

(n=35 of 111) of stakeholders report that no, they do not believe that respondent parent counsel are sufficiently well-trained and knowledgeable.

### **Why do stakeholders report that respondent parents' counsel are sufficiently well-trained and knowledgeable about child abuse and neglect case practice and issues?**

- Finding: Among the 31.5% (n=35 of 111) of the respondents who believe that respondent parents' counsel are not sufficiently well-trained and knowledgeable about child abuse and neglect case practice and issues, the responses provided two primary reasons, which are provided below "lack of understanding of the goals of hearing and timeframe required by ASFA"  
"At times they appear overly aggressive when advocating for parents, which in turn may put child at risk"

### **What training do stakeholders believe that respondent parents' counsel should receive prior to practicing in the dependency-neglect system?**

- Finding: Approximately 20.3% (n=24 of 118) of the respondents indicated what type of training they believed that respondent parents' counsel should receive prior to participating in the dependency-neglect system. Among the open-ended responses, four general patterns emerged, which are reported below with the specific suggestions and sample quotes listed below.
  - Basic training as to how the process works (e.g., hearings) and the statutes involved.
    - Dependency and Neglect Law learn relevant statutes and case law"
    - Purpose of hearings "understand what adjudication really means"
    - Deadlines "Laws, timelines, processes. Resources"
  - Training on specific issues
    - "Better understanding of the Children's Code"
    - "Substance Abuse"
    - "Domestic Violence"
    - "ICWA"
    - "ICPC "
  - Learn to be more proactive in assisting parents toward reunification.
    - Learn how to find parents services within the community  
"I think they would be more effective if they knew some of the resources available in the community."
    - Learn what services are available.  
"...need classes on resources available to their clients."
  - A better understanding of child development.  
"a need for better understanding of how the process affects children"

**What additional or continuing education do stakeholders believe that respondent parents' counsel should receive in order to enhance their practice after they have been assigned to represent clients in child abuse and neglect matters?**

- Finding: Approximately 20.3% (n=24 of 118) of the respondents answered this question. Four specific suggestions were made repeatedly made by the respondents, which are presented below.
  - More communication and meet with clients.
  - More Communication and meet with the other parties involved in the case.
  - Investigate the allegations within the petition.
  - More time to meet clients in offices rather than the halls of the court.

**Other comments do stakeholders have about respondent parent counsel.**

- Finding: Approximately 18.6% (n=22 of 118) of the respondents answered this question. What follows is a list of the additional education recommended by stakeholders. Four specific suggestions were made repeatedly made by the respondents, which are presented below.
  - Attorneys are overwhelmed with high case loads.
  - The majority of good respondent parent counsels are overshadowed by the incompetent ones.
  - Pay is to low for the work required of respondent parent counsel.
  - Respondent parent counsel does a great job considering the conditions with pay and case load.

APPENDIX H  
STATEWIDE MANAGEMENT INFORMATION SYSTEM DATA REPORT

## **RESPONDENT PARENTS' COUNSEL NEEDS ASSESSMENT**

### **Statewide Management Information System Data Report**

The state of Colorado is making efforts to improve the representation of parents accused of abuse and neglect. In this effort, the National Center for State Courts, The National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children, have conducted a study assessing the needs of respondent parents' counsel in the state of Colorado. As part of this project, data from the Administrative Office of the Courts' Management Information System (MIS) were analyzed for information pertaining to the performance of respondent parents' counsel. While this dataset was substantial (N=807), a number of process and outcome measures specifically related to respondent parents' counsel were not available (e.g., continuity or turnover of respondent parents' counsel, requests for continuances and reasons for continuances by counsel requesting the continuance). In addition, few cases in the dataset had closed, limiting our ability to analyze timeframes from petition filing to case closure, as well as limiting our ability to assess ultimate case dispositions or outcomes.

In summary, the analysis of the MIS data found that:

- It took slightly longer to appoint respondent parents' counsel in dependency and neglect cases (52.8 days from petition filing on average) than in expedited cases (45.8 days from petition filing on average). However, for both the expedited and dependency/neglect cases, these average timeframes may be misleading, as respondent parents' counsel were appointed the same day as petition filing in 40 percent of the expedited cases and in 31 percent of dependency/neglect cases.
- In the dataset analyzed, parents who were appointed counsel on the same day as the petition filing reached adjudication significantly faster than people who are appointed counsel sometime after the first day of their case ( $F(1, 117) = 3.083, p = .43$ ).

Findings are presented in more detail below.

#### **What was the average length of time for parents to receive counsel after the case was filed?**

- Finding for Expedited Cases:
  - Approximately 411 expedited cases contained information pertaining to the date the case was filed and the length of time until the parents were appointed counsel. The analysis revealed that it took an average of 45.8 days from petition filing to appoint parents counsel (range = 0-372 days). In approximately 40.4 percent (n=166 of 411) of the cases, respondent parents' counsel was appointed on the same day the petition was filed.
- Finding for Dependency and Neglect Cases:
  - Approximately 396 dependency and neglect cases contained information pertaining to the date the case was filed and the length of time until the parents were appointed counsel. The analysis revealed that it took an average of 52.8 days to appoint parents counsel (range = 0-432 days). In approximately 31.4 percent (n=129 of 411) of the cases, respondent parents' counsel was appointed on the same day the petition was filed.

### What was the average length of time for parents to receive counsel after the Initial/Emergency hearing?

- Finding for Expedited Cases:
  - Approximately 411 expedited cases contained information pertaining to the date the initial/emergency hearing was filed and the length of time until the parents were appointed counsel. The analysis revealed that it took an average of 40.8 days from the initial/emergency hearing to appoint parents counsel (range = 7-320 days). In approximately 57.2 percent of the cases (n=235 of 411), respondent parents' counsel was appointed prior to or on the same day as the Initial/Emergency hearing.
- Finding for Dependency and Neglect Cases:
  - Approximately 396 dependency and neglect cases contained information pertaining to the date the initial/emergency hearing and the length of time until the parents were appointed counsel. The analysis revealed that it took an average of 45.8 days to appoint parents counsel (range =0-338 days). In approximately 35.6% (n=141 of 396) of the cases, respondent parents counsel was appointed prior to or on the same day as the Initial/Emergency hearing.

### Does appointing an attorney on the same day the case begins significantly impact how long it takes for the case to be adjudicated?

- Finding: Timeframes from the date a case began (petition filing) and the date it was adjudicated was available in 118 of the 807 (14.6%) cases in the MIS database. An Analysis of Variance found that **parents who are appointed counsel on the same day as the petition filing reach adjudication significantly faster than people who are appointed counsel sometime after the first day of** their case (F (1, 117) = 3.083, p= .43), with the mean length of time to adjudication being 26.8 days for people appointed counsel on the same day, and the mean length of time to adjudication being 51.2 days for people who were appointed counsel after the first day of their case.