

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE
COURT APPOINTMENTS THROUGH
THE OFFICE OF RESPONDENT PARENTS' COUNSEL

The following policy is adopted to assist in the administration of justice with respect to the appointment, payment, and training of Respondent Parents' Counsel (RPC) appointed as counsel on behalf of indigent parents subject to dependency and neglect proceedings by the Office of Respondent Parents' Counsel (ORPC).

I. Mission

The ORPC's mission is to protect the fundamental right to parent by providing effective legal advocates for indigent parents in child welfare proceedings. This right is protected when a parent has a dedicated advocate knowledgeable about child welfare laws and willing to hold the state to its burden. The office's duties are to provide accountability, training, and resources, develop practice standards, and advocate for systemic and legislative changes in Colorado.

II. ORPC Authority and Responsibilities

- a. The United States Supreme Court recognized that the "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 U.S. 57, 66 (2000). In Colorado, an indigent respondent parent has a statutory right to appointed counsel to protect this fundamental right to parent. See § 19-3-202, C.R.S.
- b. Section 13-92-101 to 104, C.R.S. established the ORPC and vested within it statutory requirements regarding the oversight and administration of respondent parent representation in Colorado.
- c. The ORPC's enabling legislation charges and entrusts the ORPC with improving the quality of appointed legal representation for parents in dependency and neglect proceedings across Colorado through establishing equitable funding structures, creating a clear set of practice standards, and providing high quality and accessible training.

III. Authority and Requirement for Appointments through the ORPC

- a. The ORPC shall maintain and provide to the courts a list of qualified attorneys eligible for appointments as respondent parents' counsel (the "Appointment List"). In this capacity, the ORPC possesses:
 1. The exclusive authority and discretion to select and contract with attorneys to provide state-paid RPC services to parents subject to dependency and neglect proceedings;
 2. The authority to reject attorneys for any reason;
 3. The authority to terminate, at will, contracts with attorneys;
 4. The authority to seek termination of existing court appointments as provided by this Chief Justice Directive;
 5. The responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services and the investigation and resolution of complaints regarding attorneys who contract with the ORPC.
- b. The ORPC may periodically seek input from Judges and Magistrates regarding the Appointment List.
- c. The courts shall select attorneys for appointment from the Appointment List provided by the ORPC. It is within the ORPC's sole discretion to determine which attorneys are placed on the Appointment List. Courts shall not appoint one RPC to represent more than one respondent parent in a case. Upon appointment of counsel from the Appointment List, court staff shall enter the appointment into the case management system. The Judicial Department's case management reporting system shall generate a daily report to be sent to the appointed attorney with the following information:

Notification that [Attorney Name] is appointed for the purpose of serving as Respondent Parent Counsel in the dependency and neglect case, [Case Number][County], pursuant to section 19-3-202, C.R.S.; and

That Representation is for [Parent's Name], Respondent Parent, who has been found indigent by the court, pursuant to section 19-3-202, C.R.S.; and

Pursuant to section 13-92-101, C.R.S., the appointment is paid for by the Office of Respondent Parents' Counsel (ORPC). All questions concerning the appointment shall be referred to the ORPC.

- d. The ORPC will not process payment for the services of attorneys with whom the ORPC does not have a contract and who are not on the Appointment List, unless the exception discussed in paragraph e. of this section applies. If after July 1, 2016, the Court appoints an RPC who is not on the Appointment List and without approval by the ORPC, the ORPC will not compensate that attorney under any circumstance. Off-list and non-preapproved appointments must be paid for out of that judicial district's budget.
- e. Attorneys who choose not to apply for an ORPC contract but wish to continue to represent respondent parents may do so on the condition that the attorney comply with this CJD, ORPC governance, and sign the Non-Contract Attorney Respondent Parent Payment System User Agreement. More specifically, this may **only** occur when (1) attorneys were appointed prior to July 1, 2016 and continue to represent clients when those cases are transferred to the ORPC's operational structure on July 1, 2016, or (2) attorneys who choose not to apply to renew a contract with the ORPC during a subsequent application period after July 1, 2016. During the course of their representation these attorneys will be allowed to seek services and resources for their current indigent respondent parents from the ORPC, but they will not be allowed to accept additional appointments.

IV. Appointments on Appeal by ORPC

- a. The ORPC shall maintain a list of appellate counsel eligible for appointments on appeal. Trial counsel **must** notify the ORPC that a respondent parent would like to appeal once the court has entered either:
 - 1. a final and appealable order at or after the dispositional hearing; or
 - 2. an order terminating parental rights;
- b. When the respondent parent does wish to appeal, trial counsel **shall complete** and submit the Appellate Transmittal Sheet to the ORPC **within seven calendar days** after an appealable order or order terminating parental rights. The Appellate Transmittal Sheet will be maintained by the ORPC and distributed to attorneys via the ORPC website. This procedure does not apply for judicial reviews of magistrate orders or interlocutory appeals, which must be completed by trial counsel.
- c. If the respondent parent does not wish to appeal, trial counsel must have the respondent parent sign a written waiver of appeal **within seven calendar days** after an appealable order or termination order and submit it to the ORPC.

- d. If the attorney cannot locate a client after diligent efforts, the attorney should assess how to proceed based upon the client's last clearly articulated position. If the client previously expressed an interest in appealing, the attorney should submit the Appellate Transmittal Sheet to the ORPC **within seven calendar days** after an appealable order or termination order. If there was no discussion regarding an appeal and the client cannot be located, the attorney must provide the ORPC with an unsigned waiver of appeal noting they could not locate the client after diligent efforts **within seven calendar days** of an appealable order or termination order.
- e. Upon receipt of the Appellate Transmittal Sheet, the ORPC will select and notify the appellate counsel. Appellate counsel will file a Notice of Appeal and Designation of Record.
- f. In circumstances where a trial attorney wishes to consult an appellate attorney prior to a termination hearing where an appeal will likely follow, trial counsel should contact the ORPC for the name of the appellate attorney who will be appointed on appeal.

V. Practice Guidelines, Requirements, and Continuing Education Requirements for Attorneys Eligible for Appointments

- a. Attorneys who are deemed eligible for court appointments by the ORPC are required to:
 - 1. Possess the knowledge, expertise, and training necessary to perform the court appointment;
 - 2. Understand the Colorado Children's Code, §§ 19-1-101 to 19-7-103, C.R.S. Volume 7 CDHS Rules and Regulations for Child Welfare Services, 12 Code Colo. Regs. 2509-1 – 2509-8, this Chief Justice Directive, the Indian Child Welfare Act, 25 U.S.C. §§ 1901 to 1963 (2012) and other relevant State and Federal law;
 - 3. Understand and comply with the ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (Summary Attached as Attachment A);
 - 4. Comply with any other practice standards recommended by the ORPC;
 - 5. Comply with the training requirements mandated by the ORPC;
 - 6. Have and maintain malpractice insurance;

7. Comply with the Colorado Rules of Professional Conduct;
- b. Failure to comply with this Directive may result in termination of any associated contract, and/or removal from existing appointments, and/or removal from the appointment list.

VI. Eligibility Requirements for Appointment of RPC

- a. The respondent parent requesting representation or appointment of counsel must be indigent to qualify for court-appointed representation at state expense pursuant to section 19-3-202, C.R.S. Such person(s) must also be indigent for the ORPC to authorize payment of certain costs and expenses. See Attachment B Procedures for the Determination of Eligibility for Appointment of Respondent Parent Counsel (RPC) in Dependency and Neglect Proceedings on the Basis of Indigence.
- b. Before an appointment may be considered, the respondent parent must complete application form JDF 208 (“Application for Public Defender, Court-Appointed Counsel, or Guardian ad litem”) and sign the form under oath.
- c. The ORPC is precluded from paying for services and any costs associated with services for non-indigent parties under section 14-10-116, C.R.S. A court shall not order representation to be at state expense absent a finding of indigence unless the respondent parent automatically qualifies for appointed counsel due to being held in custody.
- d. If, in the interest of justice, a tentative appointment of legal counsel for the respondent parent is necessary, such appointment may be made pending a final decision regarding indigency. If a review of a respondent parent’s application shows that the parent is not indigent and is not qualified to have court-appointed counsel at state expense, the court may order the parent to reimburse the ORPC for the representation provided from a tentative appointment of counsel.
- e. If the court determines, at any time after appointing RPC, that the respondent parent has the ability to pay all or part of the costs for representation or other costs, the court shall enter a written order that the respondent parent reimburse all or part of said costs to the ORPC. Costs for representation provided may be assessed against the respondent parent at the fixed hourly rate for state-funded private counsel or at the state-funded counsel contract rate.

VII. Guidelines for Payment by the ORPC

- a. The State, through the ORPC, shall bear the costs of services of an RPC appointed pursuant to section 13-92-103, C.R.S. as of July 1, 2016.
- b. No claim for payment shall be submitted prior to receipt of an appointment email. Upon receipt of an appointment email from the Court, the appointed attorney shall enter the appointment in the Respondent Parent Payment System (RPPS), an online billing system, and upload the email to the same.
- c. Claims for payment for either hourly appointments or flat-fee-contract appointments **must be made within 90 days of the date services were provided.** The ORPC may review, verify, and revise, when appropriate, authorizations for payment.
- d. Claims for payment of RPC fees and expenses shall be submitted by the RPC directly to the ORPC in accordance with ORPC Billing Policies and this CJD. Claims for payment are **only** billable to the ORPC through the RPPS.
- e. Appointments may be paid on either a flat contract or an hourly fee basis at the discretion of the ORPC. Conversion to hourly payment after payment of the flat fee is only made at the discretion of the ORPC and as described in this CJD and by ORPC policy, contract, and the RPPS user agreement.
- f. Costs incurred by RPC must be preapproved to be paid by the ORPC. Requests for court costs, expert witness fees, and related expenses must be made through the RPPS. Court costs include such items as: expert witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives/Orders, and ORPC policies.
- g. The ORPC shall set the maximum total fees per appointment for all ORPC appointments and the procedures for approval of excess fees and expenses. Requests for excess fees must be made through the RPPS.
- h. Attorneys shall maintain records of time spent on their cases, regardless of whether the appointment is a contract appointment or an hourly appointment. These files must be made available upon request by the ORPC within seventy-two hours (three calendar days).
- i. An attorney must submit hourly invoices **IN LIEU OF** the flat fee invoice in the following circumstances (if a flat fee payment has already been processed, a reverse credit or other repayment will be applied):
 1. Any appointment that ends within 60 days of appointment.

2. Any new appointment beginning after the establishment of a treatment plan or permanency plan, up to a maximum fee of \$750.00.
 3. Any appointment for which the RPC cannot comply with Colorado Rules of Professional Conduct Rule 1.4, up to a maximum fee of \$750.
 4. Any appointment in which the court has assigned an attorney to take over representation from a previously appointed attorney who is withdrawing due to retirement or is being terminated as the appointee by the ORPC.
- j. If an attorney withdraws from an appointment prior to the completion of their obligations pursuant to the contract in place when the appointment was made, the ORPC will appoint counsel to continue to represent the respondent parent. In this instance, the attorney who withdrew may be required to refund part of a flat fee payment to the ORPC.

VIII. Duties of Judges and Magistrates

- a. Judges and Magistrates shall appoint RPC no later than the first temporary custody/initial hearing.
- b. To the extent practicable, Judges and Magistrates shall have in-custody respondent parents transported to the first temporary custody/initial hearing or have in-custody respondent parent appear via video or telephone.
- c. Judges and Magistrates shall maintain the equitable division of cases among RPCs eligible for appointment in each district and are encouraged to have bi-annual meetings with RPCs eligible for appointment to discuss procedures for the equitable division of cases.
- d. Judges and Magistrates shall otherwise implement procedures and practices that enable RPC to comply with this Chief Justice Directive.

IX. Procedures for Complaints against RPC under contract with the ORPC in Dependency and Neglect Proceedings

- a. All written complaints and documentation of verbal complaints regarding the performance of any RPC shall be submitted to the ORPC via the online complaint process at www.coloradoorpc.org.

- b. If the complaint involves an attorney and the ORPC determines that the attorney may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel (OARC). However, ORPC will advise the person making the complaint that the complainant may contact the OARC directly if they have a complaint about an attorney. The OARC shall advise the ORPC of the final outcome of any investigation involving an attorney on the ORPC approved list if authorized to do so under applicable rules.
- c. The ORPC may investigate a complaint and take the necessary action it believes is required to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, requiring additional training, placing the attorney on a corrective action plan, and terminating the contract with the attorney.

X. Sanctions

- a. All contracts with the ORPC for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with the Chief Justice Directive. Failure to comply with this Directive may result in termination of any associated contract, and/or removal from existing appointments, and/or removal from the appointment list.

This directive is effective July 1, 2016.

Done at Denver, Colorado this 29 of June, 2016

/s/
Nancy E. Rice, Chief Justice

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.**

**PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY
FOR APPOINTMENT OF RESPONDENT PARENT COUNSEL (RPC) IN DEPENDENCY
AND NEGLECT PROCEEDINGS ON THE BASIS OF INDIGENCE**

Indigency Determination

Persons requesting appointment of RPC in dependency and neglect proceedings to be paid by the state on the basis of indigence must complete, or have completed on their behalf, application form JDF208 (*Application for Public Defender, Court-Appointed Counsel or Guardian ad litem*) signed under oath, before such an appointment may be considered by the court.

Procedures for the Determination of Indigency

1. Completion of Form JDF208 by Applicant. Persons applying for state-paid respondent parent representation under this CJD 16-02 must complete, or have completed on their behalf, the *Application for Public Defender, Court-Appointed Counsel or Guardian ad litem*, form JDF208, and submit it to the court.
2. Review of Financial Information by Court Personnel. Court personnel shall review the applicant's information on form JDF208 to determine whether or not the applicant is indigent on the basis of three factors:
 - a) Income¹
 - b) Liquid assets²
 - c) Expenses³

Criteria for Indigency

An applicant qualifies on the basis of indigence if his or her financial circumstances meet either set of criteria described below.

1. Income is at or below guidelines / Liquid assets equal \$0 to \$1,500

- If the applicant's income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500 or less, as determined on form JDF208, the applicant is indigent and eligible for representation under this CJD 16-02 at state expense.

¹Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers' Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veterans benefits earned from a disability, child support payments or other assistance programs.

²Liquid assets include cash on hand or in accounts, stocks bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.

³*Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF208.*

2. Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income

- If the applicant's income is up to 25% above the income eligibility guidelines; the applicant has assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF208, the applicant is indigent and eligible for representation under this CJD 16-02 at state expense.

In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigence.

INCOME ELIGIBILITY GUIDELINES (Amended January 2016)				
Family Size	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$1,238	\$1,547	\$14,850	\$18,563
2	\$1,669	\$2,086	\$20,025	\$25,031
3	\$2,100	\$2,625	\$25,200	\$31,500
4	\$2,531	\$3,164	\$30,375	\$37,969
5	\$2,963	\$3,703	\$35,550	\$44,438
6	\$3,394	\$4,242	\$40,725	\$50,906
7	\$3,826	\$4,783	\$45,913	\$57,391
8	\$4,259	\$5,324	\$51,113	\$63,891
* 125% of poverty level as determined by the Department of Health and Human Services				
For family units with more than eight members, add \$347 per month to "monthly income" or \$4,160 per year to "yearly income" for each additional family member.				
Source: FEDERAL REGISTER (81FR4036, 01/25/2016)				