



STATE OF COLORADO JUDICIAL DEPARTMENT

COLORADO COURT IMPROVEMENT PROGRAM
RESPONDENT PARENTS' COUNSEL TASK FORCE
STATEWIDE NEEDS ASSESSMENT: EXECUTIVE SUMMARY

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



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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.¹ 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.²

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

¹ 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).

² 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.