



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.

RESPONDENT PARENTS' COUNSEL TASK FORCE

SPONSORED BY
COLORADO'S COURT IMPROVEMENT PROGRAM
IN COLLABORATION WITH
THE SUPREME COURT STANDING COMMITTEE ON FAMILY ISSUES

ACTION PLAN - UPDATED APRIL 2006 -

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I. Summary

The Respondent Parents' Counsel Task Force convened on October 21, 2005. The following persons were present:

Judge Karen Metzger (Chair), Court Improvement Committee; Justice Rebecca Love Kourlis (ex officio), Colorado Supreme Court; Judge Lael Montgomery, Boulder County; Judge Christine Chauche, Arapahoe County; Judge Charles Buss, Mesa County; Judge Robert Lowenbach, Weld County; Magistrate Palmer L. Boyette, Denver; Theresa Spahn, Director, Office of the Child's Representative; Professor Clare Huntington, University of Colorado School of Law; Professor Colene Flynn Robinson, University of Colorado School of Law; Debra Campeau, El Paso Office of the Guardian *ad Litem*; Lynne Hufnagel, Brownstein Hyatt and Farber; Stanlee West-Watt, Boulder Respondent Parents' Counsel; Tim Kerns, Respondent Parents' Counsel; Leigh Taylor, Respondent Parents' Counsel Mesa County; Anne Vitek, Respondent Parents Counsel, Denver/Adams County; Carolyn Pelloux, President, Juvenile Law Section; Laura Eibsen, County Attorney, Denver; Toni Gray, County Attorney, Boulder; Jim Hustad, Family Court Facilitator, El Paso; Alicia Davis (Staff), Standing Committee on Family Issues; Bill DeLisio, (Staff), Court Improvement Committee.

The Task Force discussed current practice by respondent parents' counsel, considered recent improvements in resources in Colorado's D&N representation in the form of the Office of the Child's Representative, surveyed other states' approaches to parents' representation, and framed objectives for the Task Force.

Representatives of the Task Force expressed the following hopes for the project at large:

- ◇ To create a plan to recommend to the Supreme Court
- ◇ To create a level playing field for all dependency and neglect attorneys
- ◇ To devise a mechanism to support parents' attorneys as the Office of the Child's Representative does for guardians *ad litem*
- ◇ To increase compensation and availability of resources such as investigators and experts to allow for more effective representation
- ◇ To foster advocacy that helps families
- ◇ To facilitate authentic due process for families
- ◇ To encourage this as an area of law that attorneys will choose as a profession
- ◇ To create for respondent parents' counsel a support network of attorneys who can share information and practice experiences
- ◇ To provide training to new attorneys entering the field
- ◇ To ensure that limited resources are put to the highest and best use
- ◇ To see attorney caseloads reduced
- ◇ To impact dependency and neglect law as applied to respondent parents

The work of the Task Force is expected to be intense but not prolonged. The Task Force contemplates that recommendations in the form of a report will be presented to the Supreme Court, State Court Administrator, and selected members of the General Assembly on or before

the 2007 Legislative Session. At that point, the Task Force is expected to sunset. In order to impact resources available to respondent parents' counsel, the Task Force needs to act diligently, and projects need to run concurrently.

The Task Force agreed that the much of the work ahead must focus on pursuing additional funding for attorney compensation. Many of the recommendations, such as the creation of the needs-assessment and the practice guidelines or standards will contribute to this ultimate objective. The discussion reflected that the work before the Task Force can be completed by subcommittees that address each of the following areas:

- ◇ **ADVOCACY FOR RESOURCES FOR RESPONDENT PARENTS' COUNSEL**
 - **NEEDS-ASSESSMENT: PROVIDING LEGAL RESOURCES AND IDENTIFYING AVAILABLE SERVICES TO FAMILIES**
 - **DEVELOPMENT of PRACTICE GUIDELINES or STANDARDS**
- ◇ **PROVIDING SPECIFIC TRAINING FOR PARENTS' COUNSEL**
- ◇ **RESEARCHING AND DEFINING STRUCTURAL OUTCOMES**
- ◇ **INFORMING JUDICIAL RESPONSE/CASE MANAGEMENT (project underway through the Court Improvement Committee)**

Each project has a lead person or "chair" for the accomplishment of the project goals. Staff will provide assistance to each project as much as practicable. The Task Force will convene as a whole as needed, probably quarterly. At these meetings, the various subcommittees will update the group on progress made and will receive input and assistance. The next quarterly meetings are scheduled for

- ◇ Friday, April 28 2006, 12:30-5 pm
- ◇ Friday, July 14 2006, 2-5 pm
- ◇ Friday, October 20 2006, 2-5 pm

The Task Force met again on January 20th. The purpose of the second meeting was to assign people and timelines to the action steps for these project areas:

- A. Advocacy for Increased Resources for Parents' Counsel
- A2. **Practice Guidelines or Standards**
- B. Training
- C. Structural Outcomes/"Models"

The Task Force also received an update on progress made on the Needs-Assessment project. Each of the project groups came up with the steps established in this Action Plan.

II. Projects

The Task Force posed broad objectives: to improve upon resources for the attorneys representing respondent parents, such as compensation for attorneys, legal resources, specialized training, and a support network for attorneys. In December 2005, the Task Force developed the following statement to summarize its mission:

“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.”

The Task Force agreed that the thrust of the work ahead was to pursue additional funding for attorney compensation. Accordingly, many of the recommendations formed for the 2007 Legislative Session will focus on this ultimate objective. However, the group also acknowledged the importance of other efforts in the areas of attorney and stakeholder training.

Below is a description of each project and their objectives listed in more or less chronological order, with the understanding that many of the projects will need to run concurrently. The action steps summarized below are not intended to be all-inclusive or binding, but to frame the first steps of each project.

A. ADVOCACY FOR RESOURCES FOR RESPONDENT PARENTS’ COUNSEL

Many of the action steps below, such as the creation of practice guidelines/standards and the needs-assessment, contribute to the ultimate goal of advocating for increased compensation for parents’ attorneys.

At the January meeting, the Advocacy Project Group constructed a plan which focuses on putting a face to Advocacy for Parents, and letting others know about the challenges before Respondent Parents’ Counsel. The group is collecting information on how the state will save money by putting in place greater supports for respondent parents’ counsel.

After several meetings, the Advocacy Group decided that they would be best-served to wait for the completion of the Needs-Assessment and to receive information from the other project groups once the objectives related to structural models, training and practice standards were sufficiently defined.

The action steps for the Advocacy Group, and progress made towards each, are as follows:

1. Identify members of the legislature who are most likely to support the work of the Task Force.

In February, the Advocacy Group met with Theresa Spahn as well as Judicial’s Legislative Liaison, Sherry Kester, and Budget Officer David Kribs to discuss the procedure for approaching legislators and members of the Judicial Branch. The Group would like to tell legislators and others about the important role that respondent parents’ counsel performs and the challenges that

they face. If legislation is to be introduced, the Group will contact potential sponsors after the November elections.

2. Gather compelling stories from respondent parents' counsel in Colorado where advocacy on behalf of a parent made a significant and tangible difference in reunifying or preserving a family. These stories will help convey to legislators and decision-makers that good advocacy equates good outcomes for families.

The Advocacy Group has started soliciting these stories and the responses from attorneys contacted have been very positive. Attorneys are also asked to comment on existing resources and how additional resources would have perhaps changed the flow of a case. This was a preliminary effort to assess response to the larger Needs-Assessment. To date, the response has been greater than expected.

3. Prepare a one-page fact sheet for the Respondent Parents' Counsel Task Force that can be disseminated among law-makers.

The group is currently drafting a fact sheet but will wait to finalize it once the Needs-Assessment has been completed and the Task Force is decided in its objectives and goals concerning structural models, training and practice guidelines.

4. Contact the Washington Office of Public Defense for information from their study, ongoing statistics, and progress on the development of the office.

It was determined that this information is available on the website.

A1. NEEDS-ASSESSMENT

A Needs-Assessment will assist in defining the greatest needs for attorneys and the objectives for the structural outcomes and will provide baseline data.

The needs-assessment is expected to gather current financial information, termination and reunification information, and the perceptions of attorneys, stakeholders and clients. A needs-assessment conducted by an external body is likely to provide more thorough data collection and may be viewed by funding sources as being more credible than an assessment conducted in-house.

The assessment will report the greatest barriers to effective representation, including the availability of services for families and will provide baseline data. The Task Force discussed the difficulties presented by the lack of available reunification services for families. The Task Force discussed visitation, inpatient drug treatment and a few of the services that, if more readily available, could assist in reunifying families. The needs for some of these specific resources will be more fully evident during the course of the needs-assessment.

In addition to services for families, the needs-assessment will examine the need for legal resources to assist respondent parents' counsel. Some of the legal resources discussed included appointment of experts early in the case, the provision of investigators to help construct a case

theory, social workers to assist in identifying services and supporting clients, and administrative assistance.

A committee of the task force constructed the deliverables for a proposal. SCAO staff gathered internal information and in constructed the parameters of the evaluation. Action steps include:

- ◇ Collecting RPC financial information from SCAO;
- ◇ Determining outcomes for measurement (Washington used reunification, terminations, time in care, foster care expenses);
- ◇ Securing funding for external needs-assessment;
- ◇ Establishing bid-selection committee for external needs-assessment;
- ◇ Facilitating collection of data by contacting participating stakeholders.

To encourage a competitive process, staff prepared a request for a documented quote for a needs-assessment that would gather data on parents' representation and systemic barriers to positive outcomes. One joint proposal was received from the National Center for State Courts, the National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children. Finding that their proposal represented some of the best minds in this area, that the proposed cost was comparable or lower than similar evaluations, and that the resulting study was most likely to present the credible, reliable, independent data needed to support the effort, the Selection Committee requested and received the support of the Court Improvement Committee to go forward. The study will begin officially in April. At the April 28 meeting, the Task Force will be briefed on the purpose, scope and significance of the needs assessment. The evaluators will describe the role they envision for the task force throughout the process and set forth the roles and responsibilities. Lastly, the evaluators will solicit information from the Task Force as to how the findings and recommendations in the final report will be reached.

A2. DEVELOPMENT OF PRACTICE GUIDELINES OR STANDARDS

Practice guidelines or standards (**hereinafter "Guidelines"**) will set forth best practices for parents' attorneys and will demonstrate to funding sources the type of work an attorney would need to perform on a case to ensure due process and the best outcomes for families. The project group has not yet decided whether "**standards**" or "**guidelines**" are more appropriate, but regardless of their label, the Guidelines need to be considered as a companion to additional funding for Respondent Parents' Counsel.

The 17th Judicial District has standards in place, drafted by Judge Melonakis. With input from the Project Group, Judge Melonakis sent out a draft for consideration. The group met on March 10th to review all of the standards and comment. The **guidelines, as modified by comments received from the entire subcommittee, will be sent out to the whole task force in advance of the Task Force's April 28 meeting to receive feedback at that meeting. After discussion and finalization by the Task Force, the guidelines will be disseminated among** practicing RPC attorneys, the Juvenile Law Section, county attorneys and others for comment and final drafting.

B. SPECIFIC TRAINING FOR PARENTS' COUNSEL

The group identified that training and communication for juvenile law attorneys, including respondent parents' counsel, currently occurs through the Juvenile Law Section of the Colorado Bar Association. The group discussed that training specific to respondent parents' counsel was limited.

This project group will rely on the results of the Needs-Assessment completed by the National Center for State Courts, the National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children as the foundation of the development of the training curriculum. Once the Needs-Assessment is completed in Fall 2007, the group will consider training needs statewide, and will consider regional trainings, or web-based applications. Upon completion of the Needs-Assessment the Group may develop training materials for new attorneys.

Pending the completion of the Needs-Assessment, the group is focusing its efforts on leveraging training currently being provided through other organizations such as NITA, the ABA, the Kempe Center, the National Association of Counsel for Children, the Colorado Bar Association and CLE.

The Training Group set the following action steps. Many of the action steps have been accomplished. Progress updates are given for each.

1. Establish a list-serve and website so that RPC attorneys can exchange information, and receive notice of JLS and CLE sponsored trainings.

SCAO established a statewide Respondent Parents' Counsel list-serve (coloradorpc@yahoo.com) in February and began sending all respondent parents' attorneys notice of upcoming training in the community. 92 members are on the list-serve. Through the list-serve, Respondent Parents' Counsel were given information on the ABA Center for Children and the Law list-serve for child welfare practitioners.

SCAO staff is also in the process of developing a website for Respondent Parents' Counsel information. SCAO is working to update some of the materials of the "Stepping Up to Juvenile Court" curriculum and will provide those materials on the list-serve or website when they are available.

2. Contact DHS about trainings available to Respondent Parents' Counsel.

Colorado's Department of Human Services invites Respondent Parents' Counsel to attend all currently offered trainings. Topics relevant to parents' attorneys specifically include child maltreatment, developmental delays, substance abuse issues and others. In sessions that are space-limited, priority is given to caseworkers. Attorneys (and others) can sign up for courses at: www.cocwtraining.com/. Trainings are posted six-months in advance. SCAO will place this link on the RPC Web Page, at coloradorpc@yahoo.com.

3. Contact NITA.

On April 7th, Mark Caldwell, Public Services Program Manager of the National Institute for Trial Advocacy ("NITA") spoke to the Training Group about various training options offered through NITA. NITA is a nationally recognized program that provides experiential learning for the courtroom using the concept of "Tell – Show -- Do." Several of the members of the Task Force currently act as faculty for NITA. Mr. Caldwell invited members of the Task Force to Task Force members visit NITA's Louisville facility to watch the program.

NITA offers a couple of different programs that would be of interest to parents' attorneys. NITA currently provides Persuasive Advocacy in Cases Involving Children, a 4 day program that is normally offered by \$2400. NITA may be able to offer this program to Respondent Parents' Counsel for as little as \$750, \$580 if the attorney is a member of NACC. The attorneys that represent parents in Chicago send 4-5 attorneys to this program every year.

For future and ongoing training efforts, NITA is willing to customize program design, based on the results of the Needs-Assessment. The group discussed regional training opportunities through NITA. Mr. Caldwell recommended against regional trainings for several reasons: 1) you lose the synergy of the group. Only one NITA instructor would be able to present in the regional trainings. 2) In smaller communities, participants may not participate as fully because they are uncomfortable training in front of their peers.

NITA is also able to offer, as a stop-gap measure, a 2 day or 2 ½ day event. The shorter program would entail less repetitions, they would not videotape and they would not do an expert-piece. This would be provided on an experimental basis, with about 25 participants. Members of the Task Force could act as faculty. The shorter program would be provided on a weekend to bring in greater attendance. NITA would be willing to do this as public service, so the only costs would be program materials, mailing costs, CLE administration, and evaluation costs. NITA would evaluate the program for quality of material presented and participants' response to the materials. Such a program may cost about \$100/ person and would fulfill 20 hours CLE out of the 45 hour CLE requirement.

4. Contact national organizations such as National Council of Juvenile and Family Court Judges, National Association of Counsel for Children, the ABA Center for Children and the Law to determine what services and resources are available.

Several national organizations were contacted to determine what services and resources are available. The ABA Center for Children and the Law and the National Association of Counsel for Children provided particularly useful training materials. The ABA Center for Children published a booklet called *Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys* (2000). This booklet would be ideal for attorneys entering the practice. Although the booklet is not being reprinted, a pdf version is available at: The handbook in a Pdf Version: <http://www.abanet.org/child/rcj/RepresentParents.pdf>. The ABA also provides other useful practice materials, such as the ABA list-serve, referenced above.

The National Association of Counsel for Children may also be considered as a training vehicle in the future. The NACC recently started up a certification program for child welfare attorneys. Board Certification provides formal recognition that a professional is a specialist in a particular area of practice, based on specialization standards, experience, specialized training, peer review, and expertise. Certification encourages the creation of a workforce of highly skilled child welfare attorneys representing parents, children and agencies. The NACC's requirements for certification include:

- ◇ Good Standing
- ◇ Substantial Involvement – 30% / 3 Years
- ◇ Education / CLE – 36 hours / 3 years
- ◇ Peer Review – 5 references including 1 judge
- ◇ Writing Sample – legal analysis / 3 years
- ◇ Disclosure of Conduct – Grievance Record
- ◇ Competence Examination – 4 Hours (2 Essays / 60 Multiple Choice)

There is a cost involved with the certification.

NEXT STEPS

It is expected that the Needs-Assessment completed by the National Center for State Courts, the National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children will be the foundation of the development of training curricula. Once the results of the needs-assessment are in, this project group will consider the development of a long-term curriculum for respondent parents' counsel. The Training Group will assist in the preparation of learning materials, act as faculty, and/or identify community partners to serve in this capacity.

However, continual needs-assessment will need to occur to ensure that ongoing training needs are addressed. The Training Group should consider the RPC list-serve for this purpose.

The Training Group should look to local organizations providing training in this area such as for guardians ad litem, children's legal representatives or for mediators.

Once the results of the needs-assessment are in, this project group will consider the development of curricula for respondent parents' counsel, both short-term and long-term to further add to the existing educational opportunities; assist in the preparation of learning materials; act as faculty, and/or identify community partners to serve in this capacity; arrange for regional trainings.

C. RESEARCH AND DEFINE STRUCTURAL OUTCOMES

This committee considered the different types of organizations charged with delivery of legal services. The group considered: a small, public advocacy office, public defenders, appointment by local rotation lists, appointment by a central organization, pay by salary, by the hour, by case. Some of the questions that arose were how to utilize support staff (such as investigators and paralegals) and how to handle legal-conflicts.

The Task Force reviewed various models for providing representation to parents. Working from information from the Needs-Assessment, the Structural Outcomes sub-committee will research alternative models as appropriate for Colorado as follows:

- ◇ evaluate what other states are doing to provide counsel for parents;
- ◇ study other oversight models such as through the public defender's office, through a non-profit legal representation office, through legal clinics, or through stand-alone public offices;
- ◇ as appropriate to Colorado, consider those models as applied to Colorado by interviewing local entities (for example: Legal Aid, Public Defenders, University of Colorado School of Law, etc.);
- ◇ consider pilot of Washington model (research Washington model, calculate resources needed for pilot, consider timing of the pilot);
- ◇ Consider Office of Parents' Representation (research contract vs. salary, calculate resources needed, consider staging/timing for implementation).

The project group has constructed an "instrument" or list of questions, to be used during this information gathering phase to ensure greater uniformity in collecting information.

The project group decided to gather information into a chart so that it will be easy to compare and contrast the different models. The project group will present the chart to the entire task force at the next general meeting. Their goal over the next seven months is to gather information, analyze it, and make a recommendation to the entire Task Force.

The project group will not make a final decision of what model or models to recommend until sometime after the needs assessment is completed, tentatively scheduled for October 2006. The project group felt it would be premature to decide on what model or models would be best before looking at the needs statewide.

Should the subcommittee not be able to agree on one model to present to the Task Force, The project group will recommend more than one, perhaps via a panel of subcommittee members discussing the different models and why they are recommending that model in particular.

D. INFORMING JUDICIAL RESPONSE/CASE MANAGEMENT

The Task Force discussed existing case management protocols, such as Chief Justice Directives 96-08 and 98-02 which provide for best practices in the handling of dependency and neglect cases. The Task Force acknowledged that uniform and consistent application of these case management principles would guarantee due process protections. For example, exchanging court reports during or immediately before a hearing does not conform to CJD 96-08, which encourages the exchange of court reports several days before the hearing.

The Court Improvement Committee is already engaged in the study of districts' case management plans. The Court Improvement Committee also provides training to judicial officers and employees concerning case management in dependency and neglect cases. SCAO's Family Unit provides technical assistance to districts in reviewing existing case management plans statewide. As was suggested at the meeting on October 21st, the Court Improvement Committee could consider the drafting of Rules of Juvenile Procedure to further guide processes statewide.

III. Conclusion

In appointing the Respondent Parents' Counsel Task Force in September 2005, Chief Justice Mary Mullarkey said "the interest of parents in the care, custody, and control of their children is fundamental. Representing the parents faced with severance of the parent-child relationship is difficult work, but the importance of the role is undeniable."

The Task Force agreed that there were a significant number of challenges facing respondent parents' counsel in providing the best representation for parents. However, given the importance of this work, significant efforts need to be made to allow attorneys to function at their highest capacity.