

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE
COURT APPOINTMENTS THROUGH
THE OFFICE OF RESPONDENT PARENTS' COUNSEL
Chief Justice Directive 16-02
Amended Effective November 2022

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 it with 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 appointment 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 select attorneys for specific cases upon notice to the court;
 5. The authority to seek termination of existing court appointments as provided by this Chief Justice Directive; and
 6. The responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services and receipt 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 trial courts shall select attorneys for appointment¹ 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.
- d. Courts shall not appoint one RPC to represent more than one respondent parent in a case. Courts shall not appoint more than one RPC to represent one respondent parent in a case without approval from the ORPC.
- e. Upon appointment of counsel, 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:
 1. 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

¹ Unless otherwise noted, the term "appointments" includes provisional appointments, as outlined in Paragraph VI(d) of this Chief Justice Directive.

2. That Representation is for [Parent's Name][D.O.B](if available) [Race/Ethnicity] (if available), Respondent Parent, who has been found indigent by the court, pursuant to section 19-3-202, C.R.S., OR that counsel has been provisionally appointed pursuant to Chief Justice Directive 16-02(VI)(d) for Respondent Parent [Parent's Name]; and
 3. 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.
- f. The Judicial Department's case management reporting system shall generate a weekly RPC Appointment Report to be sent to the ORPC that contains the case number, the name of the attorney appointed, county, case type, case division, respondent name, respondent race (if available), respondent date of birth (if available), and date of entry of appointment.
 - g. 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 h. 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-approved appointments must be paid for out of that judicial district's budget.
 - h. Attorneys who choose not to apply for or renew an ORPC contract but wish to continue to represent respondent parents on cases in which they were appointed may do so on the condition that the attorney comply with this CJD, ORPC governance, and sign the Respondent Parent Payment System (RPPS) 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 and shall appoint appellate counsel. Trial Counsel is prohibited from filing an appeal of the case in which they were trial counsel without prior permission from the ORPC.

- b. 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.
- c. 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. This procedure does not apply for judicial reviews of magistrate orders, which must be completed by trial counsel. The ORPC will appoint appellate counsel for judicial review, consultation with trial counsel, or interlocutory appeals on a case-by-case basis.
- d. 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.
- e. 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 submit an electronic affidavit of diligent efforts to locate the client to ORPC **within seven calendar days** of an appealable order or termination order.
- f. 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 Transcripts (JDF 545) in accordance with Colorado Appellate Rule (C.A.R.) 3.4(b)(1). Appellate counsel must make arrangements for payment in accordance with C.A.R. 3.4(d)(5). The transcript request form is available at www.coloradoorpc.org.
- g. 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 consultation and potential early appointment of an appellate lawyer.
- h. Trial counsel and appellate counsel are obligated to consult about appellate issues upon receipt of the appointment notification from the ORPC.

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, et seq., 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, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at § 14-13-101, et seq., C.R.S., the Interstate Compact on Placement of Children (ICPC), and the ICPC regulations, the Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191, including the privacy requirements in 45 C.F.R. Parts 160, 162, and 164, and other relevant State and Federal law;
 3. Regularly review caselaw, legislative and social science research updates provided by the ORPC and maintain a working knowledge of the Colorado Rules of Civil, Juvenile, Appellate, and Criminal Procedure as well as any local rules and district plans;
 4. Understand and comply with the Colorado Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases as indicated in Attachment A;
 5. Comply with any other practice standards recommended by the ORPC;
 6. Comply with the training requirements mandated by the ORPC;
 7. Have and maintain malpractice insurance; and
 8. 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. Except for the provisional appointment of counsel as set forth in paragraph VI(d) of

- this Chief Justice Directive, a 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. Except for the provisional appointment of counsel as set forth in paragraph VI(d), 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 or testify to the form under oath.
 - c. The ORPC is precluded from paying for services and any costs associated with services for non-indigent parties. Except for the provisional appointment of counsel as set forth in paragraph VI(d) of this Chief Justice Directive, 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. Courts shall appoint counsel for respondent parents who are incarcerated, being held in federal custody, or involuntarily committed as these respondents shall be presumed indigent absent a specific judicial determination to the contrary.
 - d. In the interest of justice, the court may provisionally appoint counsel for a respondent.
 - 1. The court shall review provisional appointments on a regular basis to determine whether such appointments should continue. A provisional appointment of counsel lasts until the court makes a finding of indigency, the respondent elects to retain private counsel and an entry of appearance is filed, the respondent declines appointed counsel, the respondent elects to proceed pro se, or the provisional appointment is otherwise terminated by the court.
 - 2. Additionally, provisionally appointed counsel may request termination of the appointment upon written or oral motion to the court stating that the respondent is not indigent, the respondent does not wish to have court-appointed counsel, or the respondent cannot be located after a diligent search and counsel has no direction from the respondent.
 - 3. The court may immediately terminate a provisional appointment of counsel in any of the above circumstances.
 - 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.
 - f. An attorney appointed by the court on the basis of a person’s inability to pay the costs

of the appointment shall provide timely notice to the court in the event financially related information is discovered that would reasonably call into question the person's inability to pay such costs. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the ORPC of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

VII. Guidelines for Payment by the ORPC

- a. As of July 1, 2016, the State, through the ORPC, shall bear the costs of services of an RPC appointed pursuant to section 13-92-103, C.R.S.
- 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 RPPS and upload the email to the same.
- c. Claims for payment for either hourly appointments or flat-fee-contract appointments **must be made within the time frame required in the ORPC billing policies.** 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 fee or an hourly fee basis at the discretion of the ORPC. As of July 1, 2017, all ORPC appointments, unless otherwise determined by the ORPC, will be paid on an hourly basis. Converting a case to an hourly fee after receipt of a flat fee payment is governed by the ORPC billing policies in effect as of July 1, 2017.
- f. 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. Costs incurred by RPC **must be preapproved** to be paid by the ORPC. Requests that are not preapproved will not be paid.
- 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 and must be approved prior to commencing work in excess of the max fee.
- h. Attorneys shall maintain separate 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).

VIII. Duties of Judges and Magistrates

- a. Judges and Magistrates shall appoint RPC no later than the first temporary custody/shelter/initial hearing. Nothing shall preclude a court from appointing RPC prior to the filing of a petition for good cause pursuant to section 19-3-202, C.R.S.
- b. To the extent practicable, Judges and Magistrates shall have in-custody respondent parents transported to the first temporary custody/initial hearing or any contested hearing or have in-custody respondent parent(s) appear via video or telephone.
- c. Judges and Magistrates shall allow parents a meaningful opportunity to discuss their cases with RPCs prior to the temporary custody/shelter/initial hearing.
- d. Judges and Magistrates shall not order respondents to participate in mediation prior to termination proceedings if the parties agree, taking into account the parent's wishes, that resolution of the termination motion is unlikely to occur through mediation. Judges and magistrates may order mediation in termination proceedings, but indigent respondents will not be ordered to pay unless the mediation is requested by the respondent or RPC.
- e. Judges and Magistrates shall ensure all parties receive copies of court orders and other documentation filed with the court, including proposed court orders.
- f. 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.
- g. Judges and Magistrates may appoint RPCs from an overflow list when no other RPC on the appointment list is available. Attorneys may be on an overflow list at the discretion of the ORPC and will be designated as overflow on the appointment list. RPCs placed on the ORPC appointment list are required to be placed into the jurisdiction's pick-up rotation.
- h. Judges and Magistrates shall otherwise implement procedures and practices that enable RPCs to comply with this Chief Justice Directive.
- i. In instances where a respondent parent is pro se and informs the court she or he wishes to appeal, Judges and Magistrates shall have the ORPC notified within seven calendar days of learning that the respondent parent wishes to appeal and will provide any available contact information for the respondent parent. The ORPC will appoint appellate counsel upon receipt of notification from the trial court and determination that the pro se parent is indigent.

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 may 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

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 Amended directive is effective upon signature.

Done at Denver, Colorado this 9th of November, 2022.

/s/

Brian D. Boatright, Chief Justice

Office of Respondent Parents' Counsel Standards of Practice for Attorneys Representing Parents in Dependency and Neglect Cases²

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Introduction:

The Office of Respondent Parents' Counsel (ORPC) is tasked with improving parent representation across the State of Colorado through the development of tailored practice standards for attorneys representing indigent parents³ in dependency and neglect proceedings. The paramount obligation of Respondent Parent Counsel (RPC) is to provide effective and high-quality representation to parents at all stages of the dependency and neglect process. Effective and quality representation embraces both collaboration and litigation to achieve the desired goals of the client. Where applicable, these standards shall apply to both trial and appellate RPC.

1. General Duties⁴:

- 1.1 **Collaboration:** RPC shall strive to collaborate to resolve matters consistent with the client's goals. RPC shall confer with counsel prior to filing any motions

² These standards promote quality representation and uniformity of practice throughout Colorado and are modeled after the American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and informed by practice standards for respondent parent attorneys in Washington, Wyoming, Massachusetts, North Carolina, Iowa, and Washington, D.C.

³ Parents may be legal guardians and are referred to as parents and clients where appropriate herein.

⁴ Where applicable, these practice standards shall apply to both trial and appellate RPC.

unless doing so is not required under local rules or not possible due to the emergency nature of the issue.

- 1.2 **Civility:** RPCs shall treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, and court personnel, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written. RPC shall refrain from acting upon or manifesting racial, gender, disability, or other bias or prejudice toward any participant in the legal process. RPC shall not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process. Except within the bounds of fair argument in pleadings or in formal proceedings, RPC shall abstain from disparaging personal remarks or acrimony toward such participants.
- 1.3 **Knowledge of the Law:** RPC shall know all relevant federal and state laws, chief justice directives, regulations, policies, ethics opinions, rules of professional conduct, the rules of juvenile and civil procedure, the rules of evidence, and other applicable rules. RPC have an ongoing duty to maintain current and up to-date knowledge of the laws and principles referenced herein and the latest developments in child welfare law consistent with their duty of competence under Colo. R.P.C. 1.1.
- 1.4 **Knowledge of Community:** RPC shall be aware of child welfare and family preservation services available in the community and the issues the services are designed to address.
- 1.5 **Systems Knowledge:** RPC shall understand the role and authority of the Department of Human Services and both public and private organizations within the child welfare system.
- 1.6 **Ongoing Training:** RPC shall participate annually in trainings offered by the ORPC and other available child welfare-oriented agencies. RPC shall seek training in areas the RPC believes require additional development.
- 1.7 **Scope of Trial Representation:** Trial RPC shall represent the client from the initial court proceeding, unless the court appoints earlier for good cause, through all subsequent proceedings until resolution.
- 1.8 **Scope of Appellate Representation:** Appellate RPC shall represent the client from the date of initial appointment by the ORPC through issuance of mandate by the appellate court.
- 1.9 **Interdisciplinary Representation:** RPC shall consider assembling a family defense team of paralegals, investigators, social workers, and other professionals as necessary and appropriate and as approved by the ORPC.
- 1.10 **Cultural Competency:** RPC shall act in a culturally competent manner and consider the socioeconomic position of the client throughout all aspects of representation. RPC shall understand the impact of bias stemming from race,

culture, disability, and socioeconomic status and develop tools to mitigate its negative impact. RPC shall identify and use to the client's advantage his or her individual, familial, cultural, and community strengths.

- 1.11 **Legal Research and Motions Practice:** RPC shall timely file all pleadings, motions, responses, and briefs. RPC shall research applicable legal issues and advance legal arguments as appropriate.
- 1.12 **Maintaining Client File:** RPC shall maintain client files in accordance with the Colorado Rules of Professional Conduct. All client case files must reflect the procedural history of the case and all other information necessary to render effective legal service, including copies of documents, all discovery, pleadings, settlement offers, notes and other communications to and from the client and other relevant parties in the case, the names and telephone numbers of other parties and counsel and service providers, and information on how to locate the client. RPC shall maintain accurate billing records separate from RPPS or any online billing program used by the ORPC to allow RPCs to invoice the agency.

2 Specific Ethical Duties

- 2.1 **Adherence to the Colorado Rules of Professional Conduct:** RPC shall follow the Colorado Rules of Professional Conduct, to include avoiding potential conflicts of interest and adhering to all laws and ethical obligations concerning confidentiality and privilege.
- 2.2 **Zealous Advocacy:** RPC shall pursue the client's interests despite opposition, obstruction, or personal inconvenience to the attorney, and shall take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. RPC shall act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf.
- 2.3 **Awareness of Limitations:** RPCs shall only accept appointments that they have sufficient time, resources, legal knowledge, skills, and experience reasonably necessary to afford quality representation to the client. If it later becomes apparent that the attorney is unable to provide quality representation in the case, the attorney shall contact the ORPC to seek appropriate substitution of counsel.
- 2.4 **Manageable Caseload:** RPC shall not carry a workload that, by reason of its excessive size, interferes with the rendering of quality legal service, endangers the client's interest in the prompt resolution of the case, or may lead to the breach of professional obligations.
- 2.5 **Confidentiality:** RPC shall not reveal confidential communications with the client absent express or implied consent from the client to do so. RPC shall ensure confidential communications between counsel and client are conducted in private. RPC shall maintain the confidentiality of the client's records. In the event of an inadvertent disclosure of confidential information, the RPC shall

take all steps required by the Colorado Rules of Professional Conduct, including informing the client and receiving party of the disclosure.

3 Relationship and Communication with the Client:

- 3.1 **Client-Directed Representation:** RPC shall advocate for the client's goals and empower the client to direct the representation and to make informed decisions based on candid and thorough legal counsel. RPC shall not substitute their own judgment when RPC may disagree with the client's goal. RPC shall not be obligated to execute any directive of the client that does not comport with law or the Colorado Rules of Professional Conduct.
- 3.2 **Ongoing Contact with Client:** RPC shall maintain contact with the client to establish an attorney-client relationship that will enable RPC to understand the client's interests, needs, and the client's position on issues or questions in the case.
- 3.3 **Duty to Advise:** RPC shall advise the client about all legal matters of which they are aware or should reasonably be aware which are related to the case. RPC will seek guidance from or collaborate with other legal professionals to ensure the client is fully advised on collateral consequences. RPC will ensure the client is advised regarding specific allegations against the client, the service plan, the client's rights and potential consequences in the pending proceeding, any orders entered against the client, and the potential consequences of failing to obey court orders. RPC shall advise the client of and take action to preserve all applicable constitutional, statutory, and regulatory rights of the client. RPC shall provide candid advice regarding the probable success and consequences of adopting any posture in the proceedings and provide client with all information necessary to make informed decisions.
- 3.4 **Communication Procedures:** RPC shall provide the client with contact information that allows regular attorney-client contact, ensuring communication is accessible for indigent clients, clients with a disability, and for clients who do not speak English.
- 3.5 **Client Expectations:** RPC shall work with the client to develop a case timeline and calendar system that informs the client of significant statutory deadlines and

court hearings, and sets a timeframe describing when specific case requirements (such as treatment plan action steps) should be completed.

- 3.6 **Notification of Court Dates:** RPC shall ensure clients, where possible, receive advance notification of court dates and are prepared for what to expect at all hearings.
- 3.7 **Regular Client Meetings:** RPC shall meet and communicate regularly with the client well before court proceedings. RPC shall consider the client's needs when scheduling meetings.
- 3.8 **Client Access to File:** RPC shall ensure the client has appropriate access to all petitions, court orders, service plans, briefs, and other relevant case documents including evaluations and reports regarding the child, except when expressly prohibited by law, rule, or court order.
- 3.9 **Advisement Regarding Confidentiality:** RPC shall advise the client regarding the existence of limits to, and rules regarding further disclosure of the client's communications with counsel, therapists, social workers, and other relevant individuals. As necessary, RPC shall advise the client regarding consent and revocation of any waivers of rights or releases of information about the client or the client's child given by the client.

4 **Clients with Special Circumstances**

- 4.1 **Locating Missing Clients:** RPC shall take diligent steps to locate and communicate with a missing client, including requesting an ORPC investigator to locate the client. RPC shall consider requesting the assistance of an investigator as soon as practicable and shall avoid delay in seeking the assistance of an investigator. If RPC is unable to locate the client with the assistance of the investigator and is unable to ascertain the client's position, the RPC shall consider whether the client's interests would be better protected by withdrawal and comport with all applicable rules when choosing to withdraw.
- 4.2 **Clients with Disabilities:** RPC shall attempt to ensure that barriers to communication, such as disabilities or differences in language or literacy, are accommodated. RPC shall use a translator, interpreter, or assistive technology when necessary. RPC shall employ screening mechanisms to identify clients with disabilities as early as possible in the proceedings. Where supported by the client, RPC shall inform the court and all parties regarding the existence of the disability, request appropriate evaluations and reasonable accommodations.
- 4.3 **Out of State Parents:** When appointed to represent a parent who lives out of state, RPC shall consider objecting to an Interstate Compact on the Placement of the Children ("ICPC") home study occurring unless there is a strategic reason to consent to an ICPC or the client directs RPC not to object. RPC shall take all necessary steps to ensure that necessary services are obtained in the state where

the parent resides and that reasonable efforts are made to reunify the parent with the child, including but not limited to advocating for funding for the client to travel to visits and video visits where appropriate. RPC shall take all steps to ensure the client can meaningfully participate in hearings.

- 4.4 **ICWA Considerations:** RPC shall regularly inquire of the client regarding any Native American heritage. Upon learning of any heritage or any changes to such information, RPC shall immediately inform the court and all parties. If a client may be eligible for membership in a tribe, RPC shall, if requested, assist the client in enrolling in the tribe or take steps to ensure the client is receiving such assistance. RPC shall conduct an ongoing file review for ICWA compliance and promptly notify the court and all parties if the court or county are not in compliance with the ICWA.
- 4.5 **Venue and UCCJEA Considerations:** RPC shall consider objecting to improper venue prior to adjudication unless there is a strategic reason not to object. RPC shall take steps as early as possible in cases to determine whether any other state may be the home state of the children and whether any custody orders exist in other states. Where appropriate, RPC shall inform the court of any jurisdictional issues and request that the court follow the procedures of the UCCJEA and other applicable statutes.
- 4.6 **Incarcerated Clients:** RPC shall be aware of the unique issues an incarcerated client faces and ensure that they receive the same quality of representation as nonincarcerated clients.
- 4.6.1 Client meetings: RPC shall make arrangements for confidential in-person client meetings with incarcerated clients, or telephone meetings where distance makes in-person meetings impossible or impracticable.
- 4.6.2 Writs: Unless otherwise directed by the client, RPC shall take steps to ensure that a writ is issued to have an incarcerated client brought to court for all hearings. Because local practice surrounding issuance of a writ may vary, counsel shall become familiar with the local practice. In the event parents cannot be present in person, RPC shall request the parent appear by phone as well as request appropriate accommodations.
- 4.6.3 Treatment Planning: RPC shall explore what aspects of the treatment plan and parenting can be accomplished despite incarceration. RPC shall determine if the client is incarcerated in a facility that offers classes or services that may be required under the treatment plan or court order. If appropriate, RPC shall attempt to make arrangements with the facility for a contact visit between a service provider and the incarcerated client.
- 4.7 **Clients with Diminished Capacity:** When a client's capacity to make adequately considered decisions in connection with the representation is diminished, RPC shall act in accordance with Colo. R.P.C. 1.14 and any applicable statutory and case law. RPC shall consider consulting with the ORPC about appointment of a defense team social worker in lieu of, or in addition to, a

guardian *ad litem* for the client. Before consenting to or requesting a GAL be appointed for a client, RPC shall confer with the client regarding their wishes and right to object and analyze whether the client lacks the capacity to communicate with counsel or is incapable of weighing the advice of counsel on the best course to pursue.

5 Communication with Other Professionals and Out-of-Court Advocacy:

- 5.1 **Regular Communication with other Professionals:** To learn about the client's progress and their views of the case, as appropriate, RPC shall communicate regularly with other professionals and persons involved in the case while complying with the Colorado Rules of Professional Conduct regarding contact with clients represented by counsel.
- 5.2 **Regular Communication with Counsel for Client in Other Matters:** RPC shall strive to have open lines of communication with counsel representing the client in related matters such as any criminal, civil protection orders, private custody, or administrative proceedings to ensure these orders and determinations do not conflict with the client's goals in the dependency and neglect case.
- 5.3 **Attendance at out-of-court meetings:** RPC or their agent shall strive to attend out-of-court staffings and family engagement meetings or designate an ORPC social worker where appropriate to support the client and advocate for the client's stated goals. RPC shall understand protocols for these meetings and participate appropriately.
- 5.4 **Mediation:** RPC shall meaningfully consult with the client prior to mediation and shall understand the client's goals. RPC shall not pursue a resolution in mediation that conflicts with the client's goals. RPC shall attend mediation.
- 5.5 **Ancillary Legal Issues:** Where a client has an ancillary legal issue which is outside the scope of the RPC's representation of the client but presents a barrier to the client achieving their goals in the dependency and neglect case, RPC shall consult with the ORPC regarding available resources to address the ancillary legal issue.
- 5.6 **Case Consultations:** RPCs shall consider consulting with a staff attorney at the ORPC to develop a trial strategy, discuss legal theories and caselaw, and explore available resources. RPC shall consider consulting with an appellate attorney to preserve potential issues for appellate review. The ORPC staff attorneys, when acting in this capacity, will be considered a part of the legal team with the RPC, and the consultations will be kept confidential.

6 Discovery and Court Preparation:

- 6.1 **Duty to Investigate:** RPC shall conduct a thorough and independent investigation at every stage of the proceeding and, when appropriate, utilize

ORPC resources including ORPC social workers, investigators, experts, and other professionals.

- 6.2 **Informal Discovery:** RPC shall review the child welfare agency case file and obtain all necessary documents.
- 6.3 **Formal Discovery:** When needed, RPC shall use formal discovery methods to obtain information such as subpoenas *duces tecum*, depositions, interrogatories, requests for production, and requests for admissions. RPC shall respond to all discovery requests received from other parties in a timely manner.
- 6.4 **Obtaining Information from Third Parties:** RPC shall take all necessary steps to obtain information in the possession of third parties such as law enforcement and the GAL that may benefit the client or help inform the client's decisions.
- 6.5 **Late or Incomplete Discovery:** If RPC has requested and not received complete discovery prior to a hearing, RPC shall make a tactical decision that includes assessing whether to ask that evidence be excluded or to ask for a continuance.
- 6.6 **Admissions:** After appropriate investigation and case review, RPC shall explore with the client, county attorney, and GAL the terms of an admission, continued adjudication, or informal adjustment. RPCs shall explain to the client all possible consequences of stipulating to one or more of the statutory bases and factual bases for adjudication. RPC shall keep the client fully informed of all offers made by the county attorney and should discuss with the client the advantages, disadvantages, and consequences of accepting any offers. RPC shall discuss with the client the goals the client seeks to achieve and should thoroughly inform the client of his or her alternatives and the chances of prevailing at a hearing. If the client also faces criminal charges, RPC shall advise the client regarding potential conflicts, protections, and risks. RPC shall advise the client of the consequences of adjudication, including the effect of adjudication on any future allegations regarding the children subject to the petition or other children, and the possibility of termination of parental rights.
- 6.7 **Right to Jury Trial:** RPC shall advise the client of his or her right to a jury trial. RPC shall not waive a client's right to a jury trial unless the client consents to waiver after a thorough advisement. RPC shall ensure that the client

is advised sufficiently about whether to request a jury trial prior to the client entering a denial.

6.8 Hearing Preparation: RPC shall effectively prepare for court.

- 6.8.1 Client Interview: Where possible, RPC shall interview the client to obtain information well before each hearing.
- 6.8.2 Witness Interviews: RPC shall interview or obtain the assistance of an investigator to interview potential witnesses.
- 6.8.3 Witness Preparation: RPC shall thoroughly prepare the client and all witnesses to testify, including informing the client of the questions that may come up in cross examination. RPC shall ensure the client has an opportunity to testify if the client so desires after being thoroughly advised about any risks or benefits associated with testifying. RPC shall inform the client of the possibility that another party may call the client to testify and the possibility that the client may incriminate himself or herself. RPC shall advise the client, where appropriate, about their Fifth Amendment privilege when testifying as well as the possibility that the juvenile court may make an adverse inference if the client invokes their Fifth Amendment Privilege.
- 6.8.4 Subpoenas: RPC shall subpoena necessary witnesses or obtain waivers of service in sufficient time to ensure the appearance of necessary witnesses.
- 6.8.5 Releases of Information: RPC shall obtain authorizations for release of information as appropriate.
- 6.8.6 Theory and Strategy: RPC shall develop case theories and strategies to follow at hearings and negotiations.
- 6.8.7 Interviewing Family Members: RPC shall, as appropriate, contact and interview all potential family members who may be considered for placement as possible less drastic alternatives to termination.
- 6.8.8 Expert Witnesses for Opposing Counsel: When RPC learns that another party intends to call an expert witness to testify, RPC shall take steps to determine whether the witness is qualified as an expert in the relevant field. If the witness is not qualified or the testimony will address subject matter outside of the witness's expertise, unless there are sound tactical reasons for not doing so, RPC shall challenge the witness's

qualifications and conduct a voir dire of the witness on the record or file an appropriate motion to preserve the issue for possible appellate review.

- 6.9 **Expert Witnesses:** RPC shall identify, secure, prepare, and qualify expert witnesses when needed to properly protect the client's rights and pursue the client's stated goals.
- 6.9.1 Consultation with ORPC: RPC shall determine what type of expertise is needed to further the client's stated goals and take steps to secure appointment of an appropriate expert through consultation with the ORPC, and timely request the expert in RPPS.
- 6.9.2 Locating Appropriate Expert Witness: RPC shall seek expert witnesses who are not yet approved by ORPC if the available witnesses lack the capacity or expertise necessary. RPC shall provide the contact information for the proposed witness to the ORPC in a timely fashion to secure funding for the witness to testify.
- 6.9.3 Expert Preparation: RPC shall ensure the expert is sufficiently prepared for all hearings, which includes meaningful pre-hearing communication and appropriate provision of documents. When using an expert in a court hearing, RPC shall request the court endorse the expert based on the expert's qualifications and area(s) of expertise.
- 6.9.4 Confidentiality and Work Product: RPC shall protect attorney-client privilege and attorney work product privilege with experts whenever possible. RPC shall utilize expert retainer agreements when necessary and appropriate.
- 6.10 **Review of Reports:** RPC shall make diligent efforts to review the court file and any reports with the client before each court date. RPC shall seek enforcement of any local and state rules and laws requiring court reports be distributed to parties in advance of the court date.

7 **Hearings:**

- 7.1 **Trial Skills:** RPC shall demonstrate trial skills, to include courtroom presentation, voir dire, opening and closing arguments, direct and cross examination, and an understanding and ability to utilize the rules of evidence.
- 7.2 **Use of Witnesses:** RPC shall present and cross-examine witnesses, as well as prepare and present exhibits. RPC shall consider whether cross-examination is likely to generate helpful information and avoid asking questions that are unnecessary or might elicit responses harmful to the client's case.
- 7.3 **Appearance at Hearings:** RPC shall attend and prepare for all hearings, including pretrial conferences. Absent an emergency, RPC shall represent the client directly at any preliminary protective hearing, adjudicatory trial,

dispositional hearing, permanency planning hearing, termination of parental rights hearing, and substantive motions hearing.

- 7.4 **Coverage:** RPC shall ensure that any covering attorneys are approved by ORPC to appear in dependency and neglect hearings. RPC shall inform the client prior to the hearing that there will be a coverage attorney. RPC shall brief the coverage attorney on the status of the case as well as follow up with coverage attorney as soon as possible after the proceeding.
- 7.5 **Duties of Covering Attorney:** If RPC is acting as a coverage attorney, RPC shall prepare for the hearing and inform the attorney of record about all information regarding the proceeding, any obligations or actions that appointed counsel or the client must take a result of the hearing, and the future court dates set in the matter.
- 7.6 **Awareness of Timelines:** RPC shall be aware of the time requirements imposed by the Colorado Children's Code. Counsel shall track whether required hearings take place within the mandated timeframes to make appropriate objections to untimely hearings to preserve possible appellate review.
- 7.7 **Client Privacy:** RPC shall request orders to seal reports and records of mental health or substance abuse treatment in the court file. RPC shall request orders to seal addresses and other sensitive information when necessary. RPC shall request closed proceedings or a cleared courtroom in appropriate cases.
- 7.8 **Argument:** RPC shall request the opportunity to make opening statements and closing arguments unless there is a strategic reason not to do so.
- 7.9 **Duty of Diligence:** RPC shall avoid continuances and work to reduce delays unless continuing with the scheduled hearing would result in manifest injustice to the client and/or would be in best interests of child.
- 7.10 **Advocacy for Statutory and Constitutional Rights:** RPC shall advocate for compliance with state and federal statutes such as the ICWA, the ADA, and the Children's Code and shall strive to protect the state and federal due process rights of clients.
- 7.11 **Objections and Issue Preservation:** Unless sound tactical reasons exist for not doing so, counsel shall make timely and appropriate objections and motions and shall assert all appropriate grounds for exclusion of evidence. RPC shall make offers of proof regarding excluded evidence.

8 Duties at Specific Hearings

- 8.1 **Preliminary Protective or Shelter Hearings:** At preliminary protective or shelter hearings, RPC shall preserve the right to have a hearing within 72 hours of removal, the right to present evidence and examine witnesses, the right of the client to testify, and the right to have discovery prior to the hearing. RPC should work strategically to achieve the best possible outcome for the client at

preliminary protective hearings, and consider such issues as placement with the client, a relative placement, visitation, protective orders, and early engagement of client into voluntary services. RPC should prepare the client for the preliminary protective hearing and call witnesses where appropriate.

- 8.2 **Adjudicatory Trials:** RPCs shall be prepared to address legal and evidentiary issues that reasonably can be anticipated based on the pleadings, investigation, and discovery. If material allegations arise at the adjudicatory hearing that were not contained in the Petition, RPC shall consider seeking a continuance or objecting to preserve the issue for appellate review. RPC shall consider seeking advance rulings on issues likely to arise at the adjudicatory hearing by requesting a pretrial conference or motions hearing. RPC shall consider whether there are tactical reasons to stipulate to damaging facts that are readily provable and uncontroverted.
- 8.3 **Jury Selection and Instruction:** RPC shall actively participate in jury selection and drafting jury instructions.
- 8.4 **Default Adjudications:** RPC shall object to entry of default adjudication unless otherwise directed by the client. If the court enters a default adjudication when RPC was present to defend, RPC shall take steps to promptly advise the client of their right to appeal and shall promptly transmit an appellate transmittal form, waiver, or affidavit within seven days of the entry of the default adjudication. If RPC is appointed after a default adjudication enters, RPC shall advise the client of the existence of the default adjudication and any right to appeal.
- 8.5 **Dispositional Hearings:** RPC shall recognize the importance of an appropriate, individualized treatment plan being adopted at the dispositional hearing.
 - 8.5.1 RPC shall ensure the client has sufficient time to review and discuss the treatment plan in advance of dispositional hearing. RPC shall verify that the services and service providers are appropriate and tailored to the needs of the client, and that the treatment plan could be completed within the time allocated by the plan.
 - 8.5.2 When appropriate, RPC shall collaborate outside of court, prior to the hearing, with other parties to craft an individualized treatment plan that meets the client's needs and/or the needs of the children.
 - 8.5.3 If an appropriate treatment plan cannot be accomplished collaboratively, RPC shall raise necessary objections at dispositional hearing and shall litigate as appropriate, including through the use of scientific literature and expert testimony.
- 8.6 **Permanency Planning and Permanent Home Hearings:** RPC shall be prepared to present an alternative long-term plan for the child and to present evidence in support of the alternative permanency plan. RPC shall make

appropriate objections to proposed permanency plans and permanent home findings.

- 8.7 **Termination Proceedings:** RPC shall confer with client as soon as possible after a Motion to Terminate Parental Rights is filed. The decision to file pre-trial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. RPC should consider utilizing all available informal and formal discovery methods and should seek discovery to the broadest extent permitted by the law.
- 8.8 **Relinquishment and Other Alternatives to Termination:** RPC shall be familiar with the statutory and case law governing relinquishment of parental rights as well as local policies regarding relinquishment. RPC shall fully explain to the client the advantages, disadvantages, and consequences of relinquishment and other dispositional alternatives.

9 **Advocacy for Parenting Time and Appropriate Services:**

- 9.1 **Early Engagement:** Consistent with the client's goals, RPC shall thoroughly discuss the advantages of early engagement in services and advocate for timely provision of services appropriate to meet the individual client's needs.
- 9.2 **Ensuring Clear Objectives and Orders:** RPC shall advocate for services at every stage of the proceeding, both in and out of court. RPC shall identify and address barriers that may prevent or limit the client's ability to successfully engage in services. RPC shall ensure that court orders specify each party's duties and responsibilities regarding service referrals, payment for services, and transportation issues and include a realistic timeline for commencing and completing services.
- 9.3 **Amending Treatment Plans:** RPC shall regularly discuss the client's progress in their treatment plan as well as mitigation of any safety concerns or risks. Where appropriate, after consultation with the client, RPC shall consider requesting amendments to treatment plans when it becomes clear that the existing treatment plan is not addressing the concerns that caused the case to open or that are preventing reunification. RPC shall consider requesting updated risk and safety assessments and reviewing the assessments with the client.
- 9.4 **Reasonable Efforts:** RPC shall monitor and take steps to compel the agency's compliance with the reasonable efforts requirement consistent with the client's interests and goals throughout the course of the case and shall file appropriate motions to preserve this issue.
- 9.5 **Parenting Time:** Unless contrary to client direction, RPC shall advocate for frequent, consistent visits in the least restrictive setting possible where appropriate. RPC shall advocate for non-professional supervision of visitation where possible and for a plan that allows for make-up visits when the child is not available for a visit or when the parent, for good cause, cannot attend a scheduled visit. RPC shall object to parenting time being restricted as a sanction

for the parent's failure to comply with court orders or services if the restriction is not related to child safety. If parenting time is limited or suspended, RPC must continue to assess and advocate for options to regain parenting time.

- 9.6 **Client Decision-Making:** RPC shall understand and protect the client's rights to information and decision-making while the child is in foster care or in out-of-home placement.

10 **Post Hearings:**

- 10.1 **Preparation of Orders:** RPC shall 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 or are otherwise required by procedural rules. RPC shall review court orders to ensure accuracy and clarity. RPC shall timely file objections or motions to correct orders as necessary. RPC shall review written court orders with the client. RPC shall take necessary actions to ensure a written order is entered and provided to the client following verbal issuance of any orders that may be appealed.
- 10.2 **Advisement to client of duty to comply with court orders:** RPC shall advise the client regarding compliance with court orders and the consequences of not complying with court orders. If a court order has become impracticable or unworkable, RPC shall consider filing a motion or requesting a hearing to amend the order.
- 10.3 **Advisement regarding appellate rights:** RPC shall consider and discuss the possibility of appeal with the client after adjudication and disposition, after termination, and at any other appropriate point. RPC shall be familiar with appellate timelines. RPC shall ensure contact information is correct to ensure appellate RPC can reach the client.
- 10.4 **Duty to Seek Review of Magistrate Orders:** RPC shall consider and seek district court review of magistrate rulings as appropriate and/or where necessary to preserve the client's right to appeal.
- 10.5 **Appellate Transmittal Form and Appellate Waiver:** When the client wishes 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. If the client does not wish to appeal, trial counsel shall submit a written and signed waiver of appeal within seven calendar days of an appealable order or termination order to the ORPC. If RPC cannot locate the client after diligent efforts, RPC shall assess how to proceed based on the client's last clearly articulated position. If there was no discussion regarding an appeal and the client cannot be located, RPC shall provide the ORPC with an

affidavit regarding efforts to locate the client within seven days of the appealable order or termination order.

11 Appellate Advocacy

- 11.1 **Communication with Trial Counsel:** RPC shall confer with trial RPC to assess appellate issues and other case information. RPC shall share briefs with trial RPC. Appellate RPC shall inform the client's trial RPC of all significant developments in the case.
- 11.2 **Duty of Diligence on Appeal:** RPC shall timely file the Notice of Appeal and Designation of Record with the Court of Appeals. RPC shall designate and request transcripts using ORPC transcript request form for all trial court hearings and shall provide the ORPC transcript request form to the Managing Court Reporter as soon as practicable but no later than the date of the filing of the Notice of Appeal.
- 11.3 **Duty to Investigate:** RPC shall review the record as soon as it is received, and request supplementation if necessary. RPC shall also request an investigator as appropriate, to locate the client, or as required to investigate a claim of ineffective assistance of counsel.
- 11.4 **Briefs:** RPC shall prepare and timely file an Opening Brief, or any other principal brief. RPC shall strategically determine if a Reply Brief is necessary and, if so, prepare and timely file a Reply Brief.
- 11.5 **Oral Argument:** RPC shall request oral argument whenever oral argument could assist the appellate court in ruling for the client or the client requests oral argument. RPC shall prepare for oral argument and demonstrate appropriate persuasive skills and knowledge of the law. RPC shall consult with the ORPC regarding resources available for preparation, including moot court opportunities.
- 11.6 **Request for Rehearing:** RPC shall timely file a Petition for Rehearing if one is strategically necessary.
- 11.7 **Communication with Client:** RPC shall initially counsel the client about the appellate process and possible outcomes and remedies of appeal. RPC shall give the client regular updates at every phase of the appeal. RPC shall communicate the results of appeal and its implications to the client. RPC shall advise on any further appellate remedies and the risks or possible outcomes of those remedies. RPC shall share briefs with the client.
- 11.8 **Duties Post-Opinion:** Appellate RPC shall notify trial RPC when the opinion is received and shall advise trial RPC on the next steps to take if the trial court order is reversed. In the event that the appellate court determines an attorney has provided ineffective assistance of counsel, appellate RPC shall contact the ORPC to request appointment of new trial RPC. Appellate RPC shall share a

copy of the petition with the client and communicate the court's ruling on the petition and its implications to the client.

- 11.9 **Petition for Certiorari:** RPC shall prepare and timely file a Petition for Writ of Certiorari, if requested by the client after advisement. RPC shall advise the client about the risks and possible strategic benefits of filing a petition before filing.

12 **Withdrawal and Termination of Representation:**

- 12.1 **When Withdrawal Should be Considered:** RPC shall understand the obligation to protect the constitutional and statutory rights of the client at all times. RPC shall make every effort to resolve conflicts with the client prior to filing a motion to withdraw. RPC shall pursue withdrawal where: (1) there is such a breakdown in communication that the client is denied a substantial right by counsel's continued representation; (2) a conflict of interest exists such that withdrawal is advisable or required under Colo. RPC 1.16; (3) the client cannot be located after diligent search **and** direction from the client is unknown; (4) the client wishes to proceed *pro se* and has received an advisement by the court.
- 12.2 **Withdrawal When Client Terminates Representation:** If, at any time during the course of representation, the client seeks to terminate RPC's representation, RPC shall ensure the client is fully advised of the potential consequences of withdrawal, including the possibility that the client may have to proceed *pro se*. Unless the client chooses to proceed *pro se*, RPC shall request appointment of substitute counsel by the court or the ORPC.
- 12.3 **Motions to Withdraw:** If circumstances necessitate withdrawal prior to resolution of the case, RPC shall comply with all relevant Colorado Rules of Professional Conduct, including 1.6 and 1.16, comply with C.R.C.P. 121 § 1-1, file a motion to withdraw, and request an *ex parte in camera* hearing only if the motion to withdraw is not granted. RPC should obtain a court order allowing withdrawal and substitution of counsel, if necessary.
- 12.4 **Duty to Client Post-Withdrawal:** If the motion to withdraw is granted, RPC shall take reasonable steps to protect the client's interests and arrange for the orderly transfer of the client's file and discovery to substituting counsel or to *pro se* client. RPC shall take reasonable steps to notify the client of the withdrawal, the next scheduled court date, and the client's right to reapply for court appointed counsel or hire an attorney.
- 12.5 **Conflicts of Interest:** RPC shall avoid conflicts of interest involving the client, any additional respondent parents, and prior clients. RPC shall not represent

more than one parent, guardian, or legal custodian in any matter, including for coverage purposes.

13 Supervising Associate RPCs

- 13.1 **Caseloads:** Supervising RPC shall determine and set reasonable caseloads based upon experience and abilities of associate RPC.
- 13.2 **Supervision:** Supervising RPC shall engage in active supervision of associate RPC cases, including supervising associate RPC in court and reviewing associates' written work. Supervising RPC shall provide training and mentoring to associate RPC.
- 13.3 **Ensure Adherence to Practice Standards:** Supervising RPC shall ensure associate RPC comply with ORPC Standards of Practice for Attorneys Representing Parents in Dependency and Neglect and the Requirements of Chief Justice Directive 16-02.

PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN *AD LITEM* REPRESENTATION ON THE BASIS OF INDIGENCE

Attachment B

Amended April 2025

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigence must complete, or have completed on their behalf, application form JDF208 (“Application for Court-Appointed Counsel or Guardian *ad Litem*”) signed under oath, before such an appointment may be considered by the court. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and where the court appoints a GAL for a judicial bypass proceeding pursuant to §12-37.5-107(2)(b).

Procedures for the Determination of Indigency

The following procedures are used for applicants in cases addressed in CJD 04-06.

- **Completion of Form JDF208 by Applicant**

Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF208, and submit it to the court.

- **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:

- Income¹
- Liquid assets²
- Expenses³

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian *ad litem* 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 JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation at state expense.

¹ *Income 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.

² *Liquid 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 JDF 208.*

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 JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation.

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 indigency.

INCOME ELIGIBILITY GUIDELINES
(Amended January 17, 2025)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 15,650	\$ 1,304	\$ 1,630	\$ 2,038	\$ 19,563	\$ 24,453
2	\$ 21,150	\$ 1,763	\$ 2,203	\$ 2,754	\$ 26,438	\$ 33,047
3	\$ 26,650	\$ 2,221	\$ 2,776	\$ 3,470	\$ 33,313	\$ 41,641
4	\$ 32,150	\$ 2,679	\$ 3,349	\$ 4,186	\$ 40,188	\$ 50,234
5	\$ 37,650	\$ 3,138	\$ 3,922	\$ 4,902	\$ 47,063	\$ 58,828
6	\$ 43,150	\$ 3,596	\$ 4,495	\$ 5,618	\$ 53,938	\$ 67,422
7	\$ 48,650	\$ 4,054	\$ 5,068	\$ 6,335	\$ 60,813	\$ 76,016
8	\$ 54,150	\$ 4,513	\$ 5,641	\$ 7,051	\$ 67,688	\$ 84,609

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$ 573 per month to "monthly income" or \$ 6,875 per year to "yearly income" for each additional family member. Poverty Guideline is \$ 5,500/year.

Source: Federal Register (90 FR 5917, 01/17/2025)