

12/6/96 Distributed to: All Justices, Judges, Senior Judges, Magistrates,
District Administrators, Chief Probation Officers,
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cc: Senior SCAO Staff

Directive 96-08

SUPREME COURT OF COLORADO

Office of the Chief Justice

**DIRECTIVE CONCERNING THE PROCESSING OF DEPENDENCY AND
NEGLECT CASES**

The following policies are adopted to improve the timeliness and quality of the courts' handling of dependency and neglect cases. This Directive specifies the responsibilities of judicial officers in managing this caseload. These policies are intended to encourage the early provision of services to children and families and reduce the times needed for courts to reach all major case events, including, as appropriate, the return home of children, approval of other permanent plans, and termination of parental rights.

Elements of this Directive affect procedures of departments of social services, county attorneys, guardians ad litem, respondent parents' counsel, and service providers. Therefore, each district is to work collaboratively with representatives of those groups to develop procedures to implement these policies. Districts are to meet with these individuals and have a plan in place by January 31, 1997.

1. Early Development of Case Plans.

- a. Each district shall collaborate with the local department of social services to develop mechanisms to have interim treatment plans available 30 days after the child's removal or the filing of the petition, whichever is earlier. To the extent possible, interim treatment plan formats should be based on the revised discrete plan formats to be introduced statewide in early 1997.
- b. Each district shall develop procedures to appoint a guardian ad litem in all cases prior to the first hearing in any case. Guardians ad litem shall participate in shelter care hearings whenever possible.
- c. Respondent parents should be ordered at the first hearing conducted in the case to provide the court and agency with the names and addresses of non-custodial parents and other relatives in order to expedite notice to absent parents and to permit departments of social services to conduct a relative placement study within 30 days of the shelter hearing whenever possible.

2. Expediting the Timing of Adjudication and Disposition Hearings.

- a. Each district shall collaborate with local departments of social services, county attorneys, guardians ad litem, and respondent parents' counsel, to develop procedures to ensure that petitions are filed at the first hearing conducted in all

or most actions. When the petition is available at the first hearing, the court shall conduct the advisement at that hearing.

- b. Each district shall collaborate with their local departments of social services, county attorneys, guardians ad litem, and respondent parents' attorneys to develop procedures to facilitate case disposition on the same day as adjudication.
- c. If disposition does not occur at the same time as adjudication, then it should take place within 30 days.

3. Hearings and Reports.

- a. Courts shall employ case management techniques designed to allow an early determination of the issues that will require the presentation of evidence at the hearing or trial.
- b. Courts shall require guardians ad litem to appear at all hearings and report orally on the status of the case. If the guardian ad litem has good cause not to appear, the court shall require the guardian to file and serve on counsel for the agency and parents a written report, in lieu of appearance, at least five days in advance of the hearing. Sanctions may be imposed when the report is not filed and served as required.
- c. Courts shall require reports from departments of social services to be filed and served at least five days in advance of hearings. Sanctions may be imposed when the report is not filed and served as required.
- d. Courts shall encourage departments of social services to use the new combined Discrete Case Plan/Court Treatment Plan formats for court reports. The new formats will be distributed by the Department of Human Services in the near future with a requirement that the new formats be used statewide after April 1, 1997.

4. Continuances

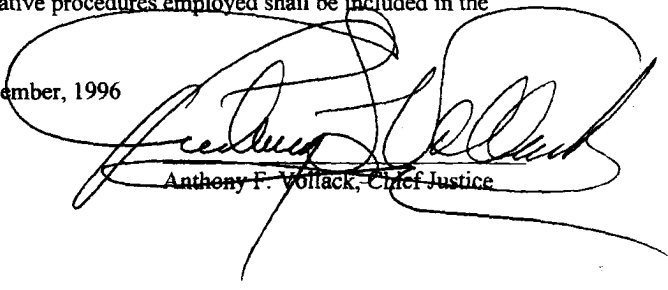
Continuances will be granted by a Judicial Officer only upon a finding that a manifest injustice would occur in the absence of a continuance.

5. Reports.

Each district shall provide to the State Court Administrator a report of its progress in implementing the elements of this Directive six months from the date of the issuance of the Directive. For any element not implemented, an explanation of the reasons for not adopting the procedure as well as a

description of any alternative procedures employed shall be included in the report.

Signed this 7 day of December, 1996

A large, stylized handwritten signature in black ink, which appears to read "Anthony F. Wollack". The signature is written over the printed name and title below it.

Anthony F. Wollack, Chief Justice

Explanation of the Elements of Chief Justice Directive 96-08 Concerning D & N Case Processing

<i>Directive Element</i>	<i>Explanation</i>
<p>1. Early Development of Case Plans</p>	
<p>a. Each district shall collaborate with the local department of social services to develop mechanisms to have interim treatment plans available within earlier 30 days from the child's removal or the filing of the petition, whichever is earlier. To the extent possible, interim treatment plan formats should be based on the revised discrete plan formats to be introduced statewide in early 1997.</p>	<p>Early treatment planning is advocated for two reasons. First, and most importantly, the earlier a treatment plan is developed the earlier services can be provided to children and parents. Second, it often appears that fear of the unknown drives requests for contested hearings. Indications from other jurisdictions are that cases tend to settle sooner without contested adjudication and disposition hearings when parents and their attorneys have an opportunity to review the proposed treatment plan in advance of the adjudicatory hearing.</p> <p>DHS staff contemplate using the new discrete case plan format (see 3d, below) for the interim case plan. The discrete case plan is a document caseworkers are required to prepare early in the case process, so providing copies to the court and other parties should not impose any significant additional burden on DSS personnel.</p> <p>Although the interim treatment plan will not in itself be an enforceable document until the case is adjudicated, it may form the basis for a protective order as well as providing the parties with a starting point for negotiating an agreement.</p>
<p>b. Each district shall develop procedures to appoint a guardian ad litem in all cases prior to the first hearing in any case. Guardians ad litem shall participate in shelter care hearings whenever possible.</p>	<p>As with "a" above, the purpose of this section is to speed up the early stages of the case. Although the process will require some additional effort to appoint guardians in advance of the shelter hearing, having the guardian available at the earliest possible opportunity should contribute to improved early case planning. For the same reason, mechanisms may eventually be developed to also permit the appointment of counsel for parents before the shelter care hearing.</p>

<p>c. Respondent parents should be ordered at the first hearing conducted in the case to provide the court and agency with the names and addresses of non-custodial parents and other relatives in order to expedite notice to absent parents and to permit departments of social services to conduct a relative placement study within 30 days of the shelter hearing whenever possible.</p>	<p>The primary purposes of this provision are to ensure timely notice to non-custodial parents of the proceedings and to facilitate placements with relatives for children removed from their homes. A further purpose is to assist DSS staff or others in locating family members for family group conferences, a formal negotiation process that allows a child's immediate and extended family to participate in making decisions regarding placement, treatment, and other services. A number of county departments have expressed interest in using family group decision-making procedures.</p>
<p>2. Expediting the Timing of Adjudication and Disposition Hearings.</p>	
<p>a. Each district shall collaborate with local departments of social services, county attorneys, guardians ad litem, and respondent parents' counsel, to develop procedures to ensure that petitions are filed at the first hearing conducted in all or most actions. When the petition is available at the first hearing, the court shall conduct the advisement at that time.</p>	<p>Early filing of the petition provides the court with better information on which to base a protective order and eliminates the need for a separate advisement, a hearing that often is a formality only. A court might substitute a pre-trial conference, a practice several members of the committee felt might be helpful.</p>
<p>b. Each district shall collaborate with their local departments of social services, county attorneys, guardians ad litem, and respondent parents' attorneys to develop procedures to facilitate case disposition on the same day as adjudication.</p> <p>c. If disposition does not occur at the same time as adjudication, then it should take place within 30 days.</p>	<p>Like the provision encouraging development of interim case plans, the purpose is to allow the provision of services to families as soon as possible, and to reduce the numbers of cases set for contested hearings. Combining the two events also obviously will eliminate a hearing in the case process. We understand that DHS is advocating earlier evaluation and treatment in all cases. These Directive elements ought to assist them in those efforts.</p>

3. Hearings and Reports.

a. Courts shall employ case management techniques designed to allow an early determination of the issues that will require the presentation of evidence at the hearing or trial.

Each of these provisions under number three is designed to promote the timely and effective resolution of D & N cases. The goal is that these cases will be managed by court staff between hearings and by judicial officer during hearings in a way so that all relevant information is available and can be dealt with in a proper fashion. As a result, there will be fewer continuances and cases will be resolved with greater effectiveness.

Both within Colorado and in other jurisdictions, assessments are showing that the courts that handle this caseload most efficiently and effectively employ good caseflow management techniques. They set hearings far enough in advance to avoid scheduling conflicts for necessary parties, limit continuances, and identify contested matters early and offer opportunities to the parties to reach a negotiated settlement ahead of the trial date.

b. Courts shall require guardians ad litem to appear at all hearings and report orally on the status of the case. If the guardian ad litem has good cause not to appear, the court shall require the guardian to file and serve on counsel for the agency and parents a written report, in lieu of appearance, at least five days in advance of the hearing. Sanctions may be imposed when the report is not filed and served as required.

Timely filing of reports and other documents seems to reduce the numbers of continuances found in this caseload. The assessment examined the times set for submission of reports and case plans in the counties studied. Assessment findings indicate that those courts with the longest advance filing deadlines for reports had the lowest rates of continuances found in the study.

c. Courts shall require reports from departments of social services to be filed and served at least five days in advance of hearings. Sanctions may be imposed when the report is not filed and served as required.

<p>d. Courts shall encourage departments of social services to use the new combined Discrete Case Plan/Court Treatment Plan formats for court reports. The new formats will be distributed by the Department of Human Services in the near future with a requirement that the new formats be used statewide after April 1, 1997.</p>	<p>This new Directive element is added at the request of the DHS committee that has been developing the new formats. That committee feels that court endorsement of use of the new formats will be helpful in encouraging county agencies to adopt the forms. The formats are designed to reduce caseworker paperwork by creating common reports for internal use, for court reviews, and for administrative Foster Care Reviews. The new formats have been designed to ensure full compliance with the settlement agreement in the recent action suit against the state. In addition, standardization in reporting formats is being sought in preparation for implementation of a new statewide automated system for social services agencies. DHS will be distributing the forms to county agencies in about a month with an instruction that they are to be used statewide after April 1, 1997.</p>
<p>4. Continuances</p>	
<p>Continuances will be granted by a judicial officer only upon a finding that a manifest injustice would occur in the absence of a continuance.</p>	<p>The assessment on D & N cases revealed an important need for many courts to reduce the time needed to resolve these cases. One important way to reduce delays is to tighten up significantly on the granting of continuances. Relying on the standard of "manifest injustice" should lead to a reduction in the number of continuances granted.</p>
<p>5. Reports</p>	
<p>Each district shall provide to the State Court Administrator a report of its progress in implementing the elements of this Directive six months from the date of the issuance of the Directive. For any element not implemented, an explanation of the reasons for not adopting the procedure as well as a description of any alternative procedures employed shall be included in the report.</p>	<p>A short report is required from each district to allow the SCAO to analyze and report on the impact of the directive on the caseload and the improvement goals established in the assessment report.</p>