



**ELEVENTH JUDICIAL DISTRICT
CHIEF JUDGE DIRECTIVE 10- 02**

SUBJECT: District Plan for Handling Dependency and Neglect Cases

To: Eleventh Judicial District Juvenile Court Judges and Magistrates, Clerk of Court, State Court Administrator's Office, Fremont, Chaffee, Park and Custer County Attorneys, Fremont, Chaffee, Park and Custer County Department of Human Services, Dependency and Neglect Contract Attorneys, Guardians ad litem, CASA and Best Practice Court team members

From: Charles M. Barton
Chief Judge

DATE: 11-29-10

I. Introduction

The procedure for handling dependency and neglect [D&N] cases in Fremont, Chaffee, Park and Custer Counties is set forth below. This plan incorporates the requirements of Colorado Statutes, Chief Justice Directives 98-02, 96-08, the recommendations in the *Child Abuse and Neglect Cases in the Colorado State Courts* report dated June 27, 1996, the recommendations contained in *Child Abuse and Neglect in the Colorado Courts 1996-2000 – A Reassessment* dated September 2002, and the experiences of other jurisdictions in improving practice in D&N cases. This plan replaces the District Plan for Handling Dependency and Neglect Cases adopted on January 29, 2009.

When a new D&N file is opened in Fremont County, the Clerk's Office conducts an immediate search for the existence of any juvenile delinquency case in which the same juvenile is subject to an active DHS Custody and Placement Order.

New D&N cases with a related delinquency case that includes an active DHS Custody and Placement Order on the same juvenile are assigned to Division 4. The remaining

D&N cases are assigned to Divisions 1 and 2 by random assignment and Family Treatment Drug Court cases are assigned to Division 5.

In Division 4, a shelter hearing is set within 72 hours to determine temporary custody and authorization to file a D&N petition. Division 4 shelter hearings are set on Tuesday or Thursday at 1:15 p.m.

If a D&N petition is authorized, a shelter order is entered and the file returned to the Clerk's Office for assignment to Division 1 or 2. The related delinquency cases remain in Division 4 and are not transferred with the D&N case. All child custody orders in any open D&N case control over any prior order in a delinquency case. If a D&N petition is not authorized, a dismissal order is entered. Judge Groome is the reviewing judge for all Fremont County magistrate review petitions.

The following is a statement of philosophy for this district that the Best Practice Courts team believes result in improved and expedited outcomes for children and families:

- Making every hearing a meaningful event with defined objectives and/or specific actions to be taken in order to eliminate delay and empower parents to participate in treatment planning and engagement in treatment at the earliest appropriate time.
- Affording parties opportunities to collaborate and to resolve issues consensually at all stages of the case in a non-adversarial, problem-solving environment that is directed by a neutral party. This can be achieved in the form of mediation, facilitator meetings, family group conference settings, etc.
- Focusing on permanency from the beginning and at every stage of the case with a family-focused/child-centered approach to each case.
- Distribution of written court orders to all parties at the conclusion of each hearing. Such orders shall be in clear and concise language that is understandable to most parents.

This plan may result in the following benefits to all parties involved in the D&N process:

- Expedited placement of children in safe and permanent homes.
- Earlier development of treatment plans and quicker engagement of parents in their treatment plans.
- Greater "ownership" of and earlier participation in treatment plans by parents who have participated in treatment plan development and who have participated in open discussions about their treatment progress with their caseworker, attorney, the guardian ad litem, and the CASA volunteer.
- Earlier identification of high-risk cases, the need for amended treatment plans, and the need for concurrent permanency planning.

- Reduced foster care costs.
- More productive use of professionals' time and allocation of agency costs by offering a variety of settlement opportunities in order to resolve issues, thereby avoiding lengthy contested hearings.
- More efficient use of judicial resources and professionals' time by reducing the number of unproductive court appearances.
- More efficient docket management, case tracking and data management.
- Greater accountability and an increased level of support and collaboration with all parties involved in the D&N process.
- The opportunity to gather all players of a family's support system (personal and professional) into collaborative meetings in order to treat children and families with a holistic, team-oriented approach rather than with isolated partnerships.
- Greater understanding by parents regarding the dependency and neglect court process and how to navigate the child welfare and community support systems for the benefit of their children.

The following sections outline the process for handling D&N cases in the juvenile court of County. Participants in specialized programs may be subject to a somewhat different and more intensive process that is outlined in Appendix .

- I. **Continuances.** At all stages of the case, continuances are granted only if good cause is shown and only when the best interests of the child(ren) will be served by granting the continuance. If the continued case involves one or more children who were under six at the time the Petition was filed, the court shall to make the findings set forth in C.R.S. § 19-3-104. Any hearing that must be continued shall be rescheduled at the earliest available time.
- II. **Participation by Children in the Court Process.** C.R.S. §19-3-702(3.7) requires that the court consult with the child in an age appropriate manner regarding the child's permanency plan.
 1. In response to the statutory requirement, and in light of the Section 8.3C.2c Title IV-E publication (see also Social Security Act – section 475(5)(C)(ii)), the following procedures for permanency hearings are acceptable:
 - a. GAL's and caseworkers will work together to ensure that the children know they have a right to be heard by the Court. They will be told that they have several options, including direct court attendance, letter, fax or email to the court, or attending a hearing in chambers.

- b. The presumption will be that the child will be allowed to come to court. This presumption can be rebutted by the caseworker or the GAL and may include such reasons as young age of the child, mental state of the child, developmental disability of the child, or preference on the child's part to participate in another way.
- c. The GAL and the caseworker will work out transportation issues. Foster parents and CASA's should be a strong resource for transportation.
- d. If a child does not participate in a permanency planning hearing, the Court will inquire as to whether the child was consulted and what his/her response was. An oral report addressing the child's position will be sufficient.
- e. Even though there are frequent permanency hearings, the statute requires that children be consulted for each hearing. Of course, frequency of hearings may be one reason that the GAL and caseworker decide that a child should not come to court, but participate another way instead.
- f. If the GAL and caseworker disagree on the issue of whether a child should attend a hearing, the GAL will make the final decision.
- g. In order to address the concerns about children's fear and anxiety, every effort will be made to make this an empowering and pleasant experience for children. The Court will assure the children that the decision about permanency is not their decision, but the Court's.

III. **Temporary Protective Custody**

- 1. Purpose: To provide an ex parte process to allow the court to determine whether children should be removed from their home or protective orders entered in order to protect children from possible abuse or neglect pending a hearing at which all parties are provided notice and an opportunity to be heard.
- 2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. County caseworker
 - b. May be necessary or appropriate
 - i. Guardian ad litem (if an open case)
 - ii. County Attorney
 - iii. Court reporter or electronic recording device (if hearing takes place at courthouse)
- 3. Process
 - a. Timing. Pursuant to C.R.S. 19-3-405, the Court shall make available a judge, magistrate or other officer of the court to be available by telephone at all times to issue temporary protective custody or protections orders when necessary to protect a child from abuse or neglect. To the end of providing an effective method to issue such orders, the presiding juvenile judicial officer shall

annually provide training and forms to all other judges in the district who have the responsibility for hearing such requests.

- b. Critical Tasks. The following tasks will be completed by the conclusion of the hearing pursuant to C.R.S. 14-3-405:
 - i. Findings regarding placement, including reasonable efforts to prevent the need for such where the child(ren) has(have) been removed from the home or a finding that no reasonable efforts are necessary because of the emergency nature of the situation.
 - ii. Entry of protective orders as may be appropriate pursuant to the provisions of C.R.S. 19-3-405(2)(b).
 - iii. Preliminary inquiry regarding the applicability the Indian Child Welfare Act, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).
 - iv. Set date and time for hearing within 72 hours of the entry of the order, excluding weekends and holidays.
 - v. Order the notification of parents of the time set for the Preliminary Protective Proceeding and order for distribution of application for court appointed counsel (Form JDF 203).
 - vi. Entry and distribution of written findings and order by the close of the next court business day.
 - vii. Notice to CASA of hearing date and time.

IV. **Preliminary Protective Hearing/Advisement Hearing**

1. Purpose: To make findings and enter protective orders regarding placement of the child(ren). To ensure that all respondent parents are identified, given the opportunity to be represented by counsel, and to ensure their understanding of the D&N process (including potential consequences and permanency options). To facilitate early case assessment and provision of services.
2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Parents
 - iv. Counsel for parents
 - v. Guardian ad litem
 - vi. County Attorney
 - vii. DHS Caseworker
 - viii. Court reporter or electronic recording device
 - b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents

3. Process

- a. **Timing:** In cases that are initiated by removal of a child, the Preliminary Protective Proceeding/Advisement hearing must be held within 72 hours of removal of the child (exclusive of weekends and holidays), unless an earlier hearing is mandated by statute.
- b. **Critical Tasks.** The following tasks will be completed at or before the Preliminary Protective Proceeding/Advisement hearing (also called “Emergency” hearing).
 - i. Appointment of a GAL
 - ii. Assurance that respondents understand their rights and potential outcomes of the D&N court process. This may be accomplished by written advisement or by the viewing of the video advisement but the court should explain the dual purposes of child protection and family preservation as well as impress upon the parents the importance of the timely resolution of the case for the benefit of the child(ren).
 - iii. Appointment of respondent parents' counsel, if eligible for appointment;
 - iv. Filing and service of the D&N Petition and Summons upon all parties who are present;
 - v. Addition of any Special Respondents to the case;
 - vi. Findings regarding placement, including reasonable efforts to prevent the need for such where the child(ren) has(have) been removed from the home or a finding that reasonable efforts are not necessary because of the emergency nature of the case;
 - vii. Entry of protective orders as needed including orders regarding monitored sobriety, evaluations, release of familial information, provision of services, and child-centered visitation issues including visitation with parents, siblings, and other persons of importance to the child(ren);
 - viii. For allegedly drug involved parents the setting of appointments for evaluation of the parents’ drug or alcohol issues and early engagement in treatment;
 - ix. Diligent inquiry regarding the paternity of children, the whereabouts of non-appearing parents and efforts to locate and notify them;
 - x. Diligent and ongoing inquiry regarding the applicability the Indian Child Welfare Act, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
 - xi. Order parents to provide information on relatives and other caregivers by filling out and filing of form JDF 559;
 - xii. Entry of orders to expedite the process of identifying able and willing relatives so that kinship placement may be considered and expedited. Set date for adjudicatory hearing within 21 to 28 days;
 - xiii. Appointment of a CASA volunteer when appropriate and available;
 - xiv. Distribute Summons, Petition, Order Appointing Guardian ad Litem, Order for Temporary Custody, Order of Protection and any other orders to all parties who are present.

- c. Visitation/Parenting Time. Except in extraordinary circumstances, where parenting time is ordered at the time of the PPP hearing, it shall be ordered pursuant to the parental contact protocol set forth in Appendix A.
- d. Non-Appearing Respondents. In the event a respondent parent does not appear at the Preliminary Protective Proceeding/advisement hearing, the County Attorney shall immediately arrange for personal service or seek to serve by certified mail or publication.

V. **Adjudicatory Hearing/Trial**

- 1. Purpose: To enter a knowing and intelligent admission to one or more of the allegations in the Petition or to contest the Petition and obtain a judicial finding whether the allegations have been proven.
- 2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Parents
 - iv. Counsel for parents
 - v. Guardian ad litem
 - vi. County Attorney
 - vii. DHS Caseworker
 - viii. Court reporter or electronic recording device
 - b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents
- 3. Process:
 - a. Timing. Except in extraordinary circumstances, the adjudicatory/plea hearing shall be heard within 21 – 28 days of the PPP. The hearing may be continued for a non-appearing party if the court determines that party has not been served or if the absence is otherwise reasonable, if counsel has been unsuccessful in meeting with his/her client, and/or if a party is in need of counsel. However, the adjudicatory hearing must be completed within 60 days of service of the D&N Petition in an Expedited Permanency Planning (EPP) case and within 90 days in a non-EPP case unless the court determines that a continuance is in the best interests of the child(ren).
 - b. Preparation. The Family Services Plan Social History Assessment shall be provided to the court and all parties at least one week prior to the adjudication/plea hearing.
 - c. Critical Tasks. The following actions will be taken at the adjudicatory hearing:
 - i. Advise parties of their rights;

- ii. Accept admissions or denials of the Petition;
 - iii. Enter default judgment as to any non-appearing party who has been properly served;
 - iv. If removal has occurred or placement is continued, the Court will make appropriate findings regarding placement and whether reasonable efforts to prevent or eliminate the need for placement have been made;
 - v. Order mediation to resolve issues that may otherwise require contested plea/dispositional hearings
 - vi. Order service on any party who has not been served
 - vii. Inquire of any parties who did not appear at the PPP hearing regarding paternity, ICWA and UCCJEA and require the parent to complete and file JDF 557;
 - viii. Make ongoing inquiries regarding an unresolved ICWA, paternity or UCCJEA issues;
 - ix. If the petition is admitted, conduct dispositional hearing (see below) or schedule the dispositional hearing for 21 to 30 days from the date of the first plea.
- d. Critical Tasks if the Petition is Denied. If the allegations in the Petition are denied, the following actions will occur:
- i. A trial date will be set;
 - ii. A pre-trial order will be entered that includes the following:
 - a) Deadlines for discovery and for endorsement of witnesses and exhibits;
 - b) An order for mediation;
 - c) A date for pretrial conference at which a plea will be taken if the parties have reached agreement;
 - iii. If the matter is not resolved before the trial date, the adjudicatory trial will occur. If the allegations in the case are not sustained at trial the case will be dismissed. If the allegations are sustained at trial, the following actions will occur:
 - a) A decree will enter;
 - b) Proceed to dispositional hearing or set the hearing within 30 days.

VI. **Dispositional Hearing**

1. Purpose. To enter a treatment plan that addresses the needs of the family and children and is designed to remedy the issues that caused the children to be declared dependent or neglected.
2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Parents
 - iv. Counsel for parents
 - v. Guardian ad litem
 - vi. County Attorney

- vii. DHS Caseworker
- viii. Court reporter or electronic recording device
- b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents

3. Process:

- a. Timing. If the dispositional hearing does not occur at the adjudication hearing it shall occur within 30 days of the date of the first adjudication.
- b. Preparation. A treatment plan, as part of the Family Services Plan, will be prepared by the DHS caseworker and each parent. The Family Services Plan with the treatment plan shall be submitted to the court and the parties no later than 7 days prior to the dispositional hearing. This plan will be developed in consultation and collaboration with parents unless the parent refuses to participate or is otherwise unavailable. The treatment plan shall be written in clear, concise and understandable language. A cover letter shall be included with the Treatment Plan that briefly outlines progress and challenges faced by the children and the parents since the previous hearing and shall state the extent to which the parent participated in the development of the plan.
- c. Critical Tasks. The following actions will be taken at the dispositional hearing:
 - i. If the plan is contested, hear disputed issues and make judicial findings and orders adopting or amending the treatment plan or set the matter for a contested hearing;
 - ii. Review the terms of the treatment plan. Find that the treatment plan submitted or as amended is reasonable and appropriate;
 - iii. Advise the respondents of the potential consequences of not complying with the treatment plan, including termination of parental rights;
 - iv. Advise of the benefits to the children and the parents of meaningful progress with treatment;
 - v. Enter the treatment plan as a court order;
 - vi. If a motion for termination of the parent-child relationship has been filed that is based upon an assertion that no reasonable treatment plan can be formulated, the court will set a hearing to determine whether, by clear and convincing evidence, no appropriate treatment plan can be devised and whether the best interests of the child would be served by a termination of the parent-child relationship. If a motion to determine that no reasonable treatment plan can be formulated has been filed that asserts that a permanent placement through allocation of parental responsibilities with a relative or other willing person would serve the best interests of the child(ren), the court will set a hearing to determine whether, by clear and convincing evidence, no appropriate treatment plan can be devised

- vii. Set a Permanency Planning hearing. An initial Permanency Planning Hearing shall occur within 90 days of the dispositional hearing.

VII. Reviews

1. Purpose: To review the need for continued placement (if the child has been removed) and make findings about whether reasonable efforts have been made to reunify the family and prevent placement; to review progress on and the need for modification of the treatment plan; to review progress of the children and their well being in placement and assess the need for services to the children; to update and review of visitation issues, protection orders and the continued appropriateness of the permanency goal; to make findings on whether DHS has made reasonable efforts to finalize the permanency goals.
2. Process:
 - a. Periodic Review Hearing. Following the dispositional hearing, the Court will hold review hearings as necessary or at the request of parties, generally every 60 to 120 days as long as there are not critical or emergent issues that merit more frequent reviews. Under no circumstances shall a child's case be reviewed less frequently than every 180 days.
 - b. Review Reports. Following dispositional hearing, a written family services plan for review is required for all court hearings (except for a pretrial conference) unless specifically waived by the judicial officer in advance.
 - i. A written Family Services Plan court report must be prepared by the DHS caseworker, filed with the Court, and served on the parties and counsel seven days prior to the court date.
 - ii. The report will include a brief social history, removal history, findings of the most recent foster care review, discussion of the most recent progress and developments in the case since the last hearing or review, and a review of each of the pertinent actions set forth in section C below.
 - c. Critical Tasks. Some or all of the following actions will be taken at every review hearing:
 - i. If removal has occurred or placement is continued, the Court will make appropriate findings regarding placement and reasonable efforts to eliminate the need for placement;
 - ii. If removal has occurred or placement is continued, the Court will find whether reasonable efforts have been made to place a child in a timely manner in accordance with the permanent plan (P.L. 105-89).
 - iii. Determine the continued appropriateness of the permanency goal and goal dates.
 - iv. Determine whether the treatment plans require modification in light of additional information or changed circumstances.
 - v. Review progress on treatment plan goals.
 - vi. Review visitation and interaction between parents and child.
 - vii. If the child has been in placement for 15 of the last 22 months, consider whether there are compelling reasons that a motion for

termination of parental rights should not be filed. In such case, the Family Service Plan review report must include the ASFA Review for Termination of Parental Rights/5A Review form explaining why a motion for termination has not been filed;

- viii. Set the next review date, or Permanency Planning Hearing, if applicable. Although generally review hearings will be scheduled a minimum of every 90 days, in no event shall the review be scheduled longer than 180 days from the last hearing.

VIII. **Permanency Planning Hearing**

1. **Purpose:** To adopt a definitive permanent plan for each child and direct that significant steps be taken to implement the plan. Accordingly, the parties should be prepared to take whatever steps are necessary to finalize the permanency planning goal by the goal date established by the court.
2. **Participants**
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Parents
 - iv. Counsel for parents
 - v. Guardian ad litem
 - vi. County Attorney
 - vii. DHS Caseworker
 - viii. Court reporter or electronic recording device
 - b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents
3. **Process:**
 - a. **Timing.** In an EPP case, the permanency planning hearing must be held within 3 months of the dispositional hearing. In a non-EPP case state and federal law require the permanency planning hearing to be held within 12 months of removal. If the child has not been returned within 6 months of the initial permanency planning hearing, a second permanency planning hearing will be held at that time. Subsequent permanency planning hearings shall occur no less frequently than every 180 days.
 - b. **Notice.** Written notice of the permanency planning hearing shall include a statement concerning the proposed permanent plan for the child(ren). Such notice shall be served on the parties, counsel, the child(ren), relatives and foster parents who have the care of the child. A written permanency plan/court report and any proposed amendments to the treatment plan must be

filed by DHS and served on above listed parties at least one week (7 days) prior to the Permanency Planning Hearing.

c. Critical Tasks

- i. Required Consultation with Child. Pursuant to C.R.S. 19-3-702(3.7), the court must consult with the child in an age appropriate manner to determine the child's wishes regarding the permanency plan. This "age appropriate" consultation may be accomplished by the child's attendance in court; by *in camera* conference with the court; by face-to-face consultation or observation by the guardian ad litem, caseworker or CASA volunteer.
- ii. Permanency Planning Goals. The court shall enter a permanency planning goal as well as a goal deadline. The court shall order the agency to make reasonable efforts to finalize the permanency goal by the goal deadline. Possible permanency planning outcomes (in the order of desirability) include:
 1. Remain home;
 2. Return home at or before the Permanency Planning hearing;
 3. Return home within 6 months of the Permanency Planning hearing;
 4. Return home more than 6 months after the Permanency Planning hearing;
 5. Adoption through relinquishment to enable adoption or other permanent living arrangement;
 6. Adoption by a relative or non-relative following termination of the parent-child relationship to enable the child(ren) to be adopted or to achieve another permanent living arrangement;
 7. Allocation of parental rights and responsibilities to an appropriate relative or non-relative;
 8. Emancipation through independent living;
 9. Other planned permanent living arrangement (OPPLA) such as long-term foster care.
- d. Visitation. If the permanency plan is not to return home, the court may suspend the parent's treatment plan and modify or suspend visitation as appropriate.
- e. Findings. If removal has occurred or placement is continued, the court shall make appropriate findings regarding placement and whether reasonable efforts to eliminate the need for placement have occurred. If supported by the evidence, the court must find that the Department continues to make efforts to finalize the permanent plan. If a goal other than return home or adoption is adopted by the court the court must make findings that there are compelling reasons not to adopt such a goal.
- f. Concurrent Planning. C.R.S. 19-3-508(7) specifically authorizes efforts to place a child for adoption or with a legal guardian or custodian to be made concurrently with reasonable efforts to preserve and reunify the family.
- g. Set Hearing. The court will set the next hearing or review date.

IX. **Termination of the Parental-Child Legal Relationship**

1. Purpose: To obtain a judicial finding as to whether there are statutory grounds to sever the parent-child legal relationship and whether termination is in the best interests of the child.
2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Parents
 - iv. Counsel for parents
 - v. Guardian ad litem
 - vi. County Attorney
 - vii. DHS Caseworker
 - viii. Court reporter or electronic recording device
 - b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents
3. Process:
 - a. Timing. The motion to terminate the parent-child relationship may be filed at any time following the dispositional hearing. The hearing on the motion shall be set no sooner than 30 days and not later than 120 days from the filing of the motion unless good cause exists to set beyond 120 days.
 - b. Pre-trial Order. A pre-trial order for the termination hearing shall be entered at the time of setting. The order shall address the following issues:
 - i. C.R.S. 19-3-604 requires the appointment of an expert witness for a requesting parent if indigent. In order to avoid delay in a scheduled trial, such motion shall be filed within 15 days of the filing of the motion to terminate.
 - ii. Set deadlines for the filing of other motions.
 - iii. Expert reports must be distributed to all parties at least 15 days prior to the termination trial, as required by statute;
 - iv. Deadlines for pre-trial discovery;
 - v. Deadlines for the exchange of witness, exhibit lists and orders of proof;
 - vi. Set deadlines for the filing of reports (e.g. DHS termination letter)
 - vii. Order that notice be sent to any tribe(s) that has not responded to the initial notice that a child may be an Indian child under the Indian Child Welfare Act;
 - c. Continuance Policy. Continuances will be granted only upon a finding that a manifest injustice will occur in the absence of a continuance. CJD 98-02.
 - d. Actions Upon Determination of Motion:

- i. Findings. C.R.S. 19-3-604 defines the standard of proof, the factors to consider and the necessary findings to determine whether the termination motion should be granted.
 1. The presiding judicial officer should use the *Termination Checklist* in order to assure that all necessary findings have been made.
 2. If the child remains in placement following the termination trial, the court will determine whether reasonable efforts have been made to place the child in a permanent placement in accordance with the established or amended permanency goal.
 3. If the child has been identified as an Indian child under the Indian Child Welfare Act or there remains reason to believe that the child may be an Indian child under the Act, the following matters must be considered:
 - a. Whether notice was given to the child's tribe or any tribe that did not responded to the initial notice that a child may be an Indian child under the Act;
 - b. Certain findings must be made by a standard of "beyond a reasonable doubt." These findings are as follows:
 - 1) That custody by the parent or Indian custodian "is likely to result in serious emotional or physical damage to the child." §1912(f);
 - 2) That active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have been unsuccessful. 25 U.S.C. § 1912(d);
 - 3) Other findings required for TPR as set forth at C.R.S. 19-3-604 are by the state mandated standard of *clear and convincing* evidence
- ii. If the motion is granted, the court will take the following actions;
 1. Consider whether it is appropriate to change the permanency goal or the goal date in light of the court's findings and order;
 2. Advise the parents of their right to appeal the court's order of termination;
 3. Amend the petition to remove the parents as respondents and order that they no longer appear at post-termination review hearings;
 4. Set the matter for post-termination review within 90 days of the order terminating the parent-child relationship for the purpose of reviewing the placement plan and for determining whether reasonable efforts have been made to finalize the permanency goal by the goal date.
- iii. If the motion is denied, the following actions may be taken:
 1. Amend the treatment plan if necessary and either reaffirm or revise the permanency goal;

2. Absent extraordinary circumstances, the DHS caseworker for the parents shall be replaced with another worker, although the same caseworker may remain as the caseworker for the children.
3. Set the matter for review within 45 days in order to closely monitor the agency's or the parents' progress on the treatment plan and the child(ren)'s health and well-being.

X. **Post-Termination Review Hearing**

1. Purpose: To review the status and progress of the child and to review and amend, if necessary, the permanent plan in order to serve the best interests and needs of the child.
2. Participants
 - a. Required
 - i. Judicial Officer
 - ii. Court clerk
 - iii. Guardian ad litem
 - iv. County Attorney
 - v. DHS Caseworker
 - vi. Court reporter or electronic recording device
 - b. May be necessary or appropriate
 - i. Able and willing relatives
 - ii. Court interpreter
 - iii. Tribal representatives
 - iv. Special Respondents
3. Process
 - a. Timing. The post-termination review hearing shall occur within 90 days of the initial order of termination of parental rights. A post-termination report shall be filed by DHS and the GAL. These reports shall be served on the remaining parties and counsel at least one week prior to the hearing. The frequency of subsequent reviews or permanency planning hearings shall be set based upon the facts and circumstances of each case but in no event shall a subsequent review hearing be set further than 180 days from the initial review.
 - b. Findings. The court will determine if the permanency plan and goal date remain appropriate and whether reasonable efforts have been made to finalize the permanency goal by the goal date;
 - c. Setting. A review hearing will be set within 180 days until the child has been adopted and the case is dismissed.

XI. **Adoption Hearing**

1. Purpose: To provide a permanent legal home for the child that will serve the child(ren)'s best interest and grant to the adoptive parents all of the rights and responsibilities of a parent pursuant to statute.
2. Process:
 - a. Timing. The adoption hearing shall be held as soon as possible after the child becomes free for adoption. In the case of an order entered by a District Court Magistrate, if no motion for review is filed, the child is free for adoption 15 days after the entry of a written decree of termination of the parent-child relationship. If a motion for review is filed, the child is not free until a final ruling from the reviewing District Court Judge. In the case of an order entered by a District Court Judge, if no appeal is filed, the child is free for adoption 21 days after the entry of a written decree of termination of the parent-child relationship or an order affirming the order of a magistrate that terminates the parent-child relationship. If an appeal is filed, the child is not free until a final mandate is issued by the appellate court. In cases where a relinquishment petition is granted, the child is not available for adoption until the relinquishing parent fails to file a motion to set the final order of relinquishment aside within 90 days after an uncontested relinquishment order is entered.
 - b. Findings. When hearing an adoption Petition for a child in foster care, the court will determine that:
 - i. Either parental rights have been voluntarily relinquished or that the parent-child relationship has been involuntarily terminated and the appeal process is complete;
 - ii. Fingerprint based criminal records checks of all adopting parents have been completed and show that the parent is not ineligible to adopt a child pursuant to the provisions of C.R.S. § 19-5-207(2.5)(a) and 19-5-208(5).
 - iii. All required consents to adoption are provided and are genuine;
 - iv. Home studies and/or court-ordered reports are properly reviewed and indicate that the adopting parents are of good moral character and have the ability to support and educate the child;
 - v. Adoptive parents understand that adoption is permanent and irreversible;
 - vi. In cases involving children with special needs, adopting parents have been advised of all the necessary services and special circumstances; surrounding the child, accept the adequacy of adoption subsidies, and are aware of services and assistance that is available after the adoption;
 - vii. The adoption by the petitioners will serve the best interests of the child.
 - c. Report of Adoption. The Report of Adoption shall be issued by the clerk to the Bureau of Vital Statistics.

XII. Conclusion

The court expects all parties and professionals in dependency and neglect cases to comply with the terms of this District plan for handling Dependency and Neglect Cases. Not all the timelines outlined in this plan are statutorily required. However, they are benchmarks established for the Juvenile Court of this District, are in the best interests of children and families and are expected to be successfully attained. This plan's effectiveness will be formally evaluated annually or more

frequently as needed based upon the goals outlined in the Introduction. Any comments or suggestions should be addressed, in writing, to: Charles M. Barton, Chief Judge.

Eleventh Judicial District

Charles M. Barton
Chief Judge
Eleventh Judicial District

Appendix A

Visitation Protocol

- Children and families shall be provided meaningful and safe family time from the time they enter care until reunification is accomplished or until further order of the court.
- The Agency shall provide as much family time as possible consistent with the best interests of the child both in terms of frequency and duration, and to provide that opportunity in such a place and manner so as to make it as natural as possible.
- The family time provisions contained in this document are presented as the minimum family time and, when possible and appropriate, provision of more Family Time shall be made.
- Family time plans should be based on the unique facts of each case. Decisions regarding family time should be articulated to all relevant parties to the case, must be factually based, appropriately documented, and approved by the court.
- Should there be a conflict between what is in the best interest of the child and what is in the best interest of the parents, the best interest and well-being of the child shall always take precedence in developing and implementing the Family Time Plan.
- Wherever used herein, the term “Family Time Plan” shall mean and refer to the schedule developed and implemented for the time the child, parents, and, where applicable, siblings spend together.
- Absent extraordinary circumstances, an initial period of family time shall occur within 48 hours following removal of the child from the home.
- At the shelter care hearing, the court shall put in place, or ensure that the agency has put in place, a meaningful Family Time Plan. This Family Time Plan shall remain in place until adjudication or until the plan is changed by the court, or (if approved by the court), modified by the caseworker and the guardian *ad litem*.
- The Family Time Plan should not be rigid, but should allow sufficient flexibility for change as circumstances warrant to ensure the safety and well-being of the child. Provided, however, that when the family time plan is changed, there should be safeguards in place to protect the rights of all parties.
- Family time plans shall not be used as a threat or form of discipline to the child or to control or punish the parent
- The particular relationship between the siblings in individual cases should always be considered because, generally speaking, sibling contact is at least as important as contact between children and their parents.
- If siblings cannot be placed together, the Family Time Plan should make specific provisions for contact between siblings. It is not necessary that all siblings be present for all family time. Considering the children’s ages and activities it may be appropriate to have some family time as a complete family unit, and some spent with various parts of the family unit. Provided however that, the duration, length, or quality of family time for one child or parent should not be sacrificed on account of another child or parent.