

# OFFICE OF RESPONDENT PARENTS' COUNSEL

## FISCAL YEAR 2016-17 ANNUAL PERFORMANCE REPORT



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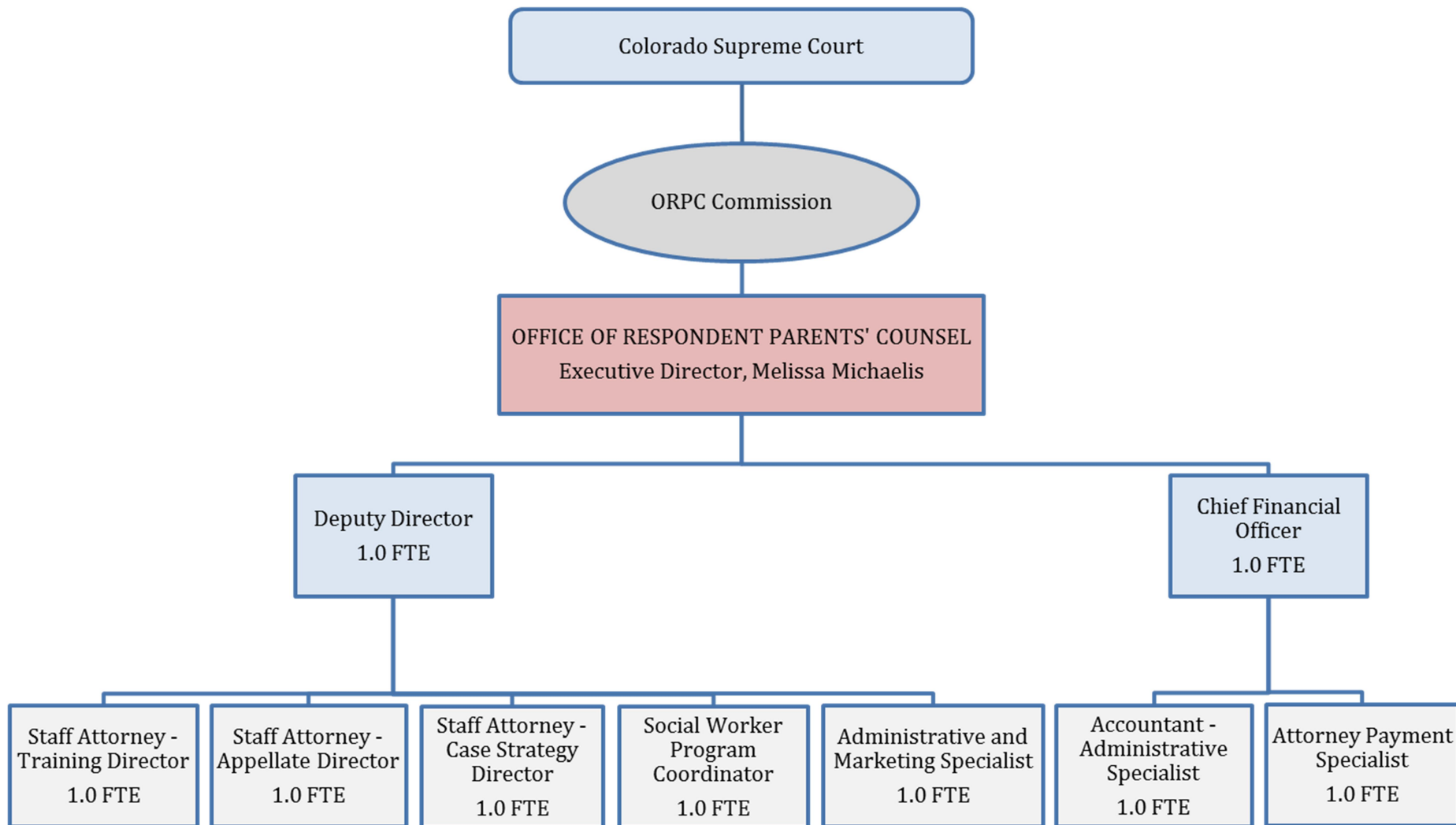
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# Organizational Chart

## OFFICE OF RESPONDENT PARENTS' COUNSEL



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## I. Agency Overview

The Office of Respondent Parents' Counsel (ORPC) is an independent governmental agency within the State of Colorado Judicial Branch and is vested with the oversight and administration of Respondent Parents' Counsel (RPC) representation in Colorado. The doors of the agency opened on January 1, 2016, and the agency assumed oversight for RPC attorneys on July 1, 2016. This is the agency's first annual performance report.

In Colorado, indigent parents whose parental rights are at risk are statutorily entitled to counsel. Prior to the creation of the ORPC, no agency existed in Colorado exclusively dedicated to parent representation. A study conducted on respondent parent representation in Colorado and published in 2007 found that RPC representation is "typically adequate but rarely proficient."<sup>1</sup> The ORPC was established to address this performance gap, as the cause of "sub proficient practice is not the unwillingness of counsel to provide proficient services but rather the existence of practice, administration, and court systems which discourage optimal practice."<sup>2</sup>

### A. Background

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, or RPC, to protect this fundamental right to parent. *See* § 19-3-202, C.R.S. (2015).

Efforts have been made over the past decade to support and enhance the quality of parent representation in dependency and neglect cases. In 2005, the Colorado Supreme Court through the Colorado Court Improvement Program created the Respondent Parents' Counsel Task Force, a multidisciplinary group of child welfare professionals, to review the issues facing respondent parents' counsel and to make recommendations to the Supreme Court and the Colorado Legislature.

To assist in identifying needs of RPC attorneys, areas in need of improvement, and baseline data for potential reform efforts, the Task Force commissioned a needs assessment. This assessment, performed by the National Center for State Courts, National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children, provided both a statewide overview of factors impacting RPC performance as well as an in-depth analysis of four counties: Denver County, El Paso County, Teller County and Weld County. The subsequent *Assessment Report* identified deficiencies and made recommendations for improvement in several areas including: training, written standards of practice, caseload and workload, compensation structure, recruitment, resources, and performance.

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<sup>1</sup> *The National Center for State Courts, National Council for Juvenile and Family Court Judges, and National Association of Counsel for Children, State of Colorado Judicial Department Colorado Needs Assessment* (hereinafter "*Assessment Report*"), available here:

[https://www.courts.state.co.us/userfiles/File/Court\\_Probation/Supreme\\_Court/Committees/Court\\_Improvement/CO\\_RPCFinalNeedAsstReptApp.pdf](https://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Court_Improvement/CO_RPCFinalNeedAsstReptApp.pdf)

<sup>2</sup> *Id.* at 75.

Although some of the recommendations from the *Assessment Report* were implemented, many barriers to effective representation identified in the 2007 report remain for RPC attorneys today.

From 2012-2013, Judges David Furman and Daniel M. Taubman of the Colorado Court of Appeals held extensive meetings with employees of the State Court Administrator's Office and court personnel to address continuing challenges for RPC and offer suggestions for improving the quality of RPC appellate advocacy. These meetings led to a request to the General Assembly to fund a Respondent Parents' Counsel Coordinator position in the State Court Administrator's Office. The RPC Coordinator position was formally funded and established in 2013, one year before the State Court Administrator established the Respondent Parents' Counsel Work Group. The 2014 Work Group was formed to analyze the current RPC program, recommend improvements to RPC practice, and analyze potential centralization of RPC administration.

Finally, the ORPC was established on January 1, 2016 by Senate Bill 14-203 (Section 13-92-101 through 104, C.R.S.) as an independent office in the Judicial Department. House Bill 15-1149 established the Respondent Parents' Counsel Governing Commission and provided that all existing and new state-paid respondent parent counsel appointments be transferred to the Office of Respondent Parents' Counsel on July 1, 2016. The ORPC Contract and Chief Justice Directive 16-02 (CJD 16-02), titled "Court Appointments through the Office of Respondent Parents' Counsel," governs the appointment, payment, and training of Respondent Parents' Counsel.

## **B. Statutory Mandate**

Section 13-92-101 to 104, C.R.S. established the ORPC and vested within it statutory requirements regarding the oversight and administration of respondent parent representation in Colorado. The ORPC's enabling legislation charges and entrusts the ORPC, at a minimum, with enhancing the provision of respondent parents' counsel by:

1. Ensuring the provision and availability of high-quality legal representation for parents in dependency and neglect proceedings;
2. Making recommendations for minimum practice standards;
3. Establishing fair and realistic state rates by which to compensate RPC; and,
4. Working cooperatively with the judicial districts to establish pilot programs.

## **C. Mission Statement and Agency Vision**

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.

The ORPC's vision is that every child deserves to have their parent represented by the best lawyer in town. To achieve this ideal, the ORPC embraces three central concepts: Advocacy, Accountability, and Access.



- Advocacy – The ORPC will contract with experienced, high-quality lawyers and will support parents’ attorneys through training, litigation support, and other resources to ensure that they are advocating for parents’ constitutional rights.
- Accountability – The ORPC will be an effective steward of taxpayer dollars by ensuring that parents’ attorneys are accountable for minimum standards and billing policies implemented by the agency.
- Access – The ORPC will ensure that all indigent parents have access to high-quality parents’ counsel in Colorado child welfare cases.

## II. Major Functions

The ORPC is tasked with enhancing the provision of respondent parent representation across the State of Colorado and is charged with providing oversight to contractors appointed to represent indigent parents in child welfare cases effective July 1, 2016. The items below detail the major functions of the agency and the efforts by ORPC to meet its statutory requirements.

### A. Develop Infrastructure

Over the last 12 months, the ORPC focused on infrastructure development. The ORPC designed and collaborated with the Ralph L. Carr Judicial Center to construct and furnish dedicated agency space that allowed the staff to move from temporary office space to a permanent office in early August 2016. Additionally, the agency purchased computers, phones, and software licenses and worked to develop an agency website located at [www.coloradoorpc.org](http://www.coloradoorpc.org).

Most importantly, the ORPC developed an online payment system, the Respondent Parent Payment System (RPPS), allowing RPC to bill and be paid by the agency for legal services. RPPS is a custom billing system that allows the agency to run complex reports about data related to child welfare cases.

RPPS tracks data about child welfare cases - from reasons for filing to case outcomes. Every bill submitted to RPPS is reviewed by the agency for compliance with billing policies. In hourly jurisdictions, RPPS also tracks costs in relation to specific case activities – from travel to client meetings and trials. In the future, the data obtained from RPPS will drive the agency’s policy analysis and development.

### B. Develop Processes and Policies

In the past year, the ORPC has developed numerous agency documents and processes to meet its four primary legislative mandates.

#### 1. Ensure the provision and availability of high-quality legal representation for parents in dependency and neglect proceedings.

**Develop and Implement Contracting Procedures:** In the last fiscal year, the ORPC underwent a comprehensive contracting process to execute one of its major duties: creating and maintaining attorney appointment lists from which courts must appoint lawyers to represent indigent parents. In March 2016, all attorneys desiring a contract to represent parents in dependency and neglect cases were required to submit an application to the ORPC. Upon review of those applications, the agency

offered contracts to 176 lawyers. This fiscal year the ORPC will yet again ask contractors to apply with the agency and will undergo a comprehensive review of contracts that includes an application, judicial stakeholder feedback, and the start of a three-year cycle of in-person court observation of attorneys. The ORPC plans to publish new appointment lists in June 2017.

The ORPC's intensive contractor review and selection process helps to ensure that parents' attorneys have adequate experience and are qualified to handle child welfare cases on behalf of respondent parents. This process has also helped the ORPC identify some practice gaps and other training opportunities.

**Training:** The ORPC co-sponsored or sponsored nine trainings for respondent parents' lawyers in the last twelve months. Most importantly the agency executed its first annual conference. The conference, *Innovation in the Culture of Respondent Parent Representation*, was held September 11-13, 2016 in Colorado Springs and offered twenty different training sessions for the 160 registrants. The entire program was approved for 17 continuing legal education credits and 2.4 ethics credits.

After the conference, the ORPC solicited feedback from the lawyers who attended.

"Lots of information and strategies of attorneys like myself that are relatively new to RPC work. Also, a great chance to network with other RPC and related professionals."

"Location, organization, and practical aspects aimed at in the trenches representation of clients. Very well put together."

"FINALLY, a conference JUST FOR RPC. It is glorious to have an office that understands our true role and job!!!!"

"We'll organized, good to great presenters, very much enjoyed getting to see the Colorado RPC Bar in one spot. You could feel some community begin to build."

"Talking to other RPC, and the ORPC staff, whom I now believe are working very hard, and gave me hope they will act on things like this evaluation to get at what can actually make a difference."

**Appellate Program:** Since taking oversight of RPC representation, the ORPC has implemented an appellate process designed to facilitate and streamline the transfer of a dependency case from a trial attorney to an appellate attorney. The ORPC has selected attorneys specifically dedicated to taking on child welfare appeals on behalf of parents and worked to create an appellate contractor list to ensure that parents are receiving quality representation on appeal. The office has also implemented a policy preventing trial attorneys from handling their own appeals to ensure that parents are getting the opportunity for a true review of trial proceedings.

Further, the Supreme Court revised and implemented updates to C.A.R. 3.4, the procedural rule governing dependency appeals. The new procedures took effect on July 1, 2016—the same day that the ORPC officially took oversight. The rule was revised in response to unintended consequences of the passage of the original Rule 3.4 in 2005.<sup>3</sup> The 2005 version of the rule was adopted to expedite the appellate process for dependency and neglect cases, and established a petition process in lieu of traditional briefing.<sup>4</sup> Because of the expedited timelines under the new rule, RPC did not

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<sup>3</sup> Revisions to CAR 3.4 Encourage Improved Advocacy in Dependency and Neglect Appeals, *The Colorado Lawyer*, October 2016, Vol. 45 No. 10, p. 49.

<sup>4</sup>Id.

have access to real-time transcripts of trial court proceedings when drafting the initial petition on appeal, which diminished the quality of the appellate advocacy.<sup>5</sup> The changes to Rule 3.4 allow for the creation and submission of transcripts to the Court of Appeals and appellate counsel, and for a traditional briefing process.<sup>6</sup>

Because of the simultaneous adoption of changes to C.A.R. 3.4, the ORPC has also coordinated with the Colorado Court of Appeals and court reporters statewide to address requirements for the new record on appeal, and to help make the appellate process run as efficiently as possible.

**ORPC Practice Supports:** As a tangible resource, the ORPC has developed a bank of motions, available to all contract attorneys through the ORPC website. The bank has been continually updated and organized since the ORPC took oversight on July 1. The ORPC also consults with attorneys about available experts and possible treatment resources, including providing access to published social science journal articles. The ORPC also offers some litigation and appellate support to attorneys who wish to brainstorm their cases.

## 2. Make recommendations for minimum practice standards.

**The ORPC's Chief Justice Directive:** Early in 2016, the ORPC worked on developing Chief Justice Directive (CJD) 16-02. The CJD outlines the agency's responsibilities and authority, the requirement that Courts must appoint from attorneys approved by the ORPC, the appellate process, practice guidelines, indigency and application requirements for parents, guidelines for payment by the agency, duties of Judges and Magistrates, and a complaint process. The CJD also adopted the practice standards created by the American Bar Association (ABA) as an interim set of practice standards for attorneys to look at and abide by during their representation of parents.

**Colorado-Specific Practice Standards:** The office has begun researching official practice standards that currently exist for respondent parent attorneys in other states, and examining how those practice standards address both the needs and practices in Colorado. In the next year, the ORPC will begin work on drafting a set of Colorado-specific practice standards. Once the standards have been developed, the ORPC will then assemble an RPC workgroup with both rural and metro-area RPC attorneys in order to vet and finalize the Colorado-specific practice standards.

**Revising The GRID:** In the upcoming year, the ORPC will be partnering with the Office of Child's Representative (OCR) to help revise and update the Guided Reference In Dependency (GRID). The GRID book is a comprehensive guide to the legal standards governing dependency and neglect cases in Colorado. The book covers the stages of a dependency and neglect case and details black letter law, statutes, seminal cases, and checklists of activities for attorneys in child welfare proceedings. The original GRID book was published in 2012 and an abbreviated update was released in 2015. The book is in need of a more thorough update to stay in line with emerging trends and new caselaw in the field of dependency and neglect. The OCR has applied for and received funding for the project.

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<sup>5</sup> Id.

<sup>6</sup> *Id.* at pp. 50-51.

### 3. Establish fair and realistic state rates by which to compensate respondent parent counsel.

**Conversion from a Mixed-Payment System:** In the first budget request drafted by the office and submitted on November 1, 2016, the ORPC requested that the legislature approve a funding increase to convert RPC payment structures from a mixed-payment system (consisting of both hourly and flat-fee payment jurisdictions) to an all hourly system that reimburses attorneys representing indigent parent clients for actual services rendered.

Under the mixed payment system, RPC in some judicial districts are compensated primarily on a flat-fee basis while RPC in other districts are compensated on an hourly basis. Currently, fourteen judicial districts in Colorado are paid hourly, while eight are paid on a flat-fee basis.

In the flat-fee districts, consisting primarily of urban counties, attorneys are given a single payment of \$1,125 when they are appointed to a case and another payment of \$1,262 upon the filing of a motion for termination. As a result of this payment structure, attorneys in flat-fee areas are not required to bill their time spent on cases so the ORPC is unable to collect a variety of pertinent data points such as: number of hearings, number of out-of-court meetings with court staff or the client, number of hours spent on research and motions produced during the course of a case.

In the hourly districts, which are primarily rural districts, RPC are paid for services actually rendered and reimbursed for expenses actually incurred. Please see the map of the flat fee and hourly judicial districts that follows this narrative.

Because of the mixed-payment system that currently exists in Colorado, it would be impossible for the ORPC to effectively monitor compliance with minimum practice standards or implement a multidisciplinary approach to family defense for attorneys in flat-fee districts without accounting for a contractor's reasonable expectation of equitable compensation.

### 4. Work cooperatively with the judicial districts to establish pilot programs.

**Social Work Pilot Program:** The ORPC is also in the process of requesting funding to launch a social worker pilot program in Mesa County and Jefferson County.

Research demonstrates that children have better long-term outcomes when they are raised in their families of origin.<sup>7</sup> Reunification, or the return of children to their families of origin from out-of-home placement, is one of the most common outcomes for children in the child welfare system, and is often the goal of successful parent advocacy.<sup>8</sup>

Program evaluations have demonstrated that clinical social workers contracted by the respondent parent attorney achieve reunification more quickly.<sup>9</sup> The contract social workers also produce an increase in system and legal engagement by the respondent parents by referring parents to tailored services and attending and advocating for parents at meetings. Even a moderate increase in parental

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<sup>7</sup> *Improving Representation for Parents in the Child-Welfare System*, Mimi Laver, October 7, 2013, available at: [apps.americanbar.org/litigation/committees/childrights/content/articles](https://apps.americanbar.org/litigation/committees/childrights/content/articles)

<sup>8</sup> *Family Reunification: What the Evidence Shows*, p. 2, Child Welfare Information Gateway, available at: [www.childwelfare.gov/pubs/issue\\_briefs/family\\_reunification](https://www.childwelfare.gov/pubs/issue_briefs/family_reunification)

<sup>9</sup> Pilnik, *Parents' social workers help parents succeed*, ABA Child Law Practice Vol. 27 No 9.

engagement is associated with a 47% increase in the rate of reunification.<sup>10</sup> Additional advocacy from the contract social worker can provide flexible and creative services which enable parents to achieve reunification faster.<sup>11</sup>

If the ORPC's funding request is granted, the office plans to roll out social workers as part of advocacy defense teams in both Mesa County and Jefferson County. The purpose of the pilot program is to assess how the addition of social workers to the defense team improves outcomes for parents and Colorado families, and to understand if those outcomes would be sustainable if the model were to be implemented statewide.

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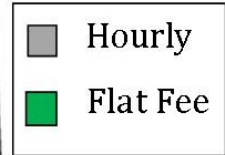
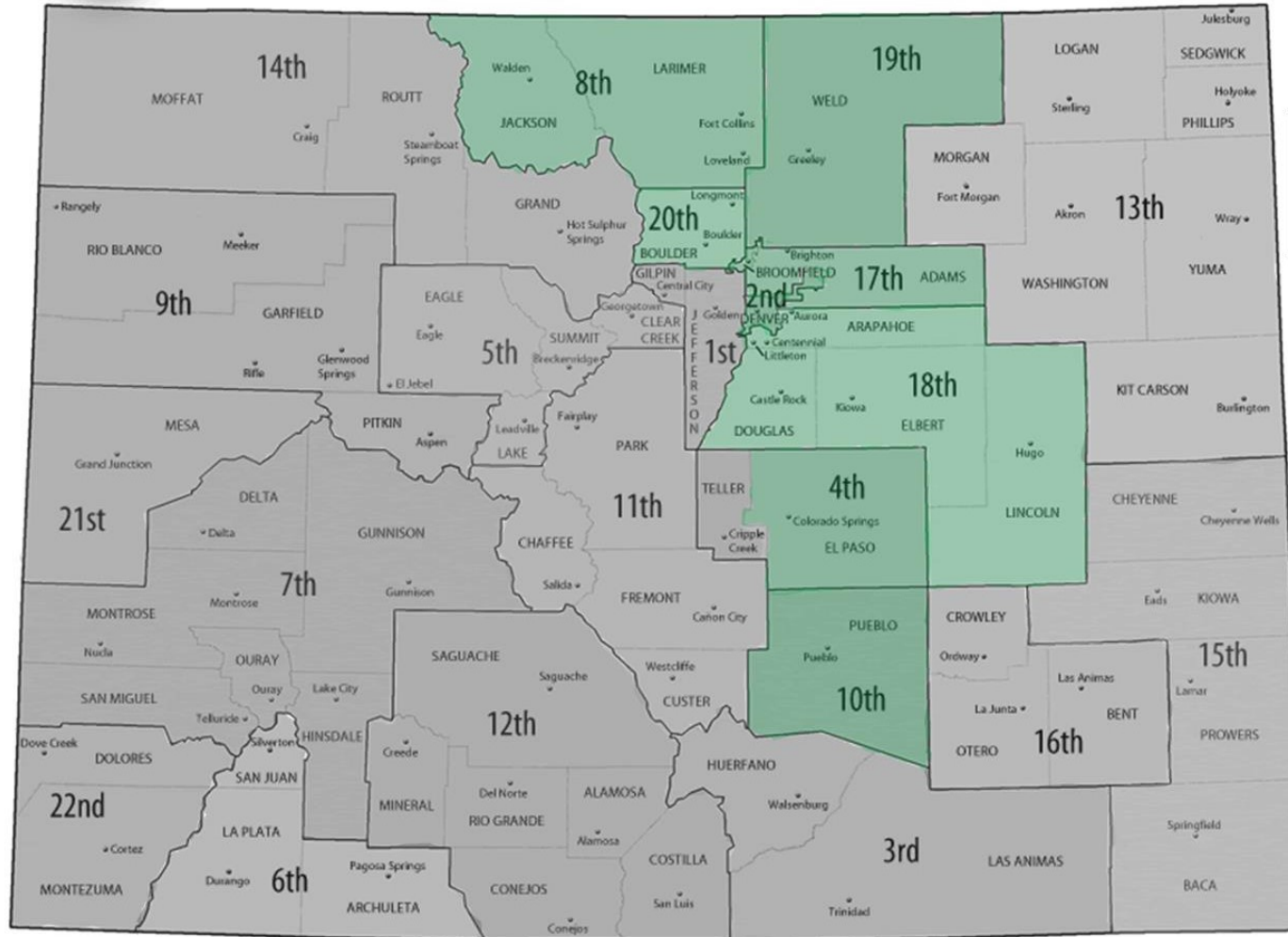
<sup>10</sup> Marcenko, Newby, Mienko, and Courtney. Family reunification in Washington State: which children go home and how long does it take?, Partners for our children (August 2011).

<sup>11</sup> Cohen and Cortese, Cornerstone advocacy in the first 60 days: achieving safe and lasting reunification for families, ABA Child Law Practice (May 2009).

## ORPC Hourly or Flat Fee Districts



# COLORADO JUDICIAL DISTRICTS



### III. Performance Goals

#### ORPC PERFORMANCE GOALS, STRATEGIES & MEASURES

##### **1. Ensuring the provision and availability of high-quality legal representation for parents in dependency and neglect proceedings.**

- I. RPC Recruitment, Application, and Evaluation
  - A. Develop an online attorney application process and cycle.
  - B. Develop an attorney evaluation process.
  - C. Establish a list of qualified attorneys available for appointment in rural and metro counties.
- II. Develop a Comprehensive Training Program
  - A. Assess the training needs of RPC in rural and metro areas.
  - B. Provide relevant, accessible, and role-specific training for RPC and support staff.
  - C. Evaluate the quality of offered trainings and use this data to improve and adapt the ORPC training program to meet the needs of RPC.
- III. ORPC Appellate Initiative
  - A. Establish dedicated appellate attorneys through creation of an ORPC Appellate Appointment List and appointment procedures.
  - B. Develop process to streamline requests for transcripts and payments for transcribers.
  - C. Develop work groups led by the Appellate Director to implement a state-wide appellate strategy.
- IV. ORPC Practice Supports
  - A. Provide support to attorneys through access to expert witnesses, a motions bank, consultations about possible treatment resources, consultation with social workers, access to investigators and paralegals, and appellate case summaries and practice tips.
  - B. Develop a website as a central location for all the supports being made available for RPC.

**2. Making recommendations for minimum practice standards.**

- I. Develop and recommend a Chief Justice Directive with ABA practice standards.
- II. Develop a draft set of practice standards to vet with an RPC workgroup from rural and metro jurisdictions.

**3. Establishing fair and realistic state rates by which to compensate RPC.**

- I. Research the current payment structure across the state.
- II. Develop a billing system with set data points that allow the ORPC to track costs per appointment and case outcomes.
- III. Use available data to determine funding required to convert RPC payments from a mixed-payment system to an hourly system.
- IV. Draft a budget request to convert to an hourly system.
- V. Annually assess and analyze costs to ensure payment parity with ADC and OCR attorneys.

**4. Working cooperatively with the judicial districts to establish pilot programs.**

- I. Develop detailed Social Worker Pilot Program Proposal, including determining two possible pilot jurisdictions.
- II. Develop pilot program assessment criteria, including length of time for program development, and determine possible test jurisdictions.
- III. Assess costs associated with pilot program rollout based on the data available.
- IV. Draft a budget request for the assessed costs.
- V. Assess and analyze data gathered during pilot program about efficacy of the multidisciplinary model in CO.