

OFFICE OF RESPONDENT PARENTS' COUNSEL

FISCAL YEAR 2017-18

ANNUAL PERFORMANCE REPORT



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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 second 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."¹ 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."²

A. 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.

B. 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.

¹ *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

² *Id.* at 75.

- 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.

C. Infrastructure Development

During the last year the ORPC has continued to focus on infrastructure development. In 2016 the ORPC designed and collaborated with the Ralph L. Carr building to construct and furnish dedicated agency space. The space had to be modified in 2017 to create room for all ten FTEs at the ORPC. Based on an assessment of agency needs, the ORPC completed its hiring process in February 2017 to become fully staffed for the first time since the agency’s doors opened. The agency purchased computers, phones, and software licenses for all employees. The ORPC also released updates and new resources to the agency’s website, located at www.coloradoorpc.org.

The ORPC has continued to refine and tailor the agency’s online payment system, the Respondent Parent Payment System (RPPS), that allows RPC to bill and be paid by the agency for legal services. RPPS is a powerful billing system that also functions as a robust data collection system, allowing 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 reasons for case closure. Every bill submitted to RPPS is reviewed by the agency for compliance with billing policies. On cases that are billed hourly, RPPS also tracks costs in relation to specific case activities such as travel to client meetings and participation in hearings.

Beginning July 1, 2017, all RPC attorneys are paid \$75 per hour for all new case filings. Although there are cases filed prior to July 1, 2017 that are still under the old flat-fee payment system, the ORPC has worked to develop billing policies that encourage RPCs to request to convert their older cases to hourly billing as soon as possible. Hourly billing makes it possible for the ORPC to collect detailed information about attorney activities on each case.

The ORPC’s goal is to have all cases operate under the hourly billing and payment system, which will enable the agency to collect more comprehensive and robust data about each individual RPC appointment for indigent parents in dependency cases. In the future, the data obtained from RPPS will drive the agency’s policy analysis and development.

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 four primary legislative mandates.

A. 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 undertook 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 2017, all attorneys desiring a contract to represent parents in dependency and neglect cases were required to submit an application to the ORPC that included essay questions, a substantive legal writing sample, references, and a resume. All applications were evaluated, and the ORPC conducted in-person interviews with many attorneys. From the 2017 spring contracting cycle to date, the agency has offered contracts to over 200 attorneys.

Also in 2017, the ORPC began implementation of a three-year contracting cycle and offered one, two, and three-year contracts to RPC attorneys across the state. All attorneys due for contract evaluation and renewal in subsequent years will be required to complete the ORPC application process anew. Attorneys due for evaluation will undergo a comprehensive review of contracts that includes a detailed application, judicial and stakeholder feedback, and in-person court observations of attorneys. Each year in the month of June, the ORPC will publish new appointment lists to the judicial districts. Courts must use these lists to appoint RPCs that have been approved through the ORPC’s annual contracting and evaluation process.

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. In the next three years, the ORPC plans to increase diversity among RPC applicants, increase the total number of RPC applicants from across the state, and develop a streamlined, electronic application process and attorney database.

Performance Measure A: Monitor/Evaluate Contractors		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Evaluate Renewing Attorney Applicants	Target	Data not available	100%	100%	100%
	Actual	Data not available	100%		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

Conduct Court Observations: As of 2017, the ORPC began conducting court observations year-round and has developed a rigorous observation calendar with the goal of observing each RPC at least once annually. Scheduling court observations requires intense coordination between agency staff, local court personnel, and RPC attorneys.

While traveling across the state to conduct court observations, the agency meets locally with RPCs and court staff, and can schedule both formal trainings for court staff and attorneys and informal roundtable discussions with RPC attorneys. The ORPC records court observation data and follows up with attorneys to notify them when their performance has fallen below the advocacy required by practice standards and to provide RPCs with resources to improve their performance.

Performance Measure B: Conduct Court Observations		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Observations of One and Two-year cycle contractors	Target	NA	80%	90%	**NA
	Actual	NA			
Observations of Three-year cycle contractors	Target	NA	80%	90%	100%
	Actual	NA			

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

***By FY19, all RPCs will be granted three-year contracts and the agency will no longer conduct court observations of attorneys on one or two-year contracts.*

Training: The ORPC received funding to start sponsoring trainings beginning January 1, 2016, the date the agency opened its doors. This date was, however, six months prior to the date the office assumed oversight of RPC attorneys. The number of annual trainings, attendees, and training hours are detailed below. In the current fiscal year from July 1, 2017 through December 29, 2017, the ORPC has already sponsored or co-sponsored 15 trainings for RPC attorneys.

Notably, the ORPC executed its second annual fall conference, The League of Extraordinary Family Defenders: Not All Heroes Wear Capes, Transforming the Art of Family Defense, in September 2017. This conference attracted 210 registrants and offered 27 individual training sessions over multiple breakout tracks. The entire conference program was approved for 15 continuing legal education credits and 7 ethics credits.

In 2017, the ORPC's Training Director also began development of a five-year strategic training plan for the agency.

In the next three years, the ORPC plans to implement trainings based on ORPC practice standards, trial advocacy training, and continue to offer core trainings such as the annual boot camp for new trial and appellate RPCs and the annual fall conference. The agency will also continue assessing training needs for rural and metro area attorneys while working to expand online training resources and remote access to trainings for attorneys in rural areas.

Performance Measure C: Provide High-Quality Trainings		FY 2015-16	FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Trainings for attorneys, associates, social workers, and court personnel	Target	NA	Establish Baseline	10	12	15
	Actual	5	22	15		
Total Number of Training Hours		17	64	34		
Total Number of Attendees		116	531	366		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

Appellate Program: After assuming oversight, the ORPC 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 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 receive quality representation on appeal. The office also implemented a policy preventing trial attorneys from handling their own appeals to ensure that parents are getting the opportunity for a true unbiased 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 2005.³ 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.⁴ Because of the expedited timelines under the new rule, RPC did not 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.⁵ 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.⁶

Since implementing the appellate program, the numbers of appeals filed in dependency and neglect cases has increased 42%. Of those appeals, the remand rate of appeals has doubled, from 11% to 23%. This means that the Court of Appeals is finding errors in trial court rulings and remanding those cases back to the trial court for correction at almost double the rate of the year before. Further, the number of published dependency and neglect cases has also doubled since ORPC began oversight of appellate attorneys, and the Colorado Supreme Court is currently considering five issues raised in child welfare cases.

This data indicates that the ORPC's appellate program is having a positive impact on advocacy and change in the law for parents and families. Correcting errors at the trial court level is important to protecting parents' due process rights and is crucial to ensuring that children achieve permanency appropriately when the case first proceeds through the trial court.

In the next three years, the ORPC plans to introduce efficiencies into appellate list management and variability into appellate practice by training appellate attorneys to specialize in certain types of appellate issues. The agency also plans to develop an appellate training program for new RPCs interested in future appellate work.

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at pp. 50-51.

Performance Measure D: Appellate List Efficiencies		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Percentage of full-time appellate attorneys on the appointment list	Target	50%	55%	60%	65%
	Actual	40%	50%		
Percentage of new appellate attorneys trained through ORPC	Target	NA	Establish training track	5%	5%
	Actual	NA	Establish training track		
Percentage rate of published remands	Target	Establish baseline	50%	55%	55%
	Actual	63%	33%		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

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 RPC attorneys about available experts and possible treatment resources for parents, including providing access to published social science journal articles.

This year, after assessing the need for increased support, the agency hired a full-time staff attorney to serve as the Case Strategy Director charged with handling the increased call volume and need for case support and consultation for trial attorneys. On average, the ORPC Case Strategy Director handles five separate case consultations with RPCs regarding trial strategy per day.

The ORPC is currently working with a programmer to develop an expert database to assist agency staff in tracking the number of retained experts willing to work with parents in dependency proceedings and willing to work at negotiated state rates. The expert database would increase efficiencies for six agency staff who routinely consult with RPC attorneys about the availability of experts across the state.

In the next three years, as illustrated in the charts below, the ORPC plans to increase the number of experts available for RPC attorneys and provide increased litigation support for attorney contractors.

Performance Measure E: Recruit and Maintain Experts		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Number of experts vetted and available for appointment through ORPC	Target	Data not available	150	175	200
	Actual	Data not available	139		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

Performance Measure F: Litigation Support		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Number of case strategy consultations	Target	Data not available	900	925	950
	Actual	Data not available	450		
Number of district specific roundtables	Target	NA	22	22	22
	Actual	NA	10		
Number of resources in motions bank	Target	Data not available	90	100	110
	Actual	Data not available	74		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

Use of Evidence-Based Practices: The ORPC uses evidence-based analysis as a foundation for its budget request and in the development of ORPC pilot programs. The ORPC defines evidence-based budgeting as analyzing historical and current data to project costs and justify requests with the best research evidence available, especially research supported by peer-reviewed journals and scholarly articles.

The purpose of performance measure J is to create an implementation strategy for the use of evidence-based practices in dependency cases. The ORPC plans to incorporate these practices by increasing access to social workers as experts on individual ORPC cases across the state and by ensuring that part of the ORPC's training program is focused on evidence-based practices and the use of social workers.

The ORPC is a new agency with limited historical data available to project trends. As a result, the ORPC uses current data to establish performance goals, strategies, and measures outlined in this report. The ORPC is working to collect and analyze baseline data to establish evidence-based performance measures that relate to the ORPC's legislative mandates.

Performance Measure J: Support the use of Evidence-Based Practices		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
Number of ORPC cases with social workers approved as experts	Target	Data not available	300	350	400
	Actual	Data not available	**164		
Number of social worker contractors available for work as experts on ORPC cases (not pilot program cases)	Target	Target number not established	5	10	15
	Actual	3	8		
Number of social worker interns at the ORPC	Target	Intern program not established	2	3	3
	Actual	0	2		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

***This number includes cases from the three jurisdictions participating in the social worker pilot program and cases from the remaining judicial districts across Colorado.*

B. Make recommendations for minimum practice standards.

The ORPC’s Chief Justice Directive: Early in 2016, the ORPC worked to develop 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 review and abide by during their representation of parents. On July 1, 2017, the CJD was updated to reflect minor changes.

Colorado-Specific Practice Standards: The ORPC has completed its first draft set of Colorado-specific practice standards for RPC attorneys. In the next calendar year, the ORPC will assemble an RPC workgroup with both rural and urban-area attorneys to vet and finalize the Colorado-specific practice standards.

The ORPC is also developing appellate practice standards from scratch, which will be vetted at the same time as the trial practice standards.

Revising The GRID: In the past year, the ORPC has partnered with the Office of the 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 needs a more thorough update to reflect emerging trends and new

caselaw in the field of dependency and neglect. The OCR has applied for and received funding for the project.

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

Establish Fair and Realistic Contractor Hourly Rates: When the ORPC assumed oversight of RPC attorneys it inherited a mixed payment system in which some RPCs were paid a flat-fee for their cases while others enjoyed the benefit of billing hourly on cases. In the flat-fee districts, consisting primarily of urban counties, attorneys were given a single payment of \$1,125 when first appointed to a case and another payment of \$1,262 upon the filing of a motion for termination.

In the ORPC’s budget request submitted FY 2017-18, the agency requested and was ultimately approved for funding to convert RPC payment structures from a mixed-payment system to an all hourly system that reimburses attorneys for actual services rendered to indigent parent clients. Beginning July 1, 2017, all RPC attorneys are paid \$75 per hour for all new case filings.

The ORPC has submitted a Decision Item in the FY 2018-19 Budget Request that will increase contractor hourly rates by 6.7%. If approved, this request would increase the hourly rate paid to attorney contractors from \$75 per hour to \$80 per hour. Based on Salary Survey adjustments for State employees, independent contractor rates have not kept pace with inflation. It is critical that the ORPC be able to attract and retain skilled and experienced attorneys to represent indigent parents who are at risk of losing a critical, fundamental right.

In the next three years, the ORPC plans to assess attorney performance under the hourly rate system by working to compile data on the average cost per appointment and average cost per case. The ORPC will also work to ensure that rates of pay for RPC are fair and realistic and based on cost of living and pay parity with other independent state agencies.

Performance Measure G: Realistic Rate of Pay		FY 2016-17	*FY 2017-18	FY 2018-19	FY 2019-20
ORPC average hourly attorney rate	Target	\$75	\$75	\$80	\$80
	Actual	Mixed Payment System	\$75		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

D. Work cooperatively with the judicial districts to establish pilot programs.

Social Worker Pilot Program: The ORPC implemented its Social Worker pilot program in three counties on July 1, 2017. Research demonstrates that children have better long-term outcomes when they are raised in their families of origin.⁷ For that reason, reunification, or the return of children to their families of origin from out-of-home placement, is one of the most common

⁷ *Improving Representation for Parents in the Child-Welfare System*, Mimi Laver, October 7, 2013, available at: apps.americanbar.org/litigation/committees/childrights/content/articles

outcomes for children in the child welfare system and is often the goal of successful parent advocacy.⁸

Evaluations of other programs have demonstrated that clinical social workers contracted by the respondent parent attorney achieve reunification more quickly.⁹ 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 engagement is associated with a 47% increase in the rate of reunification.¹⁰ Additional advocacy from the contract social worker can provide flexible and creative services which enable parents to achieve reunification faster.¹¹

The ORPC contracted with social workers who are appointed as part of the legal defense team, working on behalf of the RPC attorney and the parent client in three Judicial Districts (JD) consisting of the 4th JD – El Paso and Teller Counties, the 17th JD – Adams and Broomfield Counties, and the 21st JD – Mesa County. The social workers are only assigned to cases involving children under the age of six (Expedited Permanency Planning or EPP cases), and preliminary data demonstrates that the social workers are having an incredible impact on returning children home.

The ORPC analyzed data from the first ten weeks of the pilot program. The agency found that, in non-pilot program cases that are handled traditionally without access to a social worker, a total of 21 children out of 242 children returned home from out-of-home placement. This represents a 9% rate of reunification over the first ten weeks of a case.

In contrast, in the pilot program cases over the same ten-week period, 45 children out of 136 children total returned home from out-of-home placement. This represents a 33% rate of reunification over the first ten weeks of a case, or over three times the rate of the control group.

In the next three years, the ORPC plans to maintain current and relevant training resources for social workers and attorneys in the pilot program. The ORPC will continue to assess the efficacy of the program with ongoing data evaluation. The agency hopes to work with a contract statistician to assist with the data collection and evaluation of the pilot program objectives.

Performance Measure I: Ongoing program evaluation		*FY 2017-18	FY 2018-19	FY 2019-20
Number of districts with data collected	Target	3	3	3
	Actual	3		
Number of districts with data analyzed	Target	3		
	Actual	**0		

**Data provided for the FY 2017-18 year includes data from July 1, 2017 – December 29, 2017.*

***As of the writing of this report, the ORPC has only analyzed the first ten weeks of data for the three judicial districts with the social worker pilot program.*

⁸ *Family Reunification: What the Evidence Shows*, p. 2, Child Welfare Information Gateway, available at: www.childwelfare.gov/pubs/issue_briefs/family_reunification

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

¹⁰ 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).

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