

# OFFICE OF RESPONDENT PARENTS' COUNSEL

FISCAL YEAR 2018-19  
ANNUAL PERFORMANCE REPORT



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January 1, 2019

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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."<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. 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.

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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.

- 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 the 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 two fiscal years, 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 2018, all attorneys desiring a new or renewing 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 résumé. All applications were evaluated, and the ORPC conducted in-person interviews with many attorney applicants. From the 2017 spring contracting cycle to date, the agency has offered contracts to approximately 300 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, an interview with ORPC staff, and in-person court observations. 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 move toward electronic means of tracking contractor information.

Performance Measure A: Monitor/Evaluate Contractors		FY 2016-17	FY 2017-18	*FY 2018-19	FY 2019-20	FY 2020-21
Evaluate Renewing Attorney Applicants	Target	Data not available	100%	100%	100%	100%
	Actual	Data not available	100%	100%		

\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 27, 2018.

**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	FY 2020-21
Observations of contractors	Target	NA	80%	90%	100%	100%
	Actual	NA	73%	36%		

\* Data provided for the FY 2018-19 year includes data from July 1, 2018- December 27, 2018

**Training:** In FY 2017-18, the ORPC has executed 23 trainings. Below is a sample of RPC feedback about the agency’s trainings:

“This training challenged me to think outside of the box.”

“Training was excellent, informative and helpful. Thank you!”

“The conference helped to improve my understanding and confirmed my observation that the D&N process is complicated with room for advancement, improvement.”

The ORPC’s number of annual trainings, attendees, and training hours are detailed below.

Notably, the ORPC executed its third annual fall conference, *Object: Shaping Your Case Through Tailored Advocacy*, in September 2018. This conference attracted 215 registrants and offered 27 individual training sessions over multiple breakout tracks. The entire conference program was approved for 16 continuing legal education credits.

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.

The ORPC has hired a new training director starting January 2, 2019. The agency plans to refocus its training strategy to increase attendance and improve quality. The agency will continue to focus on three main areas: new RPCs, experienced RPCs, and jurisdictional trends.

<b>Performance Measure C: Provide High-Quality Trainings</b>		<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>*FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Trainings for attorneys, associates, social workers, and court personnel	Target	NA	Establish Baseline	10	10	10	10
	Actual	5	22	23	5		
Total Number of Training Hours		17	64	83	33		
Total Number of Attendees		116	531	539	253		

*\*Data provided for the FY 2017-18 year includes data from July 1, 2018 – December 27, 2018.*

**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.

Since implementing the appellate program, the numbers of appeals filed in dependency and neglect cases increased 42% in calendar year 2017. Of those appeals, the remand rate of appeals doubled in calendar year 2017, 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.

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.

Due to the nature of appeals, however, it is likely that (as the appellate program ages) the percentage of new appeals and remands will level off or decrease. The sharp spike in appeals in the first few years of the ORPC’s existence was likely due to the lack of advisement and knowledge about appeals prior to the creation of the office. The ORPC required that all respondents be advised of their right

to appeal in CJD 16-02, which contributed to the sharp increase in the number of respondents wishing to exercise their right to appeal. As it becomes more routine to advise clients of their appellate rights, this increase should level off, creating an environment where many of the published opinions are only issued in cases with difficult legal issues to resolve or correct.

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.

<b>Performance Measure D: Appellate List Efficiencies</b>		<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>*FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Percentage of full-time appellate attorneys on the appointment list	Target	50%	55%	60%	66%	66%
	Actual	40%	50%	55%		
Percentage of new appellate attorneys trained through ORPC	Target	NA	Establish training track	5%	5%	10%
	Actual	NA	Establish training track	3%		
Percentage rate of published remands	Target	Establish baseline	50%	55%	45%	40%
	Actual	63%	33%	73%		

*\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 27, 2018.*

**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.

In 2017, 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.

<b>Performance Measure E: Recruit and Maintain Experts</b>		<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>*FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Number of experts vetted and available for appointment through ORPC	Target	Data not available	150	175	200	215
	Actual	Data not available	174	192		

*\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 27, 2018.*

<b>Performance Measure F: Litigation Support</b>		<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>*FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Number of case strategy consultations	Target	Data not available	900	2000	2000	
	Actual	Data not available	1860	987		
Number of district specific roundtables	Target	NA	22	22	22	
	Actual	NA	18	11		
Number of resources in motions bank	Target	Data not available	90	140	180	
	Actual	Data not available	93	130		

*\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 27, 2018.*

**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.

<b>Performance Measure J: Support the use of Evidence- Based Practices</b>		<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>*FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Number of ORPC cases with social	Target	Data not available	300	350	400	425



workers approved as experts (including the Social Work Pilot Program)	Actual	Data not available	321	188		
Number of social worker contractors available for work as experts on ORPC cases (outside the Social Work Pilot Program)	Target	Target number not established	5	10	15	20
	Actual	3	8	13		
Number of MSW social work interns at the ORPC	Target	Intern program not established	2	3	3	3
	Actual	0	2	2		

*\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 6, 2018.*

## **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:** In the last calendar year, the ORPC assembled an RPC workgroup with both rural and urban-area attorneys to vet the first draft of Colorado-specific practice standards. Based on the input from those attorneys, the ORPC revised and now has the second draft of standards. The ORPC anticipates finalizing the standards and working with the Supreme Court to include them in CJD 16-02 in 2019.

**Revising The GRID:** In 2018, the ORPC partnered with the Office of the Child’s Representative (OCR) to help revise and update the Guided Reference in Dependency (GRID). The updated version of the GRID is now final and was published in both paper and PDF format. Paper copies of the GRID were distributed to Respondent Parent Counsel at ORPC’s Third Annual Conference. 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 2018 update is available here: <http://www.coloradogrid.org/>.

**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 for FY2018-19, the ORPC requested and was ultimately approved for funding to increase contractor hourly rates by 6.7%. This request increased the hourly rate paid to attorney contractors from \$75 per hour to \$80 per hour.

In the ORPC’s budget request for FY2019-20, the ORPC did not request any change to contractor hour rates although 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	FY 2020-21
ORPC average hourly attorney rate	Target	\$75	\$75	\$80	\$80	\$80
	Actual	Mixed Payment System	\$75	\$80		

*\*Data provided for the FY 2018-19 year includes data from July 1, 2018 – December 27, 2018.*

**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.<sup>3</sup> 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 outcomes for children in the child welfare system and is often the goal of successful parent advocacy.<sup>4</sup>

<sup>3</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>4</sup> *Family Reunification: What the Evidence Shows*, p. 2, Child Welfare Information Gateway, available at: [www.childwelfare.gov/pubs/issue\\_briefs/family\\_reunification](http://www.childwelfare.gov/pubs/issue_briefs/family_reunification)

Evaluations of other programs have demonstrated that clinical social workers contracted by the respondent parent attorney achieve reunification more quickly.<sup>5</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 engagement is associated with a 47% increase in the rate of reunification.<sup>6</sup> Additional advocacy from the contract social worker can provide flexible and creative services which enable parents to achieve reunification faster.<sup>7</sup>

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 4<sup>th</sup> JD – El Paso and Teller Counties, the 17<sup>th</sup> JD – Adams and Broomfield Counties, and the 21<sup>st</sup> JD – Mesa County. Three are MSW level social workers and one has a Master’s in Sociology and is enrolled in an MSW program. 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 a data snapshot that included new EPP cases filed in the pilot jurisdictions between 10/13/17 and 8/31/18. During that timeframe, 80 eligible EPP cases were assigned to a contract social worker in the pilot. In those 80 assigned cases, there were 111 children placed into out of home care. As of 8/31/18, 39 of those children were returned home to a parent (35%).

During the same timeframe, 186 eligible EPP cases were rejected for assignment due to the pilot social workers having reached their maximum caseload capacity. In the rejected cases, there were a total of 517 children placed in out of home care. As of 8/31/18, 107 of those children were returned home to a parent (21%). The inclusion of a social worker early on the legal team on EPP cases is having an impact.

The ORPC will enter into a contract with MSU Denver’s School of Social Work for a formal evaluation of the ORPC Social Work Pilot Program starting in December 2018. The evaluation will include mixed methods involving qualitative and quantitative components, including a financial analysis of the pilot program. The evaluation seeks to analyze data related to the pilot program objectives and to inform programmatic needs.

<b>Performance Measure I: Ongoing program evaluation</b>		<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Number of districts with data collected	Target	3	3	3	3
	Actual	3	3		
Number of districts with data analyzed	Target	3	3		
	Actual	0	3		

<sup>5</sup> Pilnik, *Parents’ social workers help parents succeed*, ABA Child Law Practice Vol. 27 No 9.

<sup>6</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>7</sup> Cohen and Cortese, *Cornerstone advocacy in the first 60 days: achieving safe and lasting reunification for families*, ABA Child Law Practice (May 2009).