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Office of the Child's Representative  
9th Annual Report



Presented to  
the Colorado General Assembly  
September 2009

The Office of the Child's Representative (OCR) is required by state statute, Section 13-91-105, C.R.S., to submit an annual report in September to the General Assembly. This report provides an update of the OCR's activities for the past year, including those conducted to meet the office's statutorily mandated responsibility to provide and oversee best interest legal representation for children in Colorado. The report also includes an overview of this year's major accomplishments, fiscal management of appropriations and the OCR's goals for the upcoming year.

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## OCR 2009 General Assembly Report



### From the Executive Director

I am pleased to offer you this report and to express my thanks for your interest in the challenges and accomplishments achieved this past year for the Office of the Child's Representative (OCR). I appreciate this opportunity to share our vision and commitment with you as we conclude our ninth year of operation.

The OCR opened its doors in March 2001, as the first state agency in the nation created exclusively to enhance and oversee attorney representation for children. The office was the culmination of the hard work of Senator Norma Anderson and Representative Kay Alexander. They understood, along with the support of both chambers and parties, that the time for the legislature to make the provision of competent attorney representation for abused and neglected children a priority was long overdue. They comprehended the significant commitment and resources needed to ensure quality attorney representation, as articulated in the legislative declaration of the enacting legislation, House Bill 00-1371:

*"..That the legal representation . on behalf of children is a critical element giving a voice in the Colorado court system.. That the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources... Accordingly, the General Assembly hereby determines and declares that it is in the best interests of the children of the state of Colorado, . to reduce needless expenditures, establish enhanced funding resources, and improve the quality of representation and advocacy provided to children in the Colorado court system, that an office of the child's representative be established in the judicial department." Section 13-91-102 (1), Colorado Revised Statutes*

The core mission of this agency is simple. Children who have no resources and lack the ability to independently access the court system, and who are severely impacted by every judicial decision need highly skilled lawyers who can advocate, and when necessary, litigate on their behalf. They need attorneys who are experts in the issues that will impact them for life. The work environment for the attorneys shall promote the same advocacy that a child would find if they had the resources to retain private counsel. The lawyer shall personally know the child they represent and be invested and familiar with the critically important issues that are unique to the child and their family.

We all understand when we have to refer a friend who is getting a divorce to an attorney, we think carefully about the referral, and subsequently refer them to a divorce specialist. We would never refer anyone who needed representation in a criminal case to a divorce attorney. What would seem even more outrageous is to refer them to someone who would never meet with them to ascertain the issues and develop a strategy for effective advocacy. These same considerations apply to the attorney representing children, or the guardian ad litem (GAL), as children need an attorney specifically skilled and trained to advocate their unique circumstances and issues.

We have made great strides in the representation of children since the creation of this office. The practice of representing the best interest of a child today is very different in our state than it was eight years ago. It now seems outrageous, but there was a time that attorneys in many jurisdictions never visited the children they represented and had no first-hand knowledge of the homes or schools they attended. Attorneys did not attend and participate in critically important staffings outside the courtroom. Litigation practice and use of independent experts was virtually unknown in this area of the law. Now, these skills are inherent in juvenile law practice in Colorado.

In the past nine years, we have cultivated the highest quality legal representation, thanks to the commitment and vision of

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the OCR Board, the dedication and hard work of the OCR staff, and most importantly, the attorneys throughout the state who work tirelessly and often spend sleepless nights worrying about the children they represent and the time they take away from their own families. The OCR attorneys know their children, actively participate in all phases of the case and provide not only effective advocacy, but also leadership in the courtroom on behalf of the children. But, as I say every year in this report, recognition must also go once again to the General Assembly who had the vision to create this office and the dedication to continue to support and prioritize its mission.

The OCR has always appreciated the importance of partnership with other stakeholders, and endeavored as a young organization to work collaboratively with the judges and court administration throughout the state. I must give a personal thank you to a few that have been outstanding in their partnership: Melinda Taylor and Chief Judge Vincent Phelps in the 17<sup>th</sup> Judicial District, Laurie McKager and Chief Judge William Sylvester in the 18<sup>th</sup> Judicial District, the Alternate Defense Counsel Executive Director Lindy Frolich and her staff, the Public Defender's Office Executive Director Douglas Wilson and his staff, the Colorado Supreme Court Chief Justice Mary Mullarkey and her staff, and our Joint Budget Committee analyst and the Joint Budget Committee Members whose doors are always open to discuss the issues that impact children and the courts. I thank all of you for your support over the years. Also, it has been a difficult year for the OCR attorneys and I cannot express enough my deepest gratitude and thanks for their patience and the hardships they have endured during these challenging times.

It is difficult to believe another year has come and gone so quickly. The following pages highlight the efforts made by OCR to create efficiencies within our budget, our continued commitment to continually oversee and monitor attorney services, our dedication to provide the most relevant and cutting edge training in topics critical to the representation of children, our ongoing dialogue and important policy advocacy at our state capitol, our contributions to other states as they implement and emulate Colorado's successes and our participation as committee members and policy advocates to make systemic reform and advance issues that impact the children, youth and families. We have provided a general overview of the budget and the upcoming goals that will be implemented to create budget efficiencies while at the same time increase the effectiveness of attorney advocacy statewide.

The office is at a critical juncture, and we find ourselves embarking on a season of renewed commitment. We expect and welcome the fact that we will continue to be held to the highest standard of professionalism and service. These are your children living in your communities that we represent, and we recognize the trust the General Assembly has placed in our agency to ensure these children receive the best legal representation. We appreciate the fact that the General Assembly created this state agency and will do everything within our means to fulfill the statutory mandates for the children of Colorado.

Sincerely,

Theresa Spahn

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### OCR Staff

Theresa A. Spahn, Executive Director

Sheree Coates, Billing Administrator

Linda Weinerman, Deputy Director

Melanie Jannicelli, Office Administrator

Sarah Ehrlich, Staff Attorney  
and Legislative Liaison

Lynne Winchell, Controller

Ryan Burke, Training Coordinator

Sheri Danz, Staff Attorney



### OCR Contact Information

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#### Website address

[www.coloradochildrep.org](http://www.coloradochildrep.org)

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### Board of Directors for OCR

The Board of Directors for the OCR is appointed by the Colorado Supreme Court. On October 1, 2008, Chief Justice Mullarkey appointed several new members to the OCR board. Several longstanding board members were term limited, therefore, Cheri Jahn, Lynne Hufnagel, Laura Hunt, Peggy Rudden and Joseph Wallis began four year terms on the board. Terraine Bailey was appointed when Gail Meinster became a Magistrate in the 1st Judicial District. The board serves without compensation, and through statute the board must work with the director to provide fiscal oversight, establish policy and achieve compliance with the OCR legislative mandates. The board represents all nine congressional districts, and has a balance of Republican and Democratic members.

Marsha Caplan, Democrat, Second Congressional District, Executive Director, Voices for Children

Shirley Rowe, Republican, Third Congressional District, Executive Director, CASA Mesa County

Paul Garcia, Democrat, Seventh Congressional District, Dean of Adams City High School

Representative Cheri Jahn, Democrat, Seventh Congressional District, President of the Center for Economic Policy

Lynne Hufnagel, Democrat, First Congressional District, Retired Denver District Court Judge

Laura Hunt, Republican, Fourth Congressional District, Executive Director, Larimer County Child Advocacy Center

Peggy Rudden, Republican, Sixth Congressional District, Executive Director, CASA Advocates for Children

Joseph Wallis, Republican, Fifth Congressional District, GAL El Paso County

Terraine Bailey, Democrat, Sixth Congressional District, GAL, Denver County

Ember Beamon, Youth Advisory Member

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### I. GAL Story

GAL: Cynthia Fleming- Lives and Practices in the 9<sup>th</sup> Judicial District, Glenwood Springs (Garfield County)

*It has always been a challenge to find and retain attorneys in this judicial district because of the high cost of living and the state hourly rate makes it hard for an attorney to support themselves. We found Ms. Fleming, a well -respected attorney working at legal services. Ms. Fleming shares that children with active dependency and neglect cases or delinquency cases from the 9<sup>th</sup> JD must be placed outside the community with the majority of them placed in Denver, Loveland or Grand Junction. While dedicated case workers may travel to see the children, it is rare that their families, who often lack the most basic resources, are able to travel to the Front Range or Western Slope to see their children. In this case, the county DSS properly responded to a child in crisis and funded appropriate placement. In this community, however, it is the GAL who has the ability to regularly see the child and develop a relationship outside the group home or foster care placement. This is the only person who brings information to the court directly from the child, and in many instances, is the only adult from their community that they have contact with. Ms. Fleming made a difference in the life of a fourteen year old girl by maintaining regular contact with her when no one else did. The GAL understood*



*her and had faith in her by supporting her hobbies and endeavors both in and out of court.*

I represented a 14 year old girl who lived in Garfield County but who had to be placed in a residential treatment center, Excelsior, which is located in Denver. She was placed because she was beyond the control of her mother and did not have anywhere else to live. She was repeatedly sexually assaulted by her mother's boyfriend throughout her young life. She had few friends, and virtually no family. She was slightly developmentally delayed and she struggled socially.

Her mother moved to Arizona during the pendency of the case. I was one of only two people who traveled from Glenwood Springs to Denver to visit her for more than a year (the other being the caseworker). The caseworker, however, could only occasionally see this child. No other family member, friend of the family or person from the community could see this child, assess her needs or advocate for her. It was 320 mile round trip to visit this child.

The first few visits, she was very reserved and wary of my presence. I explained to her that I was the person who had one job, which was to advocate for her best interests in court. By the fourth visit, she hugged me when I saw her. When we

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talked, she confessed that all the other girls thought she was a “dork.” When I asked her why, she said it was because she was “artsy” and no one “got that.” I told her I thought artsy was interesting and asked her to show me some of her work (not knowing what that was). We went to her room and she proceeded to share poems, drawings, songs and stories with me. She is amazingly talented. I was so impressed with her art, and I told her so. She gave me one of her pieces of artwork to keep - a picture of a girl with tears staining her face.

Like many of her peers, she struggled with the rules in treatment. She was so guarded that she was unable to connect with everyone on the treatment team. The team was frustrated by the lack of progress. I repeatedly updated the judge: “One step forward, two steps back.” It was not what anyone wanted to hear of course, but we persisted.

She continued open up to me, and I felt privileged that I was able to represent her and advocate for her best interests. I feel that once these children know you are committed to them and take the time to really get to know them as a person and not just from reading about them in a report from Denver, they feel connected to you. As our relationship developed, she would hold my hand when I would come to visit and we would walk around the grounds and talk.

I believe that sharing with me was a turning point for her. Her “breakthroughs” in treatment coincided with her opening up and sharing with me. I think it gave her a level of confidence and security to be able to move forward. I constantly reminded her that I believed she could do what was needed to be able to leave and return to her home and school. I do not think many people (if any) were telling her that. The last two times I visited her, I felt she was truly a changed person from the one I had met a year before. She had blossomed.

Her mother moved back to Colorado, and she left Excelsior. By all accounts, she and her mother are doing well. I still think of her infectious smile and her wonderful art. I believe that she was able to mature and change once she felt like she had a “safe” adult to confide in.

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*The case began as truancy in Denver Juvenile Court last spring and the child was appointed an OCR GAL named Pat Hertzler. This child never had her educational needs met because no one ever caught that she had learning disabilities. Like most children who are not succeeding in school, she had low self-esteem. She acted out and had disciplinary problems because she could not successfully participate in a classroom setting. This GAL recognized the issues that were presenting educational barriers for her and was able to zealously advocate for her.*

Z, a 13 year old girl, attended a DPS alternative school called PREP. PREP was her final chance at a school based educational curriculum because it was the last step before expulsion.

Prior to her enrollment in PREP, she was expelled from Emerson St. School at the end of the 08-09 school year. She had pages of disciplinary records that tracked her years of low attendance at school. She was expelled from Emerson St. because she assaulted on a teacher.

The GAL went to the school and extensively reviewed a complete history of her records and discovered that she had never passed any of the CSAP tests. She was tested from the time she was in 3<sup>rd</sup> grade, and she was a 7<sup>th</sup> grader last year. The records confirmed her low attendance at school.

The GAL discovered she had attended at least 9 DPS schools, and she had never been evaluated for special educational services. The GAL spoke with her legal guardian, her grandmother, and requested permission to test Z. She refused to sign the required paperwork. Upon further inquiry, Z's history demonstrated that her grandmother withdrew Z from any school in which her behavior or attendance became a problem – which basically happened in every school the child attended.

While the truancy was still pending, Z was picked up on a delinquency charge. When the GAL appeared in court with her on the delinquency case, the GAL asked the court to award her the child's educational rights, given the grandmothers long history of enabling the child to withdraw from school.

Armed with her educational rights, the GAL contacted the Assistant Superintendent at DPS, with whom she had spoken previously about the expulsion, and advised him she was awarded the educational rights. The GAL's goal was to have Z evaluated prior to school starting so that she could start with an appropriate educational program. It was the GAL's theory, based on her independent investigation into her school history, that part of the reason she got into so many fights at school was that she was covering up her low academic skills.

The school district convened a team and properly evaluated her. The evaluation included assessments regarding Z's IQ, and that she was functioning at the 2-4 grade levels in all academic areas. With the help of a special education teacher, an IEP was developed for Z.

Z still has ongoing challenges within the juvenile court system that includes probation and possible out of home placement in a TRCCF. In the long term, this child may not successfully complete the terms and conditions the court will impose. But for the first time in her school attendance, she has an IEP and will have an opportunity to be successful at school. Probation and any out of home placement require successful attendance at school. For the first time, if she chooses to take advantage of the opportunity, she will have an educational plan that will meet her needs because of the work of the GAL.

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*One of the top priorities of the child welfare system is to establish long term connections that are kin-based for children so they have a sense of family, continuity and community as they grow up. This case demonstrates the importance of having a GAL on the case to ensure safety, permanency and long term family connections for children in care.*

Margaret Seboldt was appointed to represent the oldest child, Abe. Michael Brass was appointed to represent Kate and Ken in the 13<sup>th</sup> JD. These three children lived in Morgan County. They were the victims of repeated sexual abuse and neglect by their parents. The parents previously had their rights terminated for severe abuse to several older siblings of these children. Two GALs were appointed for these children because Abe had inappropriate sexual contact with his sister while in the care of the biological parents.

These children were so tormented by the abuse that they endured that they would crouch in the corner in fetal position trembling. The children had no self confidence and were afraid to talk. Their first placement was foster care, but they were so damaged the two boys had to be placed in intensive group home.

When Ms. Seboldt was appointed, Abe was 10 and living in a therapeutic group home at Mt. St Joseph in Denver after two unsuccessful foster care placements. Abe was too young and not developmentally ready for sexual offense therapy. As his attorney described, he was acting out because he was so victimized by his parents. He did not possess the requisite mental capacity to intend to abuse his siblings. The only blessing for these children was that they have a remarkable paternal aunt. She and her husband live in rural Prowers County on a farm. The children know them as Aunt C and Uncle J. Aunt C was the only kin available for placement, and she rose to the occasion to take care of these children. She drove for five plus hours every weekend to pick up Abe in Denver and Ken in Longmont and then back to the farm. These children spent 6 months split between the group home and the farm, with 3 days at the farm and 4 days in the group home. These children, who came into the system without speaking to anyone began communicating and thriving with the Aunt and Uncle. Both of the group homes recognized this progress. During these six months, the boys were out with Uncle J on the farm and got into something slightly dangerous. This was disclosed to the Department and Ken's group home investigated the incident. They believed it was an isolated incident and that Ken was not at all traumatized by the event. When the Morgan County Department learned about this they immediately wanted to pull the children and place them in foster care.

Several experts and both group homes believed this would be very damaging to the children because they were doing so well at the farm. The Department proceeded in removing the boys without any further investigation or staffing. The Aunt, Uncle and children were devastated.

Ms. Seboldt immediately objected, as she knew Abe, and the family. She had spent significant time with the family making sure this was in fact a good fit for Abe. On many occasions, she drove four hours from her office in Wray to their farm. She watched the children interact and play with each other and with their aunt and uncle. She had regular phone contact with the Aunt to work out the details of how best to respond to Abe's very serious needs. She noticed Abe blossoming in this family setting. He started to become a very different child than the one who did not speak when the case was first opened. The GAL knew the group home had a skilled therapeutic setting, but it was not a place for a 10 year old boy to grow up. She was aware of the commitment that this aunt and uncle had to these children. She feared if these children were removed their lives would forever be affected. She strongly believed that Abe should live full time with this aunt and uncle.

Mr. Brass was the attorney for the other two siblings, Ken and Kate. When he was appointed, Kate was doing well in a foster care placement. Four year-old Ken was living in Namaqua, a group home for severely abused

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children. Mr. Brass traveled to meet Aunt C and Uncle J to explore if this could be a permanent home for Ken. He learned from Namaqau that his weekend visits were going well. The Department was not in favor of Ken living with Aunt and Uncle because of the prior behaviors of Abe. The Department was concerned about further victimization of Ken even though the Aunt had developed a safety plan to ensure the safety of each child. Mr. Brass also maintained close contact with the therapists at Namqua to monitor Ken's progress. They informed him that the more time the child spent with Aunt and Uncle and his brother, the less he acted out. They confirmed that the time spent with the family on the farm was in the child's best interest. Mr. Brass worked with the Department to approve Ken's transition to 5 days a week with Aunt and Uncle. It took numerous staffings with the professionals in the case to obtain a consensus.

The visits continued until Ken reported to his group home about the incident involving Abe. The group home was clear that as mandatory reporters they had to report the incident to the Department, but they were firm in their recommendation that this incident should not disrupt this child's current visitation schedule. They believed this was a minor and isolated event. When the Department learned of the incident they immediately responded by stopping contact with aunt and uncle. They did not call Mr. Brass, Ken's Attorney. The Department decided to remove him immediately from the group home to a third foster home. Upon the objection of Mr. Brass, the matter was set for a contested hearing.

During the contested hearing involving Abe and Ken, both Mr. Brass and Ms. Seboldt advocated for the children to continue to live with Aunt and Uncle. Ms. Seboldt shared the detailed history of her contact and familiarity with this family, their dedication to these children, and her accounts of watching the children and family. She also outlined all the services the Aunt had put into place on her own volition. She explained the fragility of these children, but reported on their significant improvements.

Mr. Brass was adamant that this was "best chance at normalcy" for Ken as he was bonded to his Aunt, Uncle and brother. He reported to the court that the child was doing exceptionally well for the first time and if we move this boy to a strange foster home it would be devastating. He agreed the incident that was reported happened months ago, and should not be ignored, but should not rise to the level of permanent removal. Everyone in the courtroom agreed that this was a one-time incident. Mr. Brass was able to give the court much detail, which no doubt assisted the court in deciphering all of the information in order to make an proper ruling on the case. He shared that he worked closely with the Aunt and Uncle, and that he was in constant contact with the group home. He visited Ken's school, and had multiple visits with Aunt, Uncle and Adam. The Department, however, opposed his position, and wanted Ken moved from the group home and contact with the Aunt and Uncle terminated. They believed it was in Ken's best interest to be separated from his Aunt, Uncle and Brother, but they did not have the detail or the understanding of the case or the children.

The Aunt and Uncle were present for the hearing and addressed the court. The Court ordered Ken and Abe to be placed in the full care of the Aunt and Uncle. While this case was costly for the OCR, it made all the difference in the lives of these children. If not for the legal advocacy of Mr. Brass and Ms. Seboldt, the two boys would be in group homes or foster care instead of with kin.

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### Significant Achievements and Highlights of the last fiscal year

The OCR is pleased with the progress achieved this ninth year of operation, and the following is a synopsis of some of the OCR activities:

- Participated in the Governor's Task Force committee and subcommittee. Authored recommendations as part of the Outcomes subcommittee.
- Implemented policy changes in response to the Colorado Budget Crisis in order to streamline the OCR budget: OCR worked with the legislature to streamline appointments in domestic relations and delinquency cases with several statutory amendments.
- Continued training of GALs with the September 2008 conference, February 2009 Conference, Keystone Summit on Children and Families.
- Continued to monitor legal services of 200 plus GALs in all 22 judicial districts.
- Testified on legislation impacting children, families, juvenile delinquency, sibling visitation and parenting coordinators. Collaborated with other policy groups in the drafting of legislation on such issues, and provided input to bill sponsors upon request.
- Worked with Adam's County to implement a Domestic Relations Pilot Program: The ENA program is modeled after a similar program in Hennepin County, Minnesota. The purpose of the ENA program is to mitigate the cost in CFI appointments. ENA teams consist of one mental health professional, and one attorney to assist the parties with making decisions about their children in dissolution of marriage cases.
- Partnered with other entities to obtain grants under the Fostering Connections to Success Act: OCR partnered with the Mile High United Way in applying for grant funding under this new federal legislation.
- Coordinated services for delinquency proceedings in Arapahoe County with the District Administrator in order to reduce costs and improve outcomes in delinquency cases
- OCR processed 60,535 payments during fiscal year 2009, an increase of approximately 15% over the previous year and more than 20% from 2007. Our Billing Administrator, Sheree Coates, processes all payments for the OCR attorneys.
- Participated as amicus curiae in *People v. Gabriesheski*, to the Colorado Supreme Court: In this criminal case, the OCR filed a motion for request to intervene as amicus. The request was granted by the Court, and OCR submitted an amicus brief in July. This case has far reaching implications for GALs, as the issue of importance to the OCR was whether the role of the GAL should be best interests or attorney client.
- Removal of Audit Provision—SB09-48 was initiated by the Legislative Audit Committee. The Committee reviewed state law to identify where statutorily required audits were not necessary and cost efficiencies and savings could be generated. Based on the performance and past audits of the OCR, the Office of the State Auditor (OSA) recommended that the Committee consider the OCR as one of the agencies where an annual audit is no longer necessary. The OSA requested the removal of the provision in statute requiring an annual audit of the OCR, section 13-19-101, Colorado Revised Statutes. OCR did not have findings on the OCR fiscal activities in the last three years. Consequently, the OSA recommended that the annual audit requirement be removed. The OCR, like all state agencies, will be subject to performance audits and finances are usually investigated as part of the performance audit. In 2007, the OCR recently successfully completed an extensive state performance audit. As part of the judicial branch, the OCR will be included in the annual judicial branch audit.

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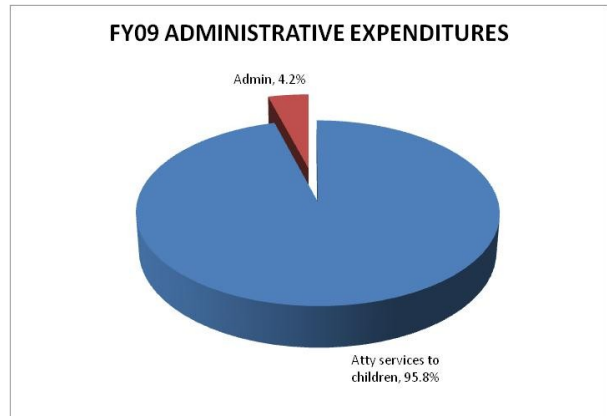
*If representation is inadequate, then the entire court is inadequate. - Nicholson v. Williams, 203 F. Supp. 2d 153, 227 (E.D.N.Y 2002).*

### II. Introduction and General Overview

#### A. What is the OCR?

**What is the Office of the Child's Representative (OCR)?** The OCR is the state agency mandated to represent the best interest of all children in the Colorado court system. **Ninety-six percent (96%)** of the OCR's budget is directly spent on attorney services for children. The remaining 4% is used to administer the state agency, which consists of a staff of eight employees who oversee approximately 250 attorneys. The OCR represented approximately 22,320 children in the last year in dependency and neglect, delinquency, paternity, truancy and dissolution of marriage cases.

**Who are the children represented?** Seventy-four percent (74%) of the 22,320 children are victims of serious child abuse and neglect. The majority of children reside in foster care and require attorney services for the entire life of a case. D&N cases are filed in every county in the state, and these children are removed from homes all over the state. Children also receive attorneys in delinquency, truancy, probate and high conflict divorce cases.



**What is the mission of the OCR?** The OCR was created by the state legislature in 2000 to improve representation for Colorado's most vulnerable children by providing competent and effective legal services. The legislation was sponsored by Sen. Norma Anderson and Rep. Kay Alexander.

**Who are the OCR attorneys?** The OCR attorneys are skilled in pediatric and juvenile law, and provide attorney services at a cost-effective rate of \$65 hour. These attorneys live and work in the same communities as the children they represent, and are available to speak with legislators to discuss the challenges these children face. They are known in the legal community as Guardians ad Litem, or GALs.

**What is a GAL expected to do in every case?** The attorney must visit each child in placement. Usually, there is more than one child per case and they are often placed in different care. Required responsibilities of the GAL include: maintain contact with the child in placement; independently investigate the facts of the case; attend all court hearings (there may be as many as 13 hearings per year in a case, 13 is the current average in Adam's County); attend ancillary hearings such as special education hearings or child support hearings; prepare for and litigate contested hearings; and attend staffings. A staffing is a meeting between the GAL, caseworkers, therapists and other individuals that work with the child. Critical treatment and placement decisions are often determined at staffing.

**What is the average cost per case for the state?** The average cost of an OCR case is \$1,300.05 per year. The average time spent on a case is 20 hours.

**What the OCR can do for you:** The OCR may serve as a resource to legislators by providing information and answering questions concerning children's issues and GALs. The OCR welcomes comments and questions from legislators regarding attorney issues and any other topics involving children or the office, including complaints, legislation or specific information concerning children or GALs in a legislator's community.

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### **III. OCR Mandates**

As previously noted, Colorado state statute, Section 13-91-101, et seq., sets forth specific mandates that are necessary and essential components of the OCR's creation: the provision and maintenance of the delivery of consistent and high quality best interest representation for children. This section provides a detailed overview of the OCR mandates.

#### **A. What are OCR's legislative mandates?**

Colorado state statute, Section 13-91-101, et seq., C.R.S., sets forth mandates that provide the necessary tools to create and maintain a consistent and high quality best interest representation system for children. The following section will highlight some of the legislative mandates in detail.

The mandates listed in statute include the following:

- Improve the quality of children's best interest representation statewide by providing oversight of the practice of GALs
- Serve as a resource for its attorneys
- Establish fair and realistic compensation for state-appointed GALs which are sufficient to attract and retain high-quality, experienced attorneys to serve as GALs
- Provide quality, accessible training statewide for attorneys, magistrates and judges
- Recommend and establish minimum training requirements for all attorneys representing children
- Recommend and establish minimum practice standards for all attorneys representing children
- Work with Court Appointed Special Advocates (CASA) to develop local CASAs in each of the 64 counties statewide, enhance funding resources for CASA and work with CASA to provide training

#### **B. Oversight/Serve as a resource**

The OCR believes serving as a resource to attorneys is a critical part of its mission to improve the quality of best interest representation. Attorneys are free to contact the Director, Deputy Director, Staff Attorney and other staff for assistance. The OCR serves as a resource and offers technical support to its contract attorneys in the following ways:

- i. Response to individual inquiries by GALs: OCR assists the attorneys by guiding them to appropriate professionals, written materials, and other resources. We also provide litigation support, appellate support and retain experts for our attorneys.
- ii. Response to inquires from judicial districts: The OCR also receives inquires from judicial officers and their staff regarding questions on payments, appointments, trainings and other inquiries.
- iii. OCR updates: The OCR provides quarterly electronic newsletters to its attorneys informing them of recent federal and state court decisions, and legislative changes that pertain to the representation of the best interests of children, trainings and current events involving child welfare issues. The OCR update is available to the public on the OCR website.
- iv. The OCR listserv: This list serv, which all OCR-contract attorneys are required to subscribe, serves as a forum on which contract attorneys ask questions about any aspect of their case, from information about a particular child placement agency or service provider to technical legal issues regarding a motion that the attorney is considering filing. The list serv is limited to attorneys who provide GAL services within Colorado.

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v. The OCR website: The new website has links to national organizations and resources for use by the general public. OCR attorneys may access billing procedures and requests for payment, view sample motions, and link to various training resources.

### **C. OCR's annual contract process**

The OCR's annual appraisal process serves as an effective method of monitoring attorney services and ensures that qualified attorneys provide legal representation for children. It also helps the OCR address systemic needs within each jurisdictional district, such as the need for additional or fewer attorneys, training on a specific issue or the facilitation of communication between local actors within the system.

The OCR's current contract process includes a series of steps. The OCR first distributes an objective evaluation form to gather feedback on all OCR attorneys. The surveys are sent to all CASA agencies, court facilitators, court administrators, and judicial officers in all 22 judicial districts within the state. The survey results allow the OCR to review the competency and quality of attorney services as well as the validity of any concerns. The office then requires all attorneys, regardless of whether they have existing contracts or are new applicants, to complete an application. Every application is considered, as contracts are not automatically renewed. Due to the budget crisis this year, we did not have the need to hire many new attorneys. In certain instances, we hired attorneys to fill the slots of those that have retired or moved on to the bench.

Prior to the commencement of the contract period, the OCR Director and attorney staff visited each of the 22 judicial districts to assess attorney services. This assessment includes meeting with the attorneys who are under contract with OCR, interviewing new applicants and meeting with court personnel, judicial officers, and CASA directors. In some instances, OCR meets with county attorneys and department of social services directors, as well as other community agencies involved in the protection of children. At this time, we also discuss training for attorneys and judicial officers during the year. Because Colorado is such a large state, we often address training needs jurisdiction by jurisdiction. At the completion of the judicial visits, OCR compiles its annual list of attorneys eligible for appointment in each judicial district, distributes it to judges and court officers within each judicial district by July 1 of the upcoming fiscal year, and subsequently prepares yearly contracts for attorneys on its list. While this is a time consuming endeavor, it is necessary to travel to the communities around the state to gather information on the attorneys and assess the unique challenges of each judicial district.

### **D. Compensation**

One of the top priorities of the OCR since its creation has been to fulfill its mandate of fair and realistic compensation. Attorneys are currently paid \$65 dollars/hour. During the inception of the office, OCR inherited a flat rate pay system. One of the initial goals of the office was to properly compensate attorneys for their work. With the support of the legislature, OCR was able to change this payment structure, to hourly billing from flat fee. The goal has always been to pay attorneys properly for the work that they perform. The hourly fee limits were set at \$45/\$55 per hour, and were raised to \$65 an hour over the course of several fiscal years and legislative sessions. The members of the JBC supported this issue and recognized that the attorneys who are paid the state rate still make far below attorneys in the private sector. Due to the budget crisis, the OCR did not pursue a raise for the court appointed attorneys in the last fiscal year, and will not do so in this fiscal climate. Our goal is to protect the rate of compensation through the remainder of the budget crisis.

### **E. Monitoring hourly billing statements**

The OCR reviews hourly billing statements provided by GALs in order to ensure that the work done on a case is adequate, and that state dollars are used for only allowable expenditures. This is another way to monitor services on any given case.

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## OCR 2009 General Assembly Report

### **F. Complaint process**

The OCR monitors attorney services throughout the year and takes the complaint process seriously. Complaints must be filed in writing with the OCR Deputy Director. Every complaint received at the office is thoroughly investigated and documented with written findings. In fiscal year 2008, 28 formal and 3 informal complaints were filed and fully investigated. Informal complaints are those that are verbal, and not written complaints. Of those 19 complaints, nine involved appointments in Domestic Relations cases, two delinquency cases, one paternity case and sixteen Dependency cases. The OCR Deputy Director investigates each complaint, spending an average of 10 hours on each complaint. Five complaints were founded and OCR terminated the contracts of the attorneys with the founded complaints. There is a no tolerance policy at the OCR for attorneys who do not follow the standards and guidelines of the Chief Justice Directive 04-06. The 23 complaints that were unfounded had full investigations of which were documented and kept on file in the OCR office.

### **G. Provide accessible training**

In conjunction with participating in national training, the OCR has always recognized that training for our own attorneys is a critical component to enhancing the provision of legal services to children. A child-sensitive legal system depends upon a bench and bar of considerable sophistication and competence, in not only the law but on issues unique to children. When representing children, lawyers must be able to draw upon interdisciplinary knowledge from such pertinent fields as psychology, sociology, social work and medicine. Children are best served by a legal practitioners in the child welfare system when judges and attorneys understand the social and psychological implications of a case, and what those mean developmentally for each child. OCR has stringent training requirements, and OCR attorneys must list applicable Continuing Legal Education credits on their application, and are required to participate in 10 hours of training sponsored by the OCR. Listed below are some of the major trainings that OCR has participated in or sponsored over the last year.

- OCR September 2008 Training focusing on Delinquency and Dependency and Neglect.
- February Conference, *Empowering Children and Youth to Overcome Adversity and Be Successful in Life*.
- NITA's Rocky Mountain Trial Advocacy Skills Training in May.
- Gang Issues Training in Colorado in Steamboat, Arapahoe County, Greeley and Colorado Springs with Officer Ernie Lucero from the Thornton Police Department.
- Participated in the Executive Planning Committee for the Summit on Children, Youth and Families. Specifically, our office put together the Attorney Forum at the Summit, which was very well attended by all child welfare attorneys.
- In conjunction with the CIP Training Subcommittee and Judge Lowenbach, the OCR produced a training DVD called "Hearing the Voices of Our Youth," about youth involvement in their court hearings. This video was also featured as a special session at the Summit.
- ABA conference on Children and the Law.
- NACC Texas training series: The Abuse and Neglect Case: A Practitioner's Guide and the Effingham Illinois presentation on Current Issues in Termination of Parental Rights.
- NACC Conference, Standing on the Forefront: Effective Advocacy in Today's World, including Theresa's presentation on Managing Child's Law Offices during Challenging Economic Times.

Upcoming trainings include our September Conference in Broomfield on Domestic Relations and Dependency and Neglect cases, a substance abuse training in Glenwood Springs, and a trial skills training and billing procedures training in the metro area.

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## OCR 2009 General Assembly Report

### **H. National Presence**

The OCR has cultivated relationships with large national organizations in order to further our mission, such as the American Bar Association Children and the Law center, the National Association of Counsel for Children, the Casey Foundation and the National Center for State Courts for technical and training assistance. On a local level, we have worked with the Mile High United Way Bridging the Gap programs, CASA programs, the Administrative Review Division, the Court Improvement Committee and the bar associations.

### **I. Speaking Engagements**

OCR was invited to speak at several national and local conferences during the past year. Because OCR is one of the only state agency models of representation in the country, many other entities have looked at Colorado to model programs in order to benefit attorney services to children. The OCR Executive Director was invited to present on our model of attorney services or best practices at the following conferences:

- ABA Conference on Representing Parents and Children
- National Association of Children (NACC) Conference
- Keystone Summit on Children and Families
- NACC Texas Trainings

### **J. Recommend and establish minimum practice and training standards.**

The OCR previously worked with the Colorado Supreme Court to draft minimum practice and training standards. Chief Justice Mary Mullarkey of the Colorado Supreme Court approved these standards in Chief Justice Directives 04-08 and 04-06. The CJDs have set forth the minimum practice and training standards for the OCR attorneys. The standards are available on the OCR web site at [http://www.coloradochildrep.org/CJ\\_Directive/cj\\_directive.html](http://www.coloradochildrep.org/CJ_Directive/cj_directive.html).

### **K. CASA**

At the request of the JBC, \$520,000 was contributed to Colorado CASA. CASA is a non-profit organization of volunteer court-appointed special advocates. Colorado CASA operates local programs in over half of the counties in the state, and each agency operates independently but under the umbrella of Colorado state CASA. This funding allowed the state CASA to hire additional volunteers and supplement operating budgets in rural programs around the state. The OCR is mandated to allocate appropriated monies to local CASA programs under 13-91-105(b)(IV), a duty that was assumed from the State Court Administrator's Office in Fiscal Year 2002. CASA volunteers are not appointed in every case, but having a CASA on the case can make a difference as the CASA only works with one family in the system at a time, and continues as a volunteer for the life of the case. Last year, CASA programs in the state served 622 new cases, a 2% increase over 2007. CASA programs served a total of approximately 2907 children in 2008. There were 1174 CASA Volunteers in the state in 2008 who put in more than 75,000 hours of time and dedication to children.

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## OCR 2009 General Assembly Report

### OCR Goals for the Upcoming Fiscal Year

1. Revise CJD 04-06, concerning the appointment of GALs in Dependency and Neglect cases.
2. Create a CJD that specifically addresses delinquency appointments under Title 19.
3. Continue to work with judicial districts to explore pilot programs in DR and D&N cases while balancing cost considerations and effective delivery of attorney services.
4. Develop policy and procedures for increased accountability and to ascertain the indigency threshold in DR cases.
5. Pursue expansion of the GAL office model in other jurisdictions.
6. Explore the possibility of duplicating the 17th JD ENA pilot for DR appointments.
7. Continue to be a resource and support system for our attorneys.
8. Support and elevate juvenile law practice on a national level with continued representation on national boards and committees such as the NACC and ABA.

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## OCR 2009 General Assembly Report

### IV. Overview of the Budget

In the OCR's enabling statute, the General Assembly recognizes that the "state has been sporadic at best, in provision of financial resources" necessary to invest in the representation of children. One of the OCR's specific mandates is to "enhance funding" to promote effective legal advocacy. In previous years, in this report the OCR has reported on its efforts and achievements to improve compensation for attorney services. This year, given the States serious economic downturn and budget crisis, the OCR set aside its efforts to work with the state on equitable funding issues and focused on how to create efficiencies and secure basic funding to meet the increase in services. The following is an overview of the OCR budget cycle, its challenges and the OCR response for Fiscal 2008/09.

#### A. Summary of Appropriations and Factors Driving the Budget:

In fiscal year 2008/2009 the OCR expended \$18,506,907 of which \$17,724,251, was spent directly on attorney services for children.

The initial 2008/09 budget appropriation approved by the JBC and Colorado General Assembly in the long Bill HB-08 1375 at \$16,055,321. During the actual fiscal year, the OCR experienced a rise in costs outside its projected budget and had to seek two emergency supplementals. Both requests were approved in the amount of \$1,014,357 and \$1,437,229 totaling \$2,570,272. This increased the OCR appropriations in the 2008/2009 fiscal year to \$18,506,907.

The OCR, like all state agencies, submits its annual budget request the year prior to the actual fiscal year. The OCR prepares and forecasts its budget based on spending trends and historical data. Numerous factors contribute to the challenges of forecasting exact spending needs for the actual fiscal year in which services are provided. Last year, several unforeseen factors impacted the budget and contributed to this challenge. In 2008/09, the following influenced the budget cycle and year end appropriations:

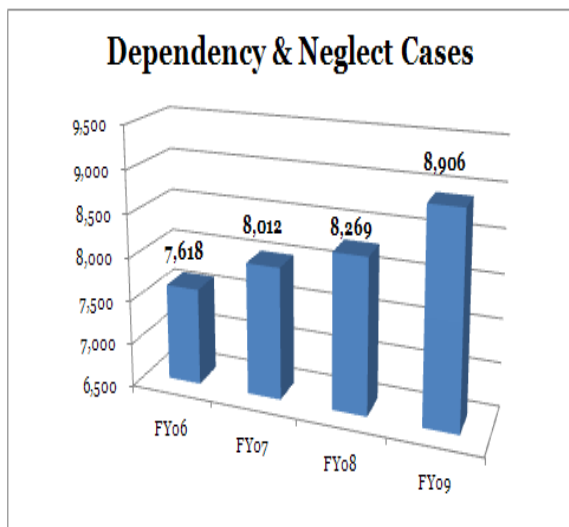
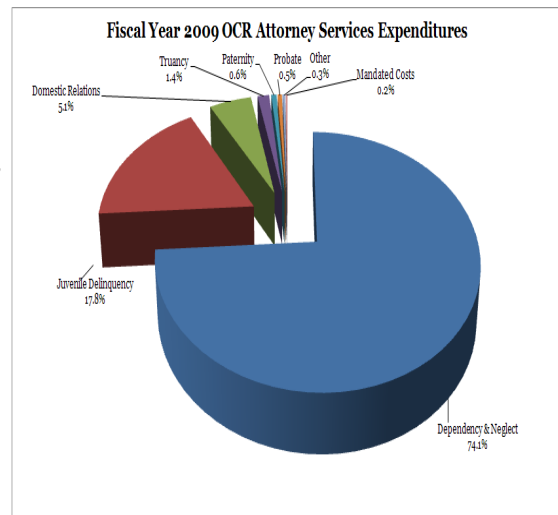
- **Specialized agency with one program:** 95.8% of the entire budget is dedicated to provide attorney services for children as this is an agency with a singular program. Any variation in case filing or cost per case directly impacts and increases the budget. In this budget cycle, the OCR experienced both an increase in case filings and cost per case.
- **Mandated services:** 95.8 % of direct services are statutorily mandated. For instance, 74% of the cases are child abuse cases (dependency and neglect) and by statute children have a right to an attorney at the inception, and through the continuation of every case. In other case types, a GAL may be appointed when it is necessary to serve the best interest of the child. OCR cannot decline appointments once the judge has determined that the case necessitates a GAL. This directly and immediately impacts the budget.
- **Cases more complicated which call for additional advocacy and result in increase cost per case:** When the number of hours necessary to zealously advocate and provide competent attorney services increase, so do the costs. In economic downturn, the cases are more challenging for the children in the court system with less services and discretionary money unavailable to assist child and families involved with social services. This year OCR attorneys spent more time advocating for the needs of the children while many departments lost funding resulting and cut back on services.
- **The OCR has no discretion over case filings:** The County Departments of Social Services in Dependency and Neglect cases, and the District Attorneys in delinquency proceedings, have the sole discretion to file cases in which GALs are appointed. Safety and the best interest of child are the compounding factors that impact the case filings.

## OCR 2009 General Assembly Report

- **Appointment is outside the authority of the OCR:** Judges had the sole discretion and obligation to appoint a GAL in delinquency and truancy cases when it is necessary to serve the best interest of the child
- **The downturn in the economy has a reverse impact in cases that require a family be indigent before the state will bear the costs for services:** All domestic relation case appointments require an indigency finding, and in an economic downturn, more families qualify under the federal and state indigency guidelines.
- **The conclusion or closure of a case is dependent** is dependent upon a number of triggering events (primarily the health and safety of the child that fall outside the authority of OCR). For example, parents may need to have continuing mental health or substance abuse treatment or monitoring before a child can be returned home, or if parental rights are terminated, an appropriate adoptive home may need to be located.

### **B. Breakdown of the Mandated Attorney Services Provided by OCR**

The OCR represents the best interest of children in dependency and neglect, delinquency, domestic relations, truancy, paternity, and probate. This fiscal year, the break down in attorney services was 74.1% dependency and neglect, 17.8% delinquency, 5.1% domestic relations, 1.4% truancy, 0.6% paternity, 0.5% probate, 0.2% mandated costs, and 0.3% other.

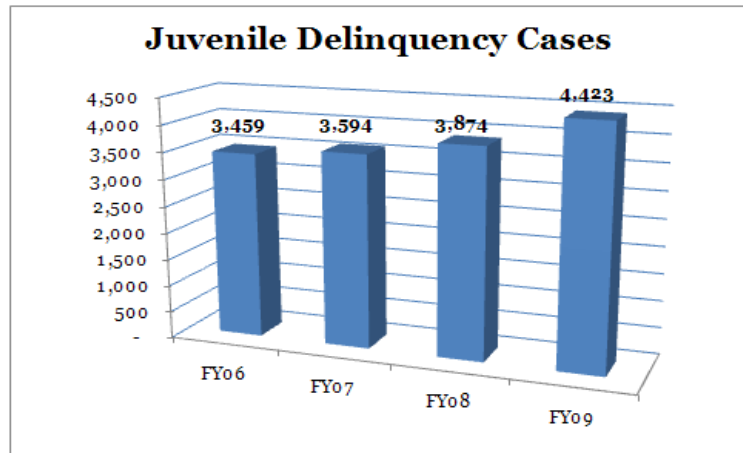


### **C. Case load increase in 2008/09 fiscal year**

In the most challenging of economic times for Colorado, the OCR experienced an increase in several case types including domestic relations, delinquency and dependency and neglect. In domestic relations, the OCR processed payment on 760 cases, an increase from the 606 case appointments the year before. Because the appointments in DR are triggered by a finding of indigency, it is fair to assume that the recession resulted in greater number of families eligible for state-paid attorneys who provide attorney services as Child and Family Investigators (CFI) or Child Legal Representatives (CLR). There was an increase in dependency and neglect case appointments as well and which has steadily increased over the last several years. In the fiscal year relevant to this report, there was an increase from 8269 in 2007/08 fiscal year to 8906 in 2008/09 fiscal year.

## OCR 2009 General Assembly Report

Juvenile delinquency case appointments have increased from 3874 to 4423 in 2008/09.



### **D. Explanation for the emergency supplemental**

As previously mentioned, the OCR had to submit two supplemental requests this year. Numerous factors made it difficult to project budgetary needs for the actual fiscal year. While these factors have always presented challenges to the budgetary process, the economic downturn significantly exacerbated the hardships of children and families in this budgetary crisis. Because the children and families serviced through OCR case types are already disproportionately poor and lacking in resources, cases requiring GAL appointments increased and became even more complicated during the current economic crisis. The OCR's budget was and continues to be, directly impacted by unforeseen contingencies such as an increase in filings, appointments and hours necessary to advocate for the needs of children.

After receiving its 2008/09 supplemental, of \$1,014,357, the OCR continued to experience a rise in costs outside its projected budget. OCR required an additional emergency supplemental during the year in the amount of \$1,437,229. The request was based on estimated expenditures through the remainder of the year so the billing accrual for year end could be processed. OCR staff worked diligently to isolate the factors that contributed to these additional costs. From the information gathered by the OCR staff, these rising costs were attributed to several major factors:

- The 2<sup>nd</sup> Judicial District (Denver) D&N costs and case filings increased exponentially
- Indigency based domestic relations appointments and costs have increased
- Statewide Integrated Treatment Courts—ITCs in Colorado have flourished in 2008 and 2009, resulting in an additional fiscal impact
- Factors that are the result of the economic downturn have increased cost per case

#### **1. Denver Dependency & Neglect Costs:**

i. The estimated increased cost of Denver D&N cases in Fiscal Year 2009 is \$811,116. In Fiscal Years 2007 and 2008, the OCR incurred expenditures in Denver in the amount of \$827,365 and \$1,371,856. Based on current fiscal year expenditures, an estimated \$2,310,143 will be incurred in Denver. Although the D&N filings in Denver have historically lagged behind other less populous areas, over the past three fiscal years the filings have increased considerably.

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## OCR 2009 General Assembly Report

ii. Caseworker issues: Through conversations with other stakeholders in the child welfare system at both the state and local level, the OCR has been able to determine that GAL costs are rising due to the following factors: high turnover and extreme shortage of Denver Department of Human Services case workers; frequent changes in caseworker assignment; and up to a five to six week lag time before the assignment of an ongoing caseworker. Because of these caseworker factors, the GAL is often the only professional who has had stable and ongoing involvement with the child(ren) in a case.

iii. Wait time in court: By comparing the first ten months of Fiscal Year 2008 to the first ten months of Fiscal Year 2009, the OCR has identified an increase of 81% in costs attributable to wait time, amounting to an increased cost of approximately \$100,000.

iv. Increases in litigation and contested hearings. Data obtained from the Denver City Attorney's Office indicate that cases have become much more contentious, requiring a significant investment of additional time by all parties, including GALs.

### **2. Domestic Relations Cases**

The number of OCR appointments in DR cases has increased. In Fiscal Year 2008, the OCR processed payment on 606 domestic relations cases. During the regular supplemental process, the OCR estimated it would process payment on 618 cases in Fiscal Year 2009. The OCR has already processed payment on 692 domestic relations cases during the first ten months of Fiscal Year 2009. This amounts to an unanticipated 12% increase. Because OCR payment for appointments in domestic relations cases is triggered by a finding of indigency, it is fair to assume that the recession has resulted in a greater number of families eligible for state-paid CFIs and CLRs.

Upon discovering this trend, the OCR reduced the presumptive maximum billing of these types of cases by 50%. The OCR conducted an audit on these case types in the metro districts and met with court administrators and/or chief judges in these districts. The OCR also participated in the revision of Title 14 to restrict indigency findings. While these measures should eventually result in efficiencies in this case type, the costs for this fiscal year have already been incurred and any benefits of OCR efforts will not be recognized until Fiscal Year 2010.

### **3. Integrated Treatment Courts**

Colorado has recently experienced an increase in Integrated Treatment Courts (ITCs) around the state. ITCs provide a coordinated system of care to children and families involved in D&N and other court processes. There are several types of ITCs that involve GALs, including D&N Family Treatment Courts that address parental substance abuse, Mental Health courts that address mental health problems of participants, and delinquency drug courts that address substance abuse issues of youth. Because of the growing awareness of the benefits of these courts, nine new integrated D&N Family Treatment Courts and one delinquency drug court were founded in Colorado in 2008. Colorado now has 11 D&N Family Treatment Courts, one Mental Health Court, and 10 juvenile drug courts, with several more in the implementation process.

ITCs require more intensive services from all practitioners, including GALs. In contrast to typical D&N and delinquency cases, ITC hearings occur weekly or bi-weekly. Most programs provide for a staffing session to take place immediately prior to the ITC docket. For example, a Thursday afternoon docket may start at 1 p.m. (following a noon staffing session) and end at 5 or 6 p.m., resulting in billing for 5-6 hours of time each week just for in-court related services. The requisite increased time commitment from attorneys results in greater cost per case.

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## OCR 2009 General Assembly Report

While the OCR understands the benefits of ITCs and is supportive of their development, the OCR was not involved in or notified of the creation of these courts. Because the full implementation of these courts extended into 2009, the OCR has just recently become aware of the impact of these courts on its budget.

The OCR will continue to work with judicial districts to isolate costs, identify trends, and pursue alternative sources of funding to alleviate the impact of ITCs on its future budget.

The JBC analyst recommended and the JBC approved the full amount requested in the emergency supplemental on June 25<sup>th</sup>, 2009.

### **E. Response to the Budget Crisis and Efficiencies Created**

When it was obvious that our costs would exceed our appropriations, the OCR worked to implement several plans to create budgetary efficiencies in a manner that would not compromise the safety or well being of the children and youth that receive services. These are highlighted in Appendix A. The OCR wants to recognize the judges, court administration in several districts, and our attorneys who immediately responded to our requests and helped facilitate the change necessary to limit the costs that would exceed the projected budget. Many thanks to the 17<sup>th</sup>, 18<sup>th</sup> and 2<sup>nd</sup> Judicial Districts who immediately partnered with the OCR and the OCR attorneys who patiently adapted to new payment procedures and restrictions.

The 17<sup>th</sup> Judicial Districts reevaluated how to best serve their indigency litigants in DR cases and committed to carefully screening indigency by way of implementing a new screening process for applicants who might qualify for state pay services. The district also partnered with OCR to pilot an alternative and cost effective model and delivery of service which will be discussed in detail in the following text. The 18<sup>th</sup> immediately reviewed its appointment policy in delinquency and truancy cases and established new procedures to prioritize only the most complicated cases that would receive the discretionary appointments of GALs. The 2<sup>nd</sup> judicial district did the same.

The OCR contract attorneys met with OCR statewide and cooperated with the immediate implementation of restricting mileage reimbursement and travel to court. They also immediately cooperated with the new payment policy that lowered of excess fees threshold all of which will be described in more detail.

The OCR was asked to prioritize its services and worked closely with the JBC analyst to isolate statutory changes that would contribute to future efficiencies. These changes were introduced as JBC Bills that were passed and became new legislation July of 2009. Please see APPENDIX A for a timeline of budget related actions by the OCR.

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## OCR 2009 General Assembly Report

### **V. The Office of the Child's Representative El Paso County Guardian ad Litem Office – 4<sup>th</sup> Judicial District**

The El Paso County Guardian ad Litem Office in the 4<sup>th</sup> Judicial District office is a staff model office of state employees that fall under the oversight of the OCR. This staff model office is similar to the way a local Public Defender's office provides attorney services. The office was created in December 1999 in response to Senate Bill 99-215, which directed the Judicial Department to pilot alternative methods of providing GAL services. The goal of this pilot program was to determine if higher quality services could be provided through a staff model at the same or less cost as the then existing attorney payment process (contract/hourly billing model). In 2005, the JBC ended the pilot status of the office and it is now a permanent part of the State Judicial Department. This staff model office is celebrating its eighth year anniversary, and as part of the anniversary celebration the office is proud to introduce a new name: The Office of the Child's Representative El Paso County Guardian ad Litem Office.

The staff model operates as a law firm and employs 13 attorneys, 4 case coordinators, and 4 administrative staff. The case coordinators have a social work or related background. These professionals make a significant contribution to the legal representation of children by assisting attorneys in their analyses of treatment needs, participating in case staffings, communicating with treatment providers, reviewing psycho-social assessments, and observing visitation between parents and their children.

Since its inception, this model has proven to be one of the most cost effective methods of delivering consistently high quality GAL services. The effectiveness of this type of model has been recognized nationally by the National Association of Counsel for Children, which has endorsed dedicated children's law offices as one of the best models for delivery of high-quality legal services. Moreover, members of the El Paso child welfare community and the court system have commented on the significant improvements in GAL representation as a direct result of the El Paso County GAL office.

These permanency records and the office's litigation statistics are among the best in the state, and this office should be highly commended. Since the GAL office was created, it has represented over 7,500 children. For the period from July 1, 2008 to June 30, 2009 the office closed 478 D&N and 172 JD cases.

Historically, the office has attracted highly skilled and experienced attorneys. The present staff of attorneys consists of a combination of very experienced attorneys as well as several with less than three years experience. The entire staff has a combined experience of over 150 years in juvenile law. OCR would like to acknowledge the entire staff of the El Paso County GAL office for maintaining their high level of professionalism. Particular credit needs to be given to Office Director and Managing Attorney Debra Campeau. The OCR is extremely grateful and appreciative to the staff of this office for their efforts and dedication. One of the next goals of the agency is to expand this model of services in other jurisdictions.

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## OCR 2009 General Assembly Report

### **VI. New Trends in Juvenile and Pediatric law that OCR is exploring over the next budget year:**

#### **A. Minority Overrepresentation/Cultural Competency**

Cultural competency is an issue that has been ripe for discussion for several years in Colorado and on a national level. According to the TRAILS system maintained by the CDHS, African American and Hispanic Children are most likely to be the subject of a termination of parental rights proceeding. While rates for terminations involving African American children have decreased slightly since 2002, the rates for Hispanic/Latino children slightly increased from 33.7% to 39.8%. As part of our efforts to increase awareness about the role of ethnicity in these case types, we have included training for the GALs on cultural competency and continue to participate in trainings and committee work that address minority overrepresentation in our court system.

#### **B. Meaningful Permanency**

What is meaningful permanency for a young person in the system? As a GAL working with teens in the foster care system, the GAL, along with other professionals in the child welfare system, is charged with finding positive connections for youth in care. This may mean locating relatives, siblings or other kin to help the young person with a sense of identity as the maneuver through the system.

#### **C. Cornerstone Advocacy**

Cornerstone Advocacy is an approach to systemic change involving safe visitation for children and parents involved in the system. The keys areas of focus are visiting arrangements that are more frequent than the typical once or twice a week, placement arrangements that facilitate connections to family members, services that are on point, and staffings so that parents and youth can participate in coordinated case planning with the GAL and social services.

The above mentioned trends are being testing around the nation and have excellent outcomes for children and families. Implementing changes to the status quo is challenging, but these ideas demonstrate results and improve chances for reunification for families. These trends may not only save time for children in the system, but may also save money to county departments and possibly to the OCR, as the less time that children spend in the system will only allow for reduced costs to the state as children move towards permanency. Over the next year, OCR will encourage GALs to think about implementing these measures in their cases in order to expedite permanency and reunification for the children they represent.

We are also seeing counties who have reduced budgets for adolescent services. It has come to our attention recently that DSS is releasing youth from the system at the age of 18. The GAL has the authority to challenge this in court in order to keep services available for youth who are 18.

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## OCR 2009 General Assembly Report

### APPENDIX A –

#### Timeline of Budget Events

In order to understand many of the measures that OCR has introduced over the past year to streamline costs, we have included a Time Line for Budget events

- December 2008 – OCR staff meets with members of the JBC and GAL constituents to discuss the upcoming legislative session and GAL practice within their districts.
- December 2008 – OCR re-evaluates budgetary priorities with the release of the last quarter revenue forecast. OCR continues to track several factors that are driving case costs – increased filings in D&N cases in Denver, increasing court wait-time, and increasing DR filings where the parties may not be indigent.
- January 2009 - OCR receives supplemental budget request \$1,014,357.
- 1/30/09 – Theresa Spahn visits with the 2<sup>nd</sup> JD (Denver) attorneys to discuss the budget and obtain suggestions about reducing costs.
- 2/20/09 – Sarah Ehrlich travels to the 20<sup>th</sup> JD to discuss the budget with the attorneys.
- 2/4/09 – Theresa Spahn traveled to the 18<sup>th</sup> JD to meet the attorneys and discuss ways to reduce costs.
- 2/5/09 – Theresa Spahn and Sheri Danz traveled to the 17<sup>th</sup> JD and gathered suggestions from the attorneys about reducing costs.
- 2/6/09 – Theresa Spahn and Sheri Danz traveled to the 1<sup>st</sup> JD and presented issues regarding the budget crisis.
- 2/12/09 – Theresa Spahn and Linda Weinerman meet with the Judges and Magistrates of Denver Juvenile Court to discuss issues impacting the OCR budget.
- 2/27/09 – Theresa Spahn sends notice to the attorneys on the OCR budget status and announces immediate changes to OCR's billing practices and procedures. Changes include limited mileage reimbursement for attorneys unless they practice in rural jurisdictions, limited reimbursement for travel to and from court in the 1<sup>st</sup>, 2<sup>nd</sup>, 17<sup>th</sup>, and 18<sup>th</sup>, and changing the excess fee limits. Also, OCR implemented new rules about payments in delinquency proceedings. From this date forward, OCR attorney staff, in addition to the billing staff, analyze GAL billing practices on all cases, specifically excess fee requests and costs for experts, in-state travel and litigation expenses.
- February/March – OCR conducts audits of financial statements in domestic relations proceedings, and audits appointments in the four major front range jurisdictions.
- 3/4/09 – Linda Weinerman and Sarah Ehrlich meet with Magistrate Torrington in Denver to obtain information about the paternity docket in Denver and the impact to the OCR budget.
- 3/30/09- Email from Theresa Spahn to attorneys via the listserv. OCR shared the difficulty of the budget process, the recommendations regarding balancing the budget for the judicial branch, and made the attorneys aware of possible statutory changes coming from the legislature.

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## OCR 2009 General Assembly Report

- March – OCR staff draft memoranda at the request of the JBC analyst on proposed efficiencies in truancy, DR and delinquency cases. OCR staff submits materials to the JBC analyst.
- March/April – OCR staff analyze drug/ITC court expenditures, finding the cost per case for drug courts is much higher than the average D&N for the same 6 month period.
- March/April – OCR staff discuss proposed pilot program on ENA with Adam’s County. OCR works with JBC analyst to add to the OCR budget.
- March/April – OCR staff monitors the budget process at the legislature, and works with JBC staff and legislative staff on SB 268.
- April – OCR staff collaborates with the CDE on alternative to truancy programs at the request of JBC analyst. Legislative change is added to the school finance act.
- May– Email from Theresa Spahn to the attorneys via the listserv on the new legislation, SB 09-268. The email also changed the payment time frame to 45 days, and updated the attorneys on the state of the OCR budget.

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## OCR 2009 General Assembly Report

### APPENDIX B OCR LEGISLATIVE REVIEW 2009 LEGISLATIVE SESSION

There is much to report on the 2009 legislative session. These are just a few of the bills that OCR monitored:

HB 1078— Sen. Hodge, Rep. Ryden—Foster parent training for IEP's—requires the department to make Foster parent training available on IEPs. (Signed by the Governor on 3/19/09.)

HB 1044—Sen. Morse, Rep. Roberts—concerning expungement of records relating to a criminal matter for which a juvenile is sentenced as a juvenile after being charged by direct file. Juvenile who is charged as an adult in a direct file case is eligible for expungement of JD records/ eligible to petition the court for expungement. (Signed by the Gov. on 3/18/09.)

HB09-1122—Rep. Roberts, Sen. Morse—expands eligibility to allow certain offenders at 18 or 19, and who are sentenced prior to 21 to be sentenced to the system, allows court to sentence after 19th birthday, as long as before 21st birthday. (Signed by the Gov. on 4/02/09.)

HB09-1314—Rep. Judd, Locked Doors in Day Treatment Centers—Allows day treatment centers to use locked doors in order to protect the public and others in treatment. The bill was killed in Senate Health and Human Services.

HB09-1306 Sen. Renfroe, Rep. Nikkel - Youth Corrections Facilities Reporting—Requires employees of the department of human services (department) to file an incident report any time a youth in the youth corrections system in the department claims to have been injured as a result of child abuse or neglect, the inappropriate use of force or restraint, or an assault by another person in the facility that is facilitated by a facility employee. This bill was killed in committee.

HB09-1321—Rep. Levy, Sen. Morse—The bill is the result of two instances in 2008 where a juvenile was killed or harmed in an adult facility while awaiting trial. The federal act that controls this area of law is scheduled to be renewed in 2009 and contains very similar language as found in HB 1321. The bill was significantly amended in the House Judiciary Committee. As passed, the bill requires the district attorney and defense counsel to make a reasonable attempt to consider the appropriate place of pretrial confinement within 30 days after charges are direct filed. The bill also lists specific factors that must be considered by the district attorney and defense counsel when considering the place of confinement. (Signed by the Gov. on 6/1/09.)

SB 09-69—Court Appointed Parenting Coordinators, Sen. Boyd and Rep. McCann—provides for parenting coordinator immunity if appointed by the court and within scope of duties, specifies when PC may be required to testify or produce records. (Signed by the Gov. on 4/16/09.)

SB 09-79 Sen. Newell, improving the well-being of children in the foster care system by improving the ability of birth siblings to maintain long term connections, allows potential adoptive parents to consider and present to the court information concerning whether a child is bonded with an adult who is willing to raise the child; considers the child's attachment to his or her psycho-logical parent when deciding permanent placement; plans for sibling groups to have continued contact; allows confidential intermediary access to D&N records. (Signed by the Gov. on 3/25/09.)

SB 09-104 Sen. Sandoval— For youth leaving foster care, requires the city or county responsible for a youth in foster care to provide youth with documents such as social security card and birth certificate. (Signed by the Gov. on 5/2/09.)

SB 164 Sen. Newell, Rep. Miklosi -Creates the Child Welfare Training Academy—requires DHS to create rules to establish a training academy, IDs job titles that shall be required to attain certification from the academy as mandatory condition of academy. (Signed by the Gov. on 5/19/09.)

SB 268—Sen. Tapia, Rep. Pommer—Budget Reduction Bill, clarifies the appointment of a GAL to exceptional/ extraordinary circumstances in truancy cases, requires indigency findings for both parties in order to qualify for state pay CFI/CLR, clarifies appointments in delinquency proceedings. (Signed by the Gov. on 5/1/09.)

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## OCR 2009 General Assembly Report

### APPENDIX C– OCR COMMITTEE INVOLVEMENT

To effectively set policy and advocate for the best interests of children, the OCR staff must work beyond the prescribed list of mandates contained in statute. Successful advocacy for children requires collaboration and the sharing of resources among many state agencies, and child advocate organizations. The following provides a sample of committees OCR is involved in, either as a member or chair.

**Governor’s Task force on Child Welfare/HB 08-1404**—Theresa Spahn, Executive Director of OCR, was appointed to the Child Welfare Action Committee in 2008, which will recommend improvements to Colorado's child-protection system following 13 child deaths at the end of 2007 and beginning of 2008. The committee will deliver interim recommendations to Gov. Ritter by Oct. 31 and a final report by Dec. 31, 2009.

**Executive Oversight Committee for Child and Family Services**—This committee was formulated to review the statewide assessment to be given to Region 8, selecting the review sites to put forward to Region 8, identifying initial PIP areas where work can be completed prior to the review to better position us in the review.

**Supreme Court Family Issues Committee and Other Professionals Standing Subcommittee:** This committee was established by the Supreme Court, as a result of the recommendations of the Colorado Supreme Court Commission on Families. This follow up committee is charged with implementation of the 79 recommendations from 2002. The OCR Executive Director served on the original Committee on Families and the subsequent Supreme Court subcommittee. To date, the committee has successfully implemented 75% of the 79 recommendations.

**Colorado Women’s Bar Association** – The Executive Director of OCR is a Past President of the Women’s Bar Association and the former public policy chair. The women’s bar association works to promote women and children’s issues throughout Colorado.

**Denver Model Court:** The Deputy Director of OCR is a member of Denver Model Court. This subcommittee is charged with developing strategies to eliminate multiple foster placements for children in the child welfare system. Statistics indicate that children in Colorado’s child welfare system are moved more frequently across the foster system than children in other states. Denver Model Court focuses on the goal of eliminating foster care moves by ensuring that the permanent plan for each child is well thought out and achievable and is currently focusing on how to avoid disruptions in foster care.

**Denver Child Protection Team:** This is a multidisciplinary team that meets weekly with the Denver Department of Human Services pursuant to CRS §19-3-308 (6) to review the Department’s response to reports of child abuse. Referrals to the Department’s Child Abuse hotline are reviewed to determine if the Department’s response was timely, adequate, and in compliance with the appropriate provisions of the Children’s Code.

**Colorado Child Fatality Prevention Review Team:** This is a state-wide multidisciplinary team that examines every child death in Colorado. The committee is charged with compiling statistical analysis, trends and recommendations to reduce child fatalities.

**Adams County Model Court:** The Adams County Model court project is a collaborative model court that focuses on improving outcomes for children and families involved in the child welfare system.

**Court Improvement Committee** – OCR is an official member of the Colorado Court Improvement Committee, serving as an ex-officio member without voting rights. The CIC focuses on improving the justice system for children, especially children in dependency and neglect cases. Specifically, the CIC oversees the federal grant given to each state that is to be utilized to improve the Dependency Court System.

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## OCR 2009 General Assembly Report

**Training Subcommittee of the Court Improvement Committee** – This subcommittee was established in the beginning of 2007, and the purpose of the committee is to develop a multi-disciplinary training curriculum with CDHS, judges, county attorneys, GALs, and Respondent Parent’s Counsel.

**Juvenile Justice and Mental Health Subcommittee of the Legislative Task Force on the Mentally Ill in Criminal Justice.** This committee is working on obtaining more consistent screening for those in the juvenile justice system, and working with family advocates to assist families with mental health or juvenile justice problems.

**CASA Legislative Committee**—OCR staff was appointed to serve on the CASA legislative committee. This committee will gather information about pursuing upcoming legislation to benefit CASA programs statewide.

**National Association of Counsel for Children** – The NACC is a non-profit child advocacy and professional organization for children’s attorneys. The NACC provides assistance to attorneys and monitors public policy and legislative advocacy. The OCR Executive Director is on the board of the NACC and supports various projects that the NACC engages in on a national level.

**Bridging the Gap: Jim Casey Youth Opportunity Initiative of Mile High United Way** – OCR was invited to participate in implementing the goals of the initiative, whose target goal is to insure youth who age out of foster care will have increased opportunities for transitioning to independent living. This three-year program will assist 75 youths each year to transition out of care and track the success of the youths as they build solid foundations and life skills. OCR staff and to serve on the Partnership Board.

**Juvenile Law Section of the Colorado Bar Association.** The OCR Staff Attorney is the incoming president of the committee. The OCR Deputy Director was the co-editor (along with Barb Shaklee of DDHS) for the Juvenile Law section of the Colorado Lawyer which involves obtaining article submissions and editing them for publication in the Colorado Lawyer.

**C-SIMI Advisory Board** – Colorado Systems Integration Model for Infants – The purpose of the committee is to recommend a community standard and approach for the screening of at-risk pregnant women and newborns in Denver for exposure of drugs during pregnancy.

**School Safety Committee and Task Force**—OCR’s Staff Attorney was appointed to the School Safety Interim Committee in 2009. This Committee is examining issues pertaining to school safety with regard to students reentering public schools after spending time in out-of-home placements. This committee is in the process of finalizing legislative recommendations.