



March 26, 2020

RE: The Office of Respondent Parents' Counsel (ORPC) and the Office of the Child's Representative's (OCR) Concerns and Priorities During the COVID-19 Pandemic

Dear Colorado Judicial Officers:

The Office of Respondent Parents' Counsel ("ORPC") and the Office of the Child's Representative are state agencies that provides interdisciplinary legal representation for indigent parents and children in child welfare proceedings. The decisions and actions of attorneys who contract with and work for the ORPC and OCR are guided by their own judgment, by the direction they receive from clients, by their independent assessment of the best interest standard, and by Chief Justice Directive.

ORPC and OCR are committed to protecting the health and safety of our contractors, parents, children, and other stakeholders involved in the child welfare system across the state. Recognizing the extraordinarily difficult responsibility courts have during this time, ORPC and OCR ask that the courts remain cognizant of the two-pronged goal of not leaving individuals at risk of contracting COVID-19 while also protecting children's safety and families' progress toward reunification and permanency at a time when connection to loved ones and the protection of children is as important as ever.

The COVID-19 pandemic and swift economic downturn has disproportionately impacted indigent families and children and placed unreasonable burdens upon ORPC and OCR independent contractors. ORPC and OCR have identified three primary areas of concern where the Court can implement measures to protect attorneys, children, families, and stakeholders during the COVID-19 outbreak.

1) Allow appearances by phone for contractors, children, parents, and caregivers. ORPC and OCR have received reports as recently as the morning of March 26, 2020 that courts are requiring in-person presence during hearings. While we appreciate the Courts need to stay open, protective measures are being implemented in many places and are working. The use of Zoom meetings and phone appearances not only protect families and professionals but also support holding hearings in a timely manner as required by statute. Unless an appearance by phone would result in a violation of due process, public safety dictates that attorneys and parties must be allowed to appear by phone rather than in person to minimize face-to-face contact and decrease the risk of COVID-19 exposure and transmission. ORPC and OCR support early appointment of counsel or GALs so that parents can be advised prior to shelter hearings and GALs can conduct an independent investigation into the best interest of the child. In addition, if contractors cannot work due to exposure to COVID-19, they are not paid. Unlike public defenders or district attorneys, they do not have state provided medical insurance, paid time off, or built-in coverage for court appearances. Some contractors are currently experiencing an impact to their ability to financially support their own families because they are too sick to work.

2) Allow electronic filings. Some lawyers are currently in quarantine and cannot access court houses to receive and file pleadings. Attorneys and pro se parties should be allowed to file pleadings electronically rather than in person to minimize face-to-face contact and decrease the risk of COVID-19 exposure and transmission. A draft order permitting this, which has been in effect already for several years in the 9th judicial district, is attached to this letter.

3) Maintain family ties and protect parent and children's rights:

a. Prioritize alternative planning for children scheduled to return home: Where children are close to a return home but a parent has not completed all of a required treatment plan, and the only thing preventing a return home is the lack of available services due to the closure of services related to the pandemic, courts should consider whether children can be safely returned home if in the best interest of the child. All cases before the court should be assessed to identify any barriers to return home that can be mitigated through reasonable efforts.

b. Prioritize individualized visitation determinations and court oversight when necessary: Some local county departments of human services and courts are making determinations to suspend all visitation. Some of these decisions appear to be made outside the presence of the court or attorneys, and when no parent, caregiver, or child is present. ORPC and OCR support a collaborative process including all parties to address individual visitation issues outside of court because the parties and caregivers are best positioned to determine whether and how visits can safely occur. However, unilateral decisions by any one party are not appropriate. Absent agreements, the court should continue its role in making individualized visitation determinations. At a minimum, presumptive visitation suspension orders should include due process protections that allow lawyers to bring unresolved issues to the court and to be heard promptly on those issues.

c. Prioritize visitation orders that are consistent with Governor, County, and Public Health Orders. Public Health Order 20-24 states that necessary travel includes travel required by court order. In light of the stay at home orders, courts should also consider including in visitation orders specific language that will allow parents and children to safely travel to wi-fi locations to participate in remote visitation or to gather in public areas for visitation with appropriate social distancing. Many indigent families rely on publicly available wi-fi and public spaces to conduct visits.

d. Prioritize sibling visits and placements where appropriate. Colorado's Foster Youth Sibling Bill of Rights promotes joint placement of siblings and frequent and meaningful contact between siblings when in the best interests of all children in a sibling group. The youth who testified in support of this legislation explained the importance of their siblings and shared compelling accounts of the trauma and hardship they faced as a result of lost contact with their siblings. During the COVID-19 pandemic turmoil, it is more important than ever for children and youth to be able to maintain important sibling relationships whenever they can do so safely. Courts should inquire about sibling contact and placement and prioritize hearings necessary to ensure sibling contact consistent with the Sibling Bill of Rights.

e. Where face-to-face visits are suspended, frequent video and telephone visits should be established immediately with whomever is available to supervise or monitor. Supporting and providing necessary equipment and resources to families to facilitate visitation is a reasonable effort the department must make, and technology may be necessary to accomplish it.¹ ORPC and OCR contractors can also be utilized to help address technical issues by identifying their clients' technological needs. It's important that professionals see children and parents at this time of stress to ensure safety plan compliance and safety of kids, so the court should consider ordering video visitation. It's also important for parents and children to see each other, which video visiting would allow.

¹ This is consistent with the Colorado Department of Human Services ("CDHS")'s current guidance to the counties: "parents and children are likely to be more anxious and more than ever need contact with each other. If a county has a clear need to decrease face-to-face visitation, they should be able to increase visitation/contact through technology -- even if it is to add a phone call. Any change in a visitation plan should be coordinated with the court and GAL and clearly documented as to why the modification was necessary, and should be handled with the child and the parent with compassion and grace. County-designed protocols should address parent/child visits with consideration to the best interest of the child, parent, and to the health of the worker. It is important to remember that visitation for children/ youth, parents, and siblings visits this comes under policies and statutes for best interest findings and reasonable efforts findings."

f. Address communication and barriers to services. Courts should encourage all parties to meet virtually as frequently as possible to address barriers to services, communication challenges, and barriers to return home orders during the pandemic.

g. Prioritize plans to address setbacks caused by the pandemic. ORPC and OCR do not want families to suffer setbacks in meeting treatment plan goals through no fault of their own. The court should encourage child welfare parties to establish plans to address setbacks caused by the pandemic, to avoid extending EPP timeframes when parties cannot meet treatment plan goals due to cessation of visitation and/or unavailable services.

h. Prioritize reviewing placements and addressing concerns of children and youth in group settings. Children and youth in residential facilities, detention centers, and other group settings are uniquely vulnerable to adverse consequences resulting from social distancing and stay at home orders. Staff shortages, unprecedented stressors on facilities, and lack of contact with outside entities put the young people in these facilities at risk of undetected isolation, neglect, and abuse. Courts should prioritize ongoing reviews of cases involving children in group settings as well as hearing any motions necessary to address concerns with such placements.

i. Encourage creative problem solving. ORPC and OCR encourage creative problem solving to support marginalized populations in maintaining contact with children and to support children in having the security of hearing from their parents during this public health crisis. Some solutions that have been utilized across the state include: creation of a jurisdictional technology fact sheet for parents, foster parents, and kin; requesting local providers to provide free Wi-Fi or asking local businesses (or libraries) to extend their Wi-Fi coverage to include their parking lots; reaching out to homeless shelters to facilitate technology; encouraging parents and children to make video/audio/photo recordings to share with each other through the caseworker; frequent family engagement meetings held virtually to discuss barriers to ongoing communication and contact.

Child welfare always involves a balancing of risks: the risk of separation trauma to children from removing them from a parent and the risk of abuse or neglect if the children remain in an abusive or neglectful placements. With the added balancing of the risk of COVID-19 and transmission, judicial decisions are now more important than ever.

ORPC and OCR are committed to working cooperatively with its contractors and with other stakeholders in the child welfare system to ensure that families are safe and protected during the COVID-19 pandemic. Please reach out to us if we can be of assistance.

Best,

Melissa Michaelis Thompson, Esq. | Executive Director
OFFICE OF RESPONDENT PARENTS' COUNSEL

Chris Henderson, Esq. | Executive Director
THE OFFICE OF THE CHILD'S REPRESENTATIVE

<p>NINTH JUDICIAL DISTRICT</p> <p>STATE OF COLORADO</p> <p>GARFIELD COUNTY, PITKIN COUNTY, AND RIO BLANCO COUNTY</p> <hr/> <p>ADMINISTRATIVE ORDER</p>	<p>COURT USE ONLY</p> <hr/> <p>Administrative Order 18-01</p>
<p>ORDER AUTHORIZING A PILOT PROGRAM FOR E-MAIL FILING OF DOCUMENTS IN DEPENDENCY AND NEGLECT CASES</p>	

The current statewide electronic filing system does not include the “JV” case class, which includes dependency and neglect (D&N) cases. The prompt exchange of information, reports, pleadings, and court orders in D&N cases ensures that the best interest of the child is protected while applying procedural safeguards to protect parental rights.

The members of the Ninth Judicial District D&N Best Practices Committee, which includes assistant county attorneys, respondent parent counsel, guardian ad litem, court appointed special advocates, treatment providers, and department of human services representatives, desire to have the ability to file documents in D&N cases via email to achieve the prompt and efficient exchange of information.

C.R.C.P. 5(b)(2)(D) authorizes the service of pleadings by either the statewide electronic filing system or other electronic means, including email. C.R.C.P. 121 § 1-26 and CJD 11-01 govern the standards for electronic filing and service.

In order to facilitate the prompt exchange of information in D&N cases, the Court hereby adopts a pilot program to allow email filing in D&N cases in accordance with the procedures described below.

1. **To Whom Applicable.** All parties in a D&N proceeding shall file pleadings, reports, and other documents by email. The Court may allow unrepresented parties to file documents in hard copy on a case by case basis.
2. **Email Filing Mandated.** For the duration of this Order, email filing of all documents and pleadings in D&N cases in the Ninth Judicial District is mandatory. A document shall not be transmitted to the Court by any other means unless the Court at any later time requests a printed copy.
3. **Format.** All pleadings and documents must conform to the requirements of C.R.C.P. 10. All pleadings and documents transmitted by email must be legible. It is the filing party's responsibility to confirm any pleading or document attached to an email for filing and service conforms to this policy.
4. **Electronic Signatures.** All pleadings must be signed as set forth in C.R.C.P. 121 §1-26 (1) (f) and (8) using either an electronic signature or a scanned signature.
5. **Paper Copy Retained.** A printed or printable copy of any pleading filed by email shall be maintained as set forth in C.R.C.P 121 §1-26 (7).
6. **Filing Deadline.** Unless otherwise ordered by the Court, a document transmitted by 11:59 p.m. Colorado time shall be deemed to have been filed the Court on that date as set forth in C.R.C.P. 121 §1-26(5).
7. **Technical Difficulties.** Upon satisfactory proof that an email filing was not completed due to technical problems, the Court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be emailed and may allow additional time to respond.
8. **Service.** Pleadings must be served pursuant to C.R.C.P. 5 on all attorneys and unrepresented parties. Service by email is presumed acceptable unless a party objects in writing. Attorneys shall place their email address on all pleadings.

9. **Multiple Documents.** Each pleading or document must be attached to the transmittal email as a separate attachment. Documents shall not be transmitted by link (e.g. dropbox) or bulk file (e.g. zip file). No attached document shall exceed 25MB in size.

10. **Email Addresses for Courts.** Pleadings and documents shall be emailed to the District Courts, with copies to all other parties as required, using the following email addresses:

Garfield	GarfieldDN@judicial.state.co.us
Pitkin	PitkinDN@judicial.state.co.us
Rio Blanco	RioDN@judicial.state.co.us

11. **Processing and Verification.** The receiving clerk shall, upon receipt of an email pleading or document, print a copy of the pleading or document, date stamp the printed copy based on the time and date the email is received, scan the “filed” stamped copy, enter the filing information in Eclipse (so that the register of actions is complete and correct), and place the printed copy in the Court’s paper case file. The receiving clerk should then “reply” to the sender’s email by attaching and sending the scanned copy of the “filed” stamped copy of the pleading or document. The “filed” stamped copy shall suffice as the Court’s original pleading. The party initiating the filing is responsible to ensure that the scanned, “filed” stamped copy of any pleading or document is complete and accurate. In order to reduce the possibility of transmitting confidential, sealed or other restricted material to an inappropriate recipient, the receiving clerk shall NOT be required to “reply to all” when returning the “filed” stamped document – the party initiating the filing shall be responsible for any further distribution of the “filed” stamped copy.

12. **Protection of Confidential Information.** Per Rule 1.6(c) of the Colorado Rules of Professional Conduct, a lawyer is required to make “reasonable efforts” to prevent the inadvertent or unauthorized disclosure of or unauthorized access to client information. Rule 1.6(c) applies to the email filing pilot program described in this Order. “Reasonable efforts” may include using an encryption program to send emails. The Court shall ensure that the judicial email addresses listed above can receive encrypted emails and that the receiving clerk has the ability to download encrypted email.

13. **Suppressed/Sealed and Other Special Filings.** The party email filing any pleading or document that is required to be filed as a suppressed, sealed, or otherwise restricted filing (e.g. psychological evaluation of a party) shall be responsible for clearly specifying the nature of the filing in the email.

14. **Effective Date and Duration of Order.** This Order shall be effective on **FILL IN DATE** and shall remain in full force and effect unless modified or withdrawn by the Chief Judge of the Ninth Judicial District. The foregoing notwithstanding, in the event the “JV” case class is included in the state electronic filing system, this Order shall expire automatically and without further notice or action upon the date said system becomes available in the Ninth Judicial District.

15. **Report to Chief Judge.** The Ninth Judicial District D&N Best Practices Team shall evaluate this policy and its use in D&N cases during the coming year and submit a status report to the Chief Judge on the first anniversary of this Order setting out any recommended changes or modifications.

SO ORDERED this day of , 2018.

BY THE COURT:

James B. Boyd

Chief Judge