SUBJECT: **<u>District Plan for Handling Dependency and Neglect Cases</u>**

To: **Judicial District Juvenile Court Judges and Magistrates, Clerk of Court, State Court Administrator's Office, Larimer County Attorney, County Department of Human Services, Dependency and Neglect Contract Attorneys, Guardians ad litem, CASA and Best Practice Court team members**

Date: **JANUARY 2012**

I. Introduction

The procedure for handling dependency and neglect [D&N] cases in Larimer County is set forth below. This plan incorporates the requirement of Colorado Statutes, Chief Justice Directives 98-02, 96-08, the recommendations of the *Child Abuse and Neglect Cases in the Colorado State Courts* 1996-2000 – *A Reassessment* dated September 2002, and the experiences of other jurisdictions in improving practice in D&N cases. This plan replaces the District Plan for Handling Dependency and Neglect Cases adopted on _____.

The following is a statement of philosophy for this district that the Best Practice Courts team believes result in improved and expedited outcomes for children and families:

- Making every hearing a meaningful event with defined objectives and/or specific actions to be taken in order to eliminate delay and empower parents to participate in treatment planning and engagement in treatment at the earliest appropriate time.

- Affording parties opportunities to collaborate and to resolve issues consensually at all stages of the case in a non-adversarial, problem-solving environment that is directed by a neutral party. This can be achieved in

the form of mediation, facilitator meetings, family group conference settings, etc.

- Focusing on permanency from the beginning and at every stage of the case with a family-focused/child-centered approach to each case.

- Distribution of written court orders to all parties at the conclusion of each hearing, whenever possible. Such orders shall be in clear and concise language that is understandable to most parents.

- This plan may result in the following benefits to all parties involved in the D&N process:

- Expedited placement of children in safe and permanent homes.

- Earlier development of treatment plans and quicker engagement of parents in their treatment plans

- Greater "ownership" because of an earlier participation in treatment plans by parents who have participated in treatment plan development and who have participated in open discussions about their treatment progress with their caseworker, attorney, the guardian ad litem, and the CASA volunteer.

- Earlier identification of high-risk cases, the need for amended treatment plans, and the need for concurrent permanency planning.

- Reduced foster care costs.

- More productive use of professionals' time and allocation of agency costs by offering a variety of settlement opportunities in order to resolve issues, thereby avoiding lengthy contested hearings.

- More efficient use of judicial resources and professionals' time by reducing the number of unproductive court appearances.

- More efficient docket management, case tracking and data management.

- Greater accountability and an increased level of support and collaboration with all parties involved in the D&N process.

- The opportunity to gather all players of a family's support system (personal and professional) into collaborative meetings in order to treat children and families with a holistic, team-oriented approach rather than with isolated partnerships.

- Greater understanding by parents regarding the dependency and neglect court process and how to navigate the child welfare and community support systems for the benefit of their children.

The following sections outline the process for handling D&N cases in the juvenile court of Larimer County.

II. Temporary Custody and Advisement Hearing

A. *Purpose*: To make a determination as to temporary custody, appropriate placement and protective orders pertaining to the child and to set a return date for First Appearance. To ensure all respondent parents are identified, represented by counsel and advised of the D&N process and consequences and to facilitate early case assessment and provision of services.

B. *Process*:

1. Removal (Emergency) cases: In cases initiated by removal of a child, the Emergency/Temporary Custody/Advisement hearing shall be held within 72 hours of removal of the child (exclusive of weekends and holidays), unless an earlier hearing is mandated by statute.

All Respondent parents will be notified of the hearing by the Larimer County Department of Humana Services ("LCDHS") and the Assistant County Attorney. Efforts will be made to ensure that respondent parents appear at the hearing so that the D&N petition can be served, the parties advised, and counsel appointed. Respondent parents' counsel will be available to meet with prospective clients at least 30 minutes prior to the hearing. Applications for court Appointed Counsel, Orders Appointing counsel, Advisement of Rights forms and affidavits regarding putative fathers and potential kinship placements will be completed before or immediately after the hearing.

If the child is removed from the home, the parties have the right to have a hearing in which the court must determine:

- Whether continued placement out of the home would be contrary to the child's best interest (CRS 19-1-115(6)(a); and
- Whether reasonable efforts were made by LCDHS to prevent removal or whether an emergency situation exits requiring temporary removal. (CRS 19-1-115(6)(b)
- Whether reasonable efforts have been or will be made to reunify the child and the family or determine that efforts to reunite have failed. (CRS 19-1-115(6)(c).

- Whether procedural safeguards with respect to parental rights have been applied in connection with the removal, a change in placement and any determination affecting parental visitation.

The court may enter protective orders as needed, including orders regarding temporary custody, Family Time, and provisions of services. The court will inquire as to identity and location of any non-appearing parents and the efforts to locate and notify them. The Court may authorize service by publication, if necessary. The court shall also inquire as to the applicability of the Indian Child Welfare Act ("ICWA"). If ICWA applies, the standard for removal is by clear and convincing evidence and the child can only be removed if there is imminent physical or emotional damage or harm.

2. Non-Emergency cases: The case is initiated by the filing of the D&N petition. Advisement hearings are held within 30 days after the petition is filed. The County Attorney's office will serve the respondents personally with the summons and petition at least 5 days before the hearing. Out of state respondents shall be served by certified mail.

3. Visitation/ Family Time: At the Temporary Custody/Advisement hearing, the court shall put in place, a meaningful Family Time Plan. This Family Time Plan shall become part of the Temporary Custody order and shall remain in place until the plan is changed by the court, or (if approved by the court), modified by the caseworker and the guardian *ad litem.*

Children and families shall be provided meaningful and safe family time from the time they are removed from their parents' custody (whether to foster care, kinship or any other out of home placement) until reunification is accomplished or until further order of the court. The goal is for LCDHS to provide visitation within 48 hours after removal of the child from the parents. However, that is not always possible, but visitation should at a minimum occur within one week and as much family time as possible, consistent with the best interests of the child both in terms of frequency and duration, and to provide that opportunity in such a place and manner so as to make it as natural as possible. The family time provisions contained in this document are presented as the *minimum* family time and, when possible and appropriate, provisions for more family time shall be made and ordered.

Family time plans should be based on the unique facts of each case. Decisions regarding family time should be articulated to all relevant parties to the case, must be factually based, appropriately documented, and approved by the court. Absent imminent physical danger to the child, Family time plans for nursing mothers and babies shall be set up immediately.

If siblings cannot be placed together, the Family Time Plan should make specific provisions for contact between siblings. It is not necessary that all siblings be present for all family time. Considering the children's ages and activities it may be appropriate to have some family time as a complete family unit, and some spent with various parts of the family unit. Provided however, the duration, length, or quality of family time for one child or parent should not be sacrificed on account of another child or parent.

III. First Appearance hearing:

A. *Purpose:* To allow the Respondent parents to enter admissions or denials regarding the allegations contained in the petition.

B. *Process:* The First Appearance hearing is held within 30 days of the filing of the petition.

1. Denials: If the allegations of the Petition are denied, the court sets the matter for an adjudicatory hearing. The court will also set facilitation or other mediation to allow the parties an opportunity to resolve issues prior to the adjudicatory hearing.

2. Admissions: If the Parties enter an admission to any allegation of the Petition, the court will hold a dispositional hearing adopting an appropriate treatment plan for the family. A treatment plan will be filed by LCDHS and served on the parties and counsel at least two weeks prior to the First Appearance hearing.

3. Defaults: The court may enter a default judgment as to any non-appearing party who has been served. The court may authorize service by publication where appropriate and default judgment is to be entered at the next scheduled hearing.

The court will set a review date and also make findings with respect to:

- Whether continued placement out of the home would be contrary to the child's best interest (CRS 19-1-115(6)(a); and
- Whether reasonable efforts were made by LCDHS to prevent removal or whether an emergency situation exits requiring temporary removal. (CRS 19-1-115(6)(b)
- Whether reasonable efforts have been or will be made to reunify the child and the family or determine that efforts to reunite have failed. (CRS 19-1-115(6)(c).
- Whether procedural safeguards with respect to parental rights have been applied in connection with the removal, a change in placement and any determination affecting parental visitation.

IV. Dispositional Hearing

A. *Purpose*: To order a treatment plan designed to focus on the needs of the family and children and specifically created to remedy the issues that caused the children to be declared dependent and neglected.

B. *Process*:

1. Timing: The court may set a dispositional hearing within 30 days of the adjudicatory hearing provided the treatment plan is not previously agreed to and ordered.

2. Preparation: A treatment plan will be prepared by the caseworker and the parents, filed with the court, and provided to the parties and counsel at least two weeks prior to the dispositional hearing. The treatment plan will be developed in consultation and collaboration with the Guardian *ad Litem* and the Respondents and the parents and the family, unless a parent refuses to participate or is otherwise unavailable.

3. Disputed Terms: If there is a dispute with the terms of the treatment plan, a party may request a hearing on any element therein. In an attempt to resolve the dispute there may be additional family group decision making meetings and/or court-ordered facilitations prior to a contested hearing.

4. Court Review: The court will review the terms of the treatment plan to determine if the plan submitted, or as amended, is reasonable and appropriate. The court will also assess the parties' willingness to comply with the treatment plan.

5. Advisement and Order: The court will advise the parties of the potential consequences of not complying with the treatment plan. The court will order the treatment plan or find LCDHS cannot develop an appropriate treatment plan at this time pursuant to C.R.S. 19-3-604(1)(a) or C.R.S. 19-3-604(1)(b) and require that the permanency planning hearing be set within 30 days of the finding.

V. Reviews

A. *Purpose.* To review the need for continued placement (if the child has been removed), paying particular attention to the Federal requirement to reunify children within 12 months or have permanency within 24 months from the date of the removal, progress on and modification of the treatment plan, and the continued appropriateness of the permanency goal. In all cases where the child is in an out-of-home placement at the time of the review, a judicial determination of reasonable efforts on the part of LCDHS to prevent out-of-home placement, to reunify the family within 12 months and to place the child in a timely manner in accordance with the permanent plan must be made.

B. *Process.* Following the Dispositional hearing, the court will hold Review hearings at determined intervals or at the request of parties, county attorney or Guardian *ad litem.* The Court has the discretion to hold frequent reviews if interpretation of the facts and circumstances of the case merit it. Written court reports are provided by the Larimer County Department of Human Services 7 days prior to the review. The report may include a brief social history and placement history, discuss the developments in the case since the last hearing or review and address each of the critical review tasks and recommendations for the date and the next written review or review hearing.

VI. Permanency Planning Hearing

A. *Purpose*: To adopt a definitive permanent plan for each child in out-of-home placement and to take significant steps toward implementing the plan. The permanency planning hearing is to make a decisive, long-term decision regarding the permanent placement of the child. Accordingly, parties should be prepared to take whatever steps necessary to finalize the permanency planning goal by the date established by the court.

B. *Process*:

1. Timing: In an Expedited Permanency Plan ("EPP") case, the permanency planning hearing must be held within 3 months of the dispositional hearing. In a non-EPP case this hearing will be held within 9 months of removal. An initial permanency planning hearing will be set before a District Court Magistrate 30 days prior to the 3 and 9 month deadlines respectively. The County Attorney will identify the proposed permanency plan goal within 15 days prior to the hearing.

2. Response/Objection to Purposed Goal: Respondents must provide a written notice within 5 days advising the court whether there is an objection to the permanency plan. If there is an objection, a contested hearing will be set either before a District Court Judge or Magistrate.

3. Reunification Goal: If the permanency plan goal is reunification within 6 months and the child has not returned within 6 months, a second permanency plan hearing will be held.

4. Amendments to Treatment Plan: LCDHS shall file a written report and any proposed amendments to the treatment plan at least one week prior to the permanency planning hearing.

5. Orders and Possible Outcomes: The court shall enter a permanency planning goal as well as a goal deadline. The court shall order the LCDHS to make reasonable efforts to finalize the permanency goal by the goal deadline. Possible permanency planning outcomes include:

   a. Remain Home
   b. Return Home within 6 months
   c. Return Home more than 6 months after the permanency planning hearing
   d. Termination of parental rights to enable adoption or other permanent plan
   e. Relinquishment to enable adoption or other permanent plan
   f. Allocation of parental rights and responsibilities to an appropriate relative or non-relative; permanent custody; guardianship
   g. Other planned permanent living arrangement (OPPLA) long-term foster care; independent living/emancipation

6. Court Finding: If removal has occurred or placement is continued, the court shall make appropriate findings regarding placements and whether reasonable efforts to eliminate the need for placement have occurred. If supported by the evidence, the court must find that the Department continues to make efforts to finalize the permanent plan. If a goal other than return home or adoption is adopted by the court the court must make findings that there are compelling reasons not to adopt such a goal.

7. Concurrent Planning: C.R.S. 19-3-508(7) specifically authorizes efforts to place a child for adoption or with a legal guardian or custodian to be made concurrently with reasonable efforts to preserve and reunify the family.

VII. Participation of Children in the Court Process

A. C.R.S. 19-3-702(3.7) requires the court consult with the child in an age appropriate manner to determine the child's wishes regarding the permanency plan.

B. In response to the statutory requirement, and in light of the Section 8.3C.2c Title IV-E publication (see also Social Security Act-section 475(5)(C)(ii)), the following procedures for permanency hearings are acceptable:

1. Guardian *ad litem*'s and caseworkers will work together to ensure that the children know they have a right to be heard by the Court. They will be told that they have several options, including direct court attendance, letter, fax or email to the court, or attending a hearing in chambers.

2. The presumption will be that the child will be allowed to come to court. This presumption can be rebutted by the caseworker or the Guardian *ad litem* and may include such reasons as young age of the child, mental state of the child, developmental disability of the child, or preference on the child's parts to participate in another way. The court should decide whether the child attends the hearing or not based upon what is in the best interest of the child.

3. The Guardian *ad litem* and the caseworker will work out transportation issues. Foster parents and CASA's should be a strong resource for transportation.

4. If a child does not participate in a permanency planning hearing, the Court will inquire as to whether the child was consulted and what his/her response was. An oral report addressing the child's position will be sufficient.

5. Even though there are frequent permanency hearings, the statute requires that children be consulted for each hearing. Frequency of hearings is not a reason to discourage

the child from participating in the permanency hearings, however they may not be able to attend all hearings and therefore the caseworker and Guardian ad litem should encourage the child to participate in another way..

6. If the Guardian *ad litem* and caseworker disagree on the issue of whether a child should attend a hearing, the Court will make the final decision.

7. In order to address the concerns about children's fear and anxiety, those present agreed that every effort will be made to make this an empowering and pleasant experience for children. The Court is committed to assuring children that the decision about permanency is not their decision alone, but the Court responsibility is to ensure they participate in the decision making process.

C. Other Permanent Plan Living Arrangement ("OPPLA") /Emancipation: The court recognizes the special needs of children emancipating from the system. Due to the failure of the system to meet their needs for future success there is a greater likelihood of homelessness and substance use among this group of children. Therefore, in the best interest of the child, the court will set aside time to address, in a face-to-face interaction, the potential and expectations of the children under the designation OPPLA/Emancipation.

VII. Termination of Parental Rights

A. *Purpose*. A judicial determination as to whether there are statutory grounds to sever the parent/child legal relationship and whether termination is in the best interests of the child.

B. Process.

1. Motion. The County Attorney or a Guardian *ad litem* may file a motion to terminate the parent/child legal relationship. This motion cannot be filed until 30 days have lapsed from the Adjudication. Although the County Attorney or the Guardian *ad litems* usually do not proceed with a motion to terminate parental rights until the Respondents have had a reasonable period of time to follow the treatment plan. The court may order the County Attorney to Show Cause as to why a Motion for Termination of Parental Rights should not be filed.

2. Set for Trial. Once the motion is filed, the court shall set the trial for no more than 120 days from the date of the motion (unless good cause exists and it serves the best interest of the child) and no earlier than 30 days from the date of the motion.

3. Findings. C.R.S. 19-3-604 defines the standard of proof, the factors to consider and the necessary findings to determine whether the termination motion should be granted.

4. ICWA. If ICWA applies and the tribe has not removed jurisdiction from district court, the standard of proof for a termination of parental rights hearing is beyond a reasonable doubt. In addition, an expert witness needs to give testimony that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Finally, the People must prove that the Department of Human Services used "active efforts" to return the child home rather than "reasonable efforts."

IX. Post Termination Review

A. *Purpose*. To review the progress of the case since termination and to amend, if necessary, the permanency plan.

B. *Timing*. The initial review shall occur within 90 days of the order of termination of parental rights. All further reviews will follow the regular review process.

X. Adoption Hearing

A. *Purpose*: To provide a permanent legal home for the child that will serve the child's best interest and grant to the adoptive parents all of the rights and responsibilities of a parent pursuant to statute.

B. *Process*:

1. Timing: The adoption hearing shall be held as soon as possible after the child becomes free for adoption. When an order is entered by a District Court Judge which terminates the parent-child relationship and no appeal is filed, the child will be free for adoption 21 days after the entry of written decree of termination of the parent-child relationship. If an appeal is filed, the child is not free until a final mandate is issued by the appellate court. In cases where a relinquishment petition is granted, the child is not available for adoption until the relinquishing parent fails to file a motion to set aside the final order of relinquishment. If a relinquishment is uncontested for 90 days, the relinquishment order is entered.

2. Findings. When hearing an adoption petition for a child in foster care, the court will determine the following

a. Either parental rights have been voluntarily relinquished or that the parent-child relationship has been involuntarily terminated and the appeal process is complete;

b. Fingerprint based criminal records checks of all adopting parents have been completed and show that the parent is not ineligible to adopt a child pursuant to the provisions of C.R.S. 19-5-207(2.5)(a) and 19-5-208(5).

c. All required consents to adoption are provided and are genuine;

d. Home studies and/or court-ordered reports are properly reviewed and indicate that the adopting parents are of good moral character and have the ability to support and educate the child;

e. Adoptive parents understand that the adoption is permanent and irreversible;

f. In cases involving children with special needs, adopting parents have been advised of all the necessary services and special circumstances; surrounding the child, accept the adequacy of adoption subsidies, and are aware of services and assistance that is available after the adoption;

g. The adoption by the petitioners will serve the best interest of the child.

3. Report of Adoption. The Report of Adoption shall be issued by the clerk to the Bureau of Vital Statistics.

XI. Conclusion

The Court expects all parties and professionals in dependency and neglect cases to comply with the terms of this District plan for handling Dependency and Neglect Cases. Not all timelines outlined in this plan are statutorily required. However, they are benchmarks established for the Juvenile Court of this District, and are in the best interests of the children and families and are expected to be successfully attained. This plan's effectiveness will be formally evaluated annually or more frequently as needed based upon the goals outlined in the Introduction.

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Presiding Judge of the Juvenile Court

Eighth Judicial District