Allocation of Parental Responsibilities (APR)

1. **Resources**
    - Children's Code Authority to order APR in a D&N case – C.R.S. § 19-1-104(c) and (4)-(6)
        i. NOTE – if there is an existing APR order out of another domestic relations or paternity case, it must be certified into the D&N – C.R.S. §19-1-104(4)
    - Review a parenting plan for the types of things a DR court looks for, there is more detail that needed most D&N's but it is a good guide. www.courts.state.co.us – Family Case Forms - Parenting Plan (JDF 1113)
    - The GRID – F9-10
    - C.R.S. § 14-10-124 – Best interest of Child

2. **Time Frame For hearing**
    - Dependent on case progress and child's needs, because is often used in older children it may be outside the one year mark
    - For EPP cases, should be occurring within twelve months, unless good cause is found to exceed the EPP timeframes.
3. **Notice**
    - No specific provision in Title 19 for notice
        i. Hearings often set on record, notice is secondary
        ii. Using 30 days is good rule as that is what is required for a TPR hearing and allows for response time, etc.

4. **Filing of Motion for APR**
    - Parent vs. Non-parent
        i. Colorado has a "psychological parent" statute to allow for APR to non-parents.
            1. 6 month requirement for filing for a non-parent to file their own action in DR court – use a guide
                a. Some courts will not do an APR if the child has not been with them more than 6 months
        ii. For a parent, this could be filed in less than 6 months or less than the year timeframe for EPP cases.
        iii. The child's needs and best interest should drive the timing of filing this Motion
5. **APR Orders**
    - **Allocate Parental Responsibilities**
        i. Because the orders are certified into a DR case and later may be reviewed you want to include what the DR court will need to review:

1. **Decision-making** – allocation of decision making responsibility involves the major decisions regarding the child's medical, mental health, religion and education. (emergency decisions are made by person who has the child at the time, with a requirement to notify the other)
    a. Types:
        i. Joint – where the parents or parents/non-parents will make joint decisions.
            1. Consider the relationships these parties have and whether this will work.
            2. What happens if the parent is no longer available or using again, etc.
        ii. Sole – where on party is given sole discretion to make decisions
            1. Usually includes a provision for meaningful consultation
2. **Parenting time –** allocation of the parenting time schedule for the parents, non-parents.
    a. This could be a traditional "schedule" (5-2-2-5, every other weekend, etc. or 50/50)
    b. This could be at the discretion of one party
        i. NOTE – DR Courts would not normally order this absent a stipulation or a demonstrated reason.
        ii. This can create issues going forward related to modifications of the order and establishing parenting time.
    c. Consider including what needs to happen if an expansion could occur or when a modification may be filed (completion of treatment, etc.)

6. **Burden of Proof/Standard**
    - Person who filed Motion carries the burden of proof, preponderance of the evidence
    - Standard is Best Interest of the Child

7. **Considerations in filing**
    - **Title 14 Guidance as to how to define "Best Interest" if in a DR case**

i. NOTE – Title 14 not apply but 14-10-124 has guidance for what a DR court looks for in fashioning an APR Order, so you want to be including some of those factors

- **Child's position/relationship with parents/other issues**
  i. The child's desires are important, their age and their relationship with their parents may mean an APR is the preferable option
     1. **Existing Parental Relationship:**
        a. Mental health or substance abuse cases, where parent can do parenting time but couldn't be primary parent due to cyclic issues. You need a custodian who will set appropriate limits with the parents in this situation but you also need a custodian who will foster a relationship and parenting time with the parent.
     2. **Adoptive Study Issues:**
        a. some relatives are appropriate caregivers but may have old criminal or DHS history so may fail an adoptive home study this may be an option
     3. **Proposed Custodian Prefers APR:**
        a. some relatives struggle with the termination aspect but are protective and would make good decisions. You should consider the reasons why the relative wants APR and whether that is actual permanency for the child.
        b. The concerns about this generally relate to a belief that a relative is likely to just give the child back to the parent but the same is true in terminations, APR is a "legal" status which may not be what actually happens
     4. **Child's Position:**
        a. older children may not consent to an adoption and/or not want their parents rights terminated but are okay with a permanent living arrangement with the custodian. GAL should have an ongoing dialog about this with child to be able to understand, consider and articulate their position in the decision-making process even if the GAL takes a different position.

8. **Participation in Hearing**
   - **Special Respondents or Intervenors:** They can participate in an APR hearing and present evidence.

- **Child may/may not be present at a hearing:** if non-contested and are older, they may attend as this is the closure for their case. In a contested hearing, the GAL should look at whether it is appropriate for them to appear for all or part or to provide their position directly to the Court

9. **Less Drastic Alternative**
    - APR is a less drastic alternative to termination. An APR is only an appropriate less drastic alternative if it can meet the child's physical, mental, emotional needs and is in their best interest.
10. **Certification into DR cases**
    - This must occur to keep the Order "live" for later modification as a D&N case closes with limited jurisdiction
    - If parties had a previous DR case that was certified in it should be certified back to that case
    - If a new DR case will be created, it should be certified into the county where the child resides (some counties just certify where D&N was filed)

<u>Guardianship</u>

1. **Resources**
    a. **GRID F10-14**
    b. **<u>www.courts.state.co.us</u>**
    c. **C.R.S. § 15-14-201, et. Seq.**
2. **Petition for Appointment of Guardian – C.R.S. § 14-14-205**
    a. Can be filed by the minor or a person interested in the welfare of the minor\
    b. A copy of the Petition and Notice must be served on the following:
        i. Minors age 12 and older unless the minor is the petitioner
        ii. Any person alleged to have had the primary care and custody during the 60 days prior to filling of the petition
        iii. Each living parent of the minor or if none the adult nearest in kinship that can be found
        iv. Any person nominated to be the guardian by the minor if the minor has reached age 12
        v. Any appointee of a parent/guardian
        vi. Any guardian or conservator acting for the minor in this stat or elsewhere
3. **Hearing on Petition**
    a. **Standard of Proof –** Preponderance of the evidence
    b. **Findings Required – C.R.S. § 15-14-204(2):**
        i. Appointment of guardian is in the child's best interests

ii. The parents have given their consent, or the parental rights have been terminated, or the parents are unwilling or unable to exercise their parental rights, or the guardian has died or become incapacitated and has not made arrangements for a second guardian.

4. **Considerations for a Guardianship**
    a. Financial responsibilities and options for subsidized guardianships
    b. Certification into a probate case if D&N court enters Guardianship
    c. Special requirements for the Guardian
        i. Letters of guardianship
        ii. Guardian's report
        iii. Modification
        iv. Termination

Adoption

1. **Resources**
    a. **C.R.S. § 19-5-208**
    b. **GRID F1-8**
    c. Forms can be found at **www.judicial.state.co.us**
2. **Filing of Petition/Inclusions with Petition – C.R.S. § 19-5-208**
    a. Petition is filed by the prospective adoptive parents in the county they live or the county the agency is in
        i. Check your local practice on whether the Department helps with the paperwork and getting it filed.
    b. The Petition must include if the child is an Indian Child and identified tribe
    c. Written consent from the agency
    d. Affidavit related to fees, costs or expenses associated with the adoption
    e. Home study report
3. **Notice**
    a. The prior ICWA notices with postal receipts must be attached to the Petition
    b. If there are required notices under the Interstate Compact for Placement of Children they would also be attached to the Petition
4. **Time Frame for Hearing**
    a. Can be set any time after the paperwork and necessary supporting documents are collected and filed with the court as long as the child has been placed with the adoptive parents for at least 6 months
5. **Required Findings for Adoption Decree**
    a. Child is available for adoption, C.R.S. §§ 19-5-210(2)(a), 19-5-203(1)
        i. If the child is over 12 that the child has provided written consent, C.R.S. § 19-5-203(2)
    b. The person adopting has good moral character, has the ability to support and educate the child and has a suitable home for the child, C.R.S. § 19-5-210 (b)

c. The criminal background records do not reveal any proscribed criminal background described in 19-5-207 (2.5)(a)
d. The child's mental and physical condition makes them a proper subject for adoption in the adoptive home. C.R.S. § 19-5-210(2)(c)
e. The best interests of the child will be served by the adoption in the adoptive home, C.R.S. § 19-5-210(2)(d)
f. If the child is part of a sibling group, whether it is in their best interests of the child to remain in the intact sibling group, if the adoptive home involves a non-joint placement for the child with their siblings, the Court must make findings by a preponderance of the evidence that a joint placement is not in the child's best interest. C.R.S. § 19-5-210(2)(e),

6. **Considerations for Hearing**
   a. **ICWA Priorities for Placement**
      i. If the child is an Indian Child there are placement preferences that apply, these should have been addressed on an ongoing basis during the underlying D&N case
   b. **Sibling preference**
      i. There is a sibling presumption for placement
      ii. The underlying D&N should have addressed the sibling placement issues
      iii. See above for specific findings related to the sibling presumption
   c. **Relative placement preferences**
      i. The Court must consider but is not bound by a placement request for a relative. If they make a timely requests the Court must give preference to the relative.
   d. **MEPA**
      i. An adoptive placement should not be delayed or denied as a result of racial or ethnic background, color or national origin. The consideration of these is only under extraordinary circumstances.
   e. **Adoptions by unmarried couples**
      i. Two hearings are required, some jurisdictions allow hearings to be held back to back, check your local practice
   f. **Child Consent**
      i. If a child is over 12 they must consent to their adoption
      ii. GAL's should be involved in determining whether the child is consenting voluntarily and understands what they are consenting to
   g. **Child Attendance at Hearing**
      i. At most Adoption hearings, the children are present to enjoy the celebration
      ii. Children over 12 must attend to confirm their consent
   h. **Adoption Assistance – Financial**

i. GAL should participate as much as possible and provide information to the reviewer and/or adoptive parents