

OFFICE OF RESPONDENT PARENTS' COUNSEL

ANNUAL PERFORMANCE REPORT



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I. Agency Overview

The Office of Respondent Parents' Counsel (ORPC) is an independent government agency within the State of Colorado Judicial Branch and is vested with the oversight and administration of Respondent Parents' Counsel (RPC) representation in Colorado. The agency opened on January 1, 2016 and assumed oversight for RPC attorneys on July 1, 2016.

The United States Supreme Court recognized that the "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). As former United States Supreme Court Justice John Paul Stevens highlighted more than thirty years ago, there is little that is "more grievous" than depriving a parent of the right to raise one's child, including even a prison sentence. *Lassiter v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting). This deprivation of a parent's rights is what all RPC tirelessly defend against and is the very heart of RPC practice.

In Colorado, an indigent respondent parent has a statutory right to appointed counsel to protect this fundamental right to parent. *See* § 19-3-202, C.R.S. (2020). Prior to the creation of the ORPC, no agency existed in Colorado exclusively dedicated to parent representation. As the Colorado General Assembly has declared, a respondent parents' counsel "plays a critical role in helping achieve the best outcomes for children involved in dependency and neglect proceedings by providing effective legal representation for parents in dependency and neglect proceedings, protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate." § 13-92-101, C.R.S. (2020).

A study conducted on respondent parent representation in Colorado and published in 2007 found that RPC representation is "typically adequate but rarely proficient."¹ The ORPC was established to address this performance gap, as the cause of "sub proficient practice is not the unwillingness of counsel to provide proficient services but rather the existence of practice, administration, and court systems which discourage optimal practice."²

A. Statutory Mandate

To protect and oversee the appointment of these critical counsel, the Office of Respondent Parents' Counsel (ORPC) was established on January 1, 2016, by Senate Bill 14-203 (Section 13-92-101 through 104, C.R.S.) as an independent office in the Judicial Branch. House Bill 15-1149 established the Respondent Parents' Counsel Governing Commission and provided that all existing and new state-paid RPC appointments be transferred to the ORPC on July 1, 2016. The ORPC's enabling legislation charges and entrusts the ORPC, at a minimum, with enhancing the provision of respondent parent counsel by:

¹The National Center for State Courts, National Council for Juvenile and Family Court Judges, and National Association of Counsel for Children, *State of Colorado Judicial Department Colorado Needs Assessment*, (March 2007) (hereinafter "*Assessment Report*"),

https://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Court_Improvement/C_ORPCFinalNeedAsstReptApp.pdf.

² *Id.* at 75.

1. Ensuring the provision and availability of high quality legal representation for parents in dependency and neglect proceedings;
2. Making recommendations for minimum practice standards;
3. Establishing fair and realistic state rates by which to compensate RPC; and,
4. Working cooperatively with the judicial districts to establish pilot programs.

Additionally, the ORPC Contract, the ORPC Billing Policies and Procedures, and Chief Justice Directive 16-02 (CJD 16-02), titled “Court Appointments through the Office of Respondent Parents’ Counsel,” govern the appointment, payment, and training of RPCs.

B. Mission Statement and Strategic Plan

The ORPC’s mission is to protect the fundamental right to parent by providing effective legal advocates for indigent parents in child welfare proceedings. This right is protected when a parent has a dedicated advocate, knowledgeable about child welfare laws and willing to hold the state to its burden. The office’s duties are to provide training and resources; develop practice standards; and advocate for systemic and legislative changes in Colorado.

The ORPC believes that every child deserves to have their parent represented by the best lawyer in town. To achieve this ideal, the ORPC has identified five essential pillars that support and inform the agency’s work.

- 1. Systems are Fair and Followed** – Procedural fairness occurs when parents receive access to excellent interdisciplinary teams through engagement, recruitment, and retention of contractors who have access to the resources necessary to give dignity and fairness to families and to ensure procedures are followed.
- 2. Family Voice Leads** – Family voice is strong when parents are engaged and present at every stage of their case and supported by their family defense team, so they may be heard by the system and play an active role in their case planning.
- 3. Decrease Trauma to Children** – Trauma to children is reduced when parents are provided with preventative or in-home supports to keep children with their family of origin, when unnecessary removals are rare, and when children can safely stay with their family.
- 4. Family Defenders Have a Strong Community** – Parents have better representation when there is a strong community of family defenders who have access to training, access to litigation and practice support, and who are celebrated for every kind of success in their parent advocacy.
- 5. ORPC is Recognized, Respected, Productive and its Staff is Strong** – The ORPC achieves its statutory mandate when its reputation, performance, staff strength, and

adherence to its values, which include the Five Pillars of the ORPC, have a positive impact on the child welfare system.

In addition to the above foundational pillars, the ORPC embraces three central concepts: Advocacy, Accountability, and Access.

- **Advocacy** – The ORPC will contract with experienced, high-quality attorneys and will support those attorneys through training, litigation support, and other resources to ensure that they are advocating for parents’ constitutional rights.
- **Accountability** – The ORPC will be an effective steward of taxpayer dollars by ensuring that parents’ attorneys are accountable for minimum standards and billing policies implemented by the agency.
- **Access** – The ORPC will ensure that all indigent parents have access to high-quality parents’ counsel in Colorado child welfare cases.

II. Major Functions

The ORPC is charged with enhancing the provision of respondent parent representation across the State of Colorado and with providing oversight to contractors appointed to represent indigent parents and serve on interdisciplinary teams in child welfare cases. The items below detail the major functions of the agency and the efforts by the ORPC to meet its four primary legislative mandates, while upholding the five essential pillars of the agency.

A. **Systems are Fair and Followed**

Attorney Evaluations: The ORPC’s statutory mandate to provide parents with high quality legal representation is the primary means for the agency to ensure that the Colorado child welfare system is both substantively and procedurally fair. To further this mandate, the agency has created an objective attorney contracting process that includes a written application, writing sample assessment, references, assessment of attorney qualifications and commitment to the work, and an interview. Applications are scored by two staff attorneys using a matrix to maximize objectivity and consistency in the review of applicants. Once an attorney is selected for a contract, their work is monitored periodically through the agency’s courtroom observation process.

After the ORPC was created, The Federal Administration on Children, Youth and Families Children’s Bureau (hereinafter the Children’s Bureau) issued an information memorandum about the importance of high quality legal representation for all parties in child welfare proceedings.³ The Children’s Bureau emphasized the “[n]umerous studies and reports” indicating the importance of competent legal representation for parents, children, and youth in ensuring that legal rights are protected.⁴

³ ACF – Children’s Bureau, High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (January 17, 2017) (<https://www.acf.hhs.gov/cb/policy-guidance/im-17-02>).

⁴ *Id.* at p. 2.

The Children’s Bureau noted there is evidence to support that providing legal representation for parties in child welfare proceedings contributes to:

- Increases in party perceptions of fairness;
- Increases in party engagement in case planning, services, and court hearings;
- More personally tailored and specific case plans and services;
- Increases in visitation and parenting time;
- Expedited permanency; and
- Cost savings to state government due to reductions of time children and youth spend in care.⁵

Further, the memo points to the demonstrated link between the provision of competent legal representation and increases in procedural justice, fairness, and engagement of families in the child welfare system.⁶ The ORPC’s intensive contractor review and selection process promotes the appointment of family defense attorneys who have adequate experience and are qualified to handle child welfare cases on behalf of respondent parents. The courtroom evaluation process helps to ensure that an attorney doing work on behalf of parents is meeting the criteria for excellent representation suggested by the Children’s Bureau. It also fosters RPC who are client-centered, ethical, and prepared for proceedings.

During the past year, the ORPC has successfully increased the number of high quality RPC in rural jurisdictions, though recruitment and retention of attorneys in these locations continues to present a significant challenge. Moving forward, the ORPC will continue working to increase diversity among RPC applicants, increase the total number of RPC applicants across the state, enhance the electronic application process, and continue to develop a more robust electronic means of tracking contractor information, demographics, and case outcomes.

Performance Measure A: Evaluate and Recruit Attorney Contractors		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22*	FY 2022-23
Number of Applications Reviewed	Actual	281	295	300	17*	TBD
Number of New Applicants	Actual	57	63	75	17*	TBD

**Data provided for the FY 2021-22 year includes data from July 1, 2021- November 1, 2021. Most contractors apply by 3/31 each year, but ORPC does review mid-cycle applications where there is a need for new attorneys in a particular jurisdiction.*

In addition to reviewing RPC during the annual renewal process, the ORPC has also designed a system for observing attorneys in court. The purpose of the in-court observations is to assist the agency in evaluation of RPC quality for contracting decisions, RPC supports, and tailored training to address local needs for individual attorneys or whole jurisdictions. Additionally, information gained during the observations is used to evaluate the need to add or subtract lawyers within jurisdictions. Aiming to

⁵ *Id.*

⁶ *Id.* at p. 5.

observe all trial-level RPC multiple times during their contract allows the ORPC to better address concerns as they arise and to celebrate successes with legal teams that encourage excellence for clients.

The ORPC believes that continuing to improve the availability of high quality legal representation for parents will improve the fundamental fairness for families in the child welfare system.

Conduct Court Observations: The ORPC prioritizes conducting observations of RPC to ensure the provision of high quality legal representation. The use of frequent, targeted, and objective evaluations based on ORPC practice standards ensures that indigent parents have access to effective assistance of counsel.

Observations also mitigate overall legal error in courtrooms. If ORPC staff observe systemic problems in any jurisdiction, staff may follow up with judges and other appropriate agencies, such as the Colorado Judicial Department's Court Improvement Program, to discuss needs for training or additional resources. ORPC staff also support attorneys in each jurisdiction by providing relevant caselaw, research, and practice tips following observations to ensure parents have access to appropriate treatment plans, services, and resources both as early as possible and throughout the case. Court observations are essential to the ORPC's ability to safeguard fair systems for families.

Since 2017, the ORPC has conducted court observations year-round. In non-pandemic times, scheduling court observations requires intensive coordination between agency staff, local court personnel, and RPC. Logistical challenges can present significant hurdles to scheduling and completion of court observations in rural and non-metro areas of the state. Prior to the onset of the pandemic, agency staff traveled throughout the state, witnessing court appearances in many types of hearings, both contested and uncontested.

The increased volume of remote hearings across the state created additional opportunities for court observations due to the elimination of travel time for ORPC staff. This change has also permitted the ORPC to observe more contested substantive hearings, since these hearing types are often continued at the last minute.

However, remote hearings provide fewer opportunities for engaging directly with RPC and inhibit the ORPC's ability to truly analyze what is occurring in a jurisdiction. Additionally, virtual hearings are often difficult to follow due to technical difficulties, poor audio quality, and background noise from multiple participants. ORPC staff have observed that internet outages and poor connection quality for court staff, individual attorneys, and parents has frequently led to delays and confusion among parties to cases. Sometimes, a parent or party who is not related at all to the case being heard accidentally makes a record or appears. Because of these issues, ensuring quality observations and oversight remains a challenge. To combat these challenges, the ORPC continues to conduct in-person court observations when possible and has conducted in-person observations in this fiscal year in jurisdictions as geographically diverse as El Paso, Denver, and Washington counties.

In 2019 the agency adopted an objective court observation measurement tool tied to the ORPC's practice standards, the Colorado Rules of Professional Conduct, and legislative mandates. Currently, the goal for observing contractors focuses on those RPC scheduled to renew their contracts during the current fiscal year. The agency also focuses on meaningful observation of contractors who could be offered additional training or support.

The agency aims to observe all renewing contractors at least once in the fiscal year leading up to their contract renewal. The agency also aims to observe contractors at least three times during their four-year contracting period, so there is more than one court observation measurement that can be averaged for a better understanding of the RPC’s court performance. The ORPC makes exceptions to these fundamental goals for those contractors who carry fewer than five contracted cases or who serve only in a supervisory role.

The data collected during court observations creates follow up opportunities to advise RPC when their performance has fallen below practice standards and to offer them resources to improve their performance. It also allows the ORPC to recognize contractors who are excelling in their advocacy and support of clients. The collected data also creates information for the training division to incorporate in planning curricula.

Performance Measure B: Conduct Court Observations		FY 2019-20	FY 2020-21	FY 2021-22**	FY 2022-23
Observations of renewing contractors	Target	100%	100%	100%	100%
	Actual	93%	100%*	74%**	TBD

**In FY 2020-21, only one contractor was up for renewal.*

***Data provided for the FY 2021-22 year includes data from July 1, 2021-November 1, 2021.*

Due to changes in court observation methodology, the ORPC is unable to isolate data on the number of court observations for renewing contractors for FY 2017-18 or FY 2018-19. As a result, the measurement of this goal began with FY 2019-20. In addition, though the ORPC structured contract terms so that no RPC would be up for renewal in FY 2020-21, one contractor was subject to renewal last year due to special circumstances.

In FY 2019-20, the ORPC observed 93% of the RPC eligible for renewal. This is notable, given that ORPC was unable to observe any attorneys for approximately 3.5 months at the beginning of the pandemic when court operations were severely disrupted. Had the pandemic not been a factor, the ORPC is confident that the agency would have observed 100% of renewing contractors in FY 2019-20. The ORPC is on track to observe 100% of renewing contractors in FY 21-22.

Colorado-Specific Practice Standards: Based on input from RPC and the need for Colorado-specific practice standards, the ORPC has drafted practice standards reflecting the nature of the agency’s practice in Colorado, drawing on guidance from the American Bar Association’s national standards of practice for attorneys representing parents in dependency cases and other states’ practice guidelines for respondent parent attorneys.

In 2019, the ORPC finalized the practice standards and worked with the Colorado Supreme Court and the Office of the State Court Administrator to incorporate the updated practice standards into Chief Justice Directive 16-02. In 2020, the ORPC worked with the Office of Attorney Regulation Counsel to review the proposed practice standards and incorporate all feedback. The updated Chief Justice Directive with Colorado-specific practice standards for RPC was amended and went into effect in March 2021.

Appellate Program: The ORPC’s appellate program is an essential element of its statutory mandate to provide high quality legal representation for parents. After assuming oversight for RPC, the agency created an appellate contractor list, selecting appellate attorneys based on objective criteria to ensure that parents receive quality representation on appeal. The agency also implemented a policy preventing trial attorneys from handling their own appeals to ensure that parents are getting the opportunity for a truly unbiased review of trial proceedings.

The ORPC developed an appellate-specific training program for appellate RPC that includes a biannual Appellate Certification training to acquaint new RPC with performance and practice standards of appellate attorneys. The ORPC requires all appellate attorneys to complete the Appellate Certification training within two years of appointment.

The appellate certification program allows trial RPC who are interested in doing appellate work to learn more about what the work entails and allows the ORPC to train and provide professional development opportunities that are rare in an independent contractor model. The ORPC provided additional training to appellate attorneys in the last fiscal year, including a Rule 21 webinar, appellate roundtables, and a training on framing appellate issues.

Appeals are especially important to ensuring that court processes in child welfare cases are fundamentally fair. When the Colorado Supreme Court decides a case or the Court of Appeals publishes an opinion pursuant to Colorado Appellate Rule 35(f), the decision becomes binding statewide precedent that guides all trial judges’ application of the Children’s Code. The ORPC tracks reversal and remand rates in both published and unpublished opinions as listed in the table below.

Performance Measure C: Appellate List Efficiencies		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22**	FY 2022-23
Overall percentage of remands	Actual	8%	7%	9%	12%**	TBD
Percentage rate of published remands	Actual	60%	60%	57%	100%**	TBD
Percentage of appellate attorneys trained through ORPC’s Appellate Certification	Target	No target established	50%	50%*	100%	100%
	Actual	78%	85%	85%*	95%	TBD

**Appellate Certification was not offered in FY 2020-21.*

***Data provided for the FY 2021-22 year includes data from July 1, 2021-November 1, 2021.*

This year, the ORPC began collecting data from all opinions issued by the Court of Appeals and combining that data with information the ORPC already collected when assigning appellate RPC. This data allows the ORPC to see trends and issues, including when trial RPC are being alleged to be ineffective or when counties are experiencing a relatively high rate of remand. It also allows the agency to understand which issues are being raised on appeal and to have more oversight of appellate RPC work. Additionally, it assists ORPC staff attorneys in providing better support to appellate and trial RPC. For example, if an appellate RPC wants to raise a novel issue or has a concerning set of facts in a case, the data collected by the ORPC allows staff to locate unpublished cases that may contain

helpful reasoning or to connect the appellate RPC with another RPC who has made a similar argument.

This data collected by the agency indicate that the ORPC's appellate program has increased parents' access to justice over the last five years. Correcting errors at the trial court level protects parents' due process rights and ensures that trial courts will treat cases involving the most important decision in a child and parent's life with due care and deliberation. Based on contractors' reports on case closure of appeals, approximately ten percent of cases submitted to the Court of Appeals are found to have a legal error so substantial that the Court of Appeals reverses the trial court decision. This figure does not include limited remands, which occur when the Court of Appeals sends a case back to the trial court for further proceedings but still maintains jurisdiction over the appeal. If limited remands were included, this figure would be even higher.

Due to the nature of appeals, however, it is likely that, as the appellate program matures, the percentage of new appeals and remands will level off or potentially decrease. The sharp spike in published remands and reversals is indicative of some of the larger procedural issues occurring at the trial court level that impinge upon the constitutional and statutory rights of parents and families. As RPC improve their ability to spot and correct these errors at earlier points in the case, and as trial courts make corrections based on current remands from the Court of Appeals, this increase in the number of remands should level off. This creates an environment where most published opinions are issued in cases with difficult legal issues to resolve or correct.

This anticipated leveling-off did not occur in the last fiscal year. Initially, appeals slowed to a crawl at the start of the pandemic as courts cancelled hearings, resulting in a dearth of any final appealable orders. Then, in June 2020, courts began conducting termination and adjudicatory trials again in many jurisdictions. Ultimately, by the fall of 2020, appellate RPC were overrun as orders and hearings that had been delayed were completed. Due to the surge in appeals, the ORPC had to call on some trial attorneys to take on some appellate work. This was a good opportunity for trial attorneys to explore their interests in appellate work and have some new perspectives, and the ORPC was ultimately able to add some very talented trial attorneys to the appellate list. With this, the agency now has a sufficient number of independent contractors to handle the sustained increase in appeals.

One significant impact on the ORPC's appellate program involved the public censure of Judge Natalie Chase and her subsequent resignation in Arapahoe County. ORPC appellate attorneys were forced to react immediately and to determine how to handle cases involving parents of color where Judge Chase had terminated parental rights or made other crucial decisions in the case. Ultimately, the Court of Appeals issued a published opinion endorsing a strategy of limited remands to the trial court to determine whether Judge Chase demonstrated actual bias or there was an appearance of impropriety requiring a new trial. In total, the Court of Appeals remanded approximately fifteen cases, and many of those cases have now resulted in either orders or stipulations for new trials. This process has been resource-intensive with most appellate RPC and many trial RPC having cases remanded. Remands have required expert testimony and extensive preparations and negotiations.

Disability Law Overview: The government has long discriminated against people with disabilities under the guise of protecting children. Almost one hundred years ago, the Supreme Court of the United States decided the case of Carrie Buck, who was born to a mother with Intellectual/Developmental Disabilities (I/DD) living in the Virginia State Colony for Epileptics and Feeble-minded. Carrie was released from the institution to live with another family but became

pregnant following a sexual assault and was returned to the institution. The institution's superintendent elected to pursue forced sterilization of Carrie, hoping to pave the way for forced sterilization of any other person with a disability in state custody. In upholding Carrie's forced sterilization, Justice Holmes wrote:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.⁷

This view is deplorable but, sadly, not completely absent from modern-day child welfare systems. In fact, just a few years ago in 2018, the Colorado General Assembly made the following findings:

- Persons with disabilities continue to face unfair, preconceived, and unnecessary societal biases, as well as antiquated attitudes, regarding their ability to successfully parent their children;
- Because of these societal biases and antiquated attitudes, children of persons with disabilities historically have been vulnerable to unnecessary removal from one or both of their parents' care or are restricted from enjoying meaningful time with one or both parents; and
- Children have been denied the opportunity to enjoy the experience of living in loving homes with a parent or parents with a disability or other caretakers with a disability.⁸

Fighting against negative stereotypes of parents, including those with disabilities, is one of the primary challenges that RPC face. On April 26, 2021, Governor Polis signed SB21-107 into law, formally honoring the efforts of an ORPC staff attorney to end discrimination against parents with disabilities by renaming a portion of Colorado statute the Carrie Ann Lucas Parental Rights for People with Disabilities Act.

Ms. Lucas was a devoted disability advocate who lived with disabilities and parented children with disabilities. She was vocal about the discrimination she faced in her road to parenthood and fought vigorously so other parents with disabilities would not face the same discrimination. Tragically, Ms. Lucas died in 2019 at the age of 47. Her death left a huge void at the agency where she had worked tirelessly to ensure that RPC would have the skills to recognize when their clients had disabilities and the tools to advocate for these clients, ensuring them access to justice and amplifying their voices. While no one could ever fill the void left by Ms. Lucas's death, the ORPC decided that her efforts were too important to discontinue and, with support from the Colorado General Assembly, added a position at the agency dedicated to focusing on the rights of parents and families with disabilities.

The Carrie Ann Lucas Disability Advocacy Director began work with the agency just over a year ago in September 2020. Despite the pandemic, the ORPC continued its trainings on the rights of people with disabilities in the child welfare system for RPC and others, including professionals at the American Bar Association's Parent Representation Conference, child welfare attorneys in Texas and Idaho, and numerous child welfare Best Practices Court Teams throughout Colorado. Realizing that caseworkers must also have training in recognizing disabilities and identifying reasonable

⁷ *Buck v. Bell*, 274 U.S. 200, 207 (1927).

⁸ Concerning Family Preservation Safeguards for Parents with Disabilities, H.B. 18-1104 (2018) (codified at § 24-34-805(1)(a)(I), (III), (IV), C.R.S.).

accommodations for persons with disabilities, the ORPC is currently developing a training for social workers through The Kempe Center's Child Welfare Training System.

These efforts are just the beginning of what is needed to ensure that parents with disabilities are not discriminated against and that they enjoy the full right to parent. Most parents involved in the child welfare system have at least one disability.⁹ Of the population of parents served by the ORPC, a staggering 49.6% of parents have one or more disabilities.¹⁰

While parents with disabilities account for nearly half of the parents the ORPC serves, they comprise nearly three-fourths of the parents whose parental rights are ultimately terminated.¹¹ Stated a different way, while 9.7% of parents without disabilities will have their parental rights terminated, that percentage jumps to 23.9% for parents with disabilities.¹² Similarly, while parents without disabilities enjoy a 73.2% reunification rate, for parents with disabilities, the reunification rate is only 51.3%.¹³

In some cases, a disability is the primary reason that a family is referred to the child welfare system. This often occurs when a parent's mental health condition is not effectively managed, a substance use disorder is uncontrolled, or an I/DD is detected. While the ORPC arms its contractors with the information and resources needed to help support indigent parents with disabilities and educate other stakeholders about the rights of people with disabilities, there is still much work to be done. A person's disability does not have to dictate whether they can successfully parent. To believe otherwise plays into the antiquated stereotypes and assumptions that Carrie Ann Lucas and decades of advocates before her cautioned us against.

B. Family Voice Leads

Attorneys representing indigent parents in dependency and neglect proceedings are client-directed, meaning they must consult with their client and represent his or her expressed position. A courtroom is an intimidating place for a parent, particularly after experiencing the trauma of having a child removed from the family. When an attorney has frequent communication with a parent and can access appropriate resources such as expert evaluations, consultations, or the assistance of an investigator, these resources can assist a parent in telling his or her story and meaningfully engaging in treatment services. Treating parents with dignity and respect and providing adequate resources up front in a case can help ensure that parents' voices are heard by the court and by the other professionals working on the case.

However, the normal challenges faced in amplifying a parent's voice are exacerbated by the current pandemic. Courts differ in their approaches for remote, in-person, or hybrid hearings for indigent parent. As a result, it is more important than ever to have a cohesive interdisciplinary team to support parents. These obstacles are further compounded at the intersection of expensive technology and accessibility. For the families the ORPC serves who struggle daily with poverty, sobriety, and mental

⁹ Nat'l Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* (2012), chapter 5, <https://www.ncd.gov/publications/2012/Sep272012>.

¹⁰ ORPC Internal Data, Respondent Parent Payment System, analyzed September 2021 for the period FY 2018-19 through FY 2020-21.

¹¹ *Id.*, analyzed October 2021 for the period FY 2018-19 through FY 2020-21.

¹² *Id.*

¹³ *Id.*

health issues, support beyond that of the appointed attorney is crucial in connecting and engaging the parent in an increasingly complex system.

Attorneys who work within a supportive and collaborative family defense team have a higher level of satisfaction with their work and are more likely to continue to represent indigent parents. In a recent survey of ORPC contractors, an RPC wrote, “I love ORPC. All [their] trainings and support...make me able to do this work.” Another attorney noted that “ORPC is always supportive and there is always someone from the office available to answer questions and concerns and step in at a moments [sic] notice.”

Excellent advocacy, adequate resources, and an increased number of allies for parents will strengthen family voice in dependency proceedings and ensure that families are heard regarding what is most important to them – the needs and concerns of their children. In this time of a global health crisis, parents feel more isolated and marginalized than ever before; surrounding them with a team of advocates creates hope that their voice is being heard.

Attorney Consultations and Coaching: In 2017, after assessing the need for increased support, the agency hired a full-time staff attorney to serve as the Case Strategy Director, charged with handling the increased call volume and need for case support and consultation for trial attorneys. In 2021, upon the departure of the Appellate Director, the agency restructured staff attorney duties and hired a full-time staff attorney to serve as the Director of Family Defense. The Case Strategy Director and the Director of Family Defense work in tandem to provide case consultations to RPC in the field. On average, these two staff members each handle an average of five case consultations with RPC regarding case strategy per day, amounting to approximately 500 consultations per year. ORPC staff have implemented a scheduling system that allows contractors to schedule a consultation easily and reduces staff time spent scheduling phone calls and meetings. Attorneys seek guidance on a range of issues, from appointment of expert witnesses to appropriate services to questions on caselaw. Through these optional consultations, attorneys are provided with the resources and support to ensure that their clients’ voices are heard.

Optional case consultations and attorney coaching are part of a broader initiative of attorney supports. As a result of increased staff capacity, case consultations can also be more targeted and broadly offered. For cases involving clients with disabilities or children with disabilities, RPC are connected with the Disability Advocacy Director for consultation. Between January 1, 2021 and November 1, 2021, the Disability Advocacy Director conducted 95 case consultations focused on more effective disability advocacy for clients. In cases where lawyers are preparing for trial, they are connected to the Director of Engagement, Case Strategy Director, or Director of Family Defense to discuss case theory, themes, and trial strategy.

Attorney coaching consists of individual case consultations related to specific cases. This sometimes involves concentrating on litigation skills, client-centered advocacy efforts, ethical concerns, disability advocacy for individual clients, and other law practice management advice. Based upon the ORPC’s jurisdictional observations, coaching can also consist of targeting groups of attorneys facing similar challenges to craft litigation strategies or resolve issues unique to their county. The format of coaching includes one-on-one feedback, roundtable discussions, strategy brainstorming, skill building, and case reviews. ORPC staff may refer RPC to additional resources, specific training opportunities, or mentorship options as part of the contractor coaching program.

ORPC supports can reduce costs and mitigate attorney burnout by helping attorneys avoid spending hours drafting motions or researching issues where ORPC staff resources can quickly point them in the right direction. These supports have the added benefit of promoting RPC community-building by supporting attorneys before they reach possible burnout. In 2021, the ORPC conducted statewide remote meetings and quarterly jurisdictional-specific RPC roundtables focusing on discrete issues relevant to those contractors. The agency has also added a roundtable for new RPC to share challenges and successes related to their growth in the practice.

Beginning FY 2019-20, the ORPC tracked the percentage of attorneys using the case consultation resource provided by the agency. With additional staff attorneys providing consultations and the ability to refer attorneys to other staff with specialized knowledge, such as disability advocacy or trial and investigation strategy, the ORPC has increased its capacity to offer meaningful feedback to attorneys more frequently and more broadly.

Performance Measure D: Attorney Coaching		FY 2019-20	FY 2020-21	FY 2021-22*	FY 2022-23
Percentage of attorneys using case consultations	Target	75%	80%	80%	80%
	Actual	83%	80%	73*	TBD

**Data provided for the FY 2021-22 year includes data from July 1, 2021-November 1, 2021.*

Access to Experts and Investigators: The ORPC consults with RPC about available experts and possible treatment resources for parents, including providing access to published social science journal articles. The ORPC continues to work on developing a web-based application to house expert information that will increase efficiencies for the seven agency staff who routinely consult with RPC about the availability of experts across the state.

Experts may provide an evaluation that recommends a service for a client that has not been considered but that would permit a reunification of the family. A psychologist can recommend specific accommodations for a parent with a cognitive or intellectual disability that would allow the individual to independently parent. A toxicologist may review a report and determine that accusations that a parent tested positive for a drug are not accurate. The ORPC offers a wide range of experts that assist attorneys in both evaluating their cases and presenting evidence that supports the parent’s position. Expert assistance in dependency cases improves both the services that may be offered to a parent and the accuracy of the court’s decision, and thus ensures fairness for indigent parents during the court process.

The ORPC tracks the numbers of experts appointed in the representation of parents each fiscal year. The data below do not include social workers, family advocates, or parent advocates that are appointed as members of the defense team. The data refer to the use of experts approved for parent evaluations or those used through the course of litigation. The data are useful internally in determining the number of RPC accessing expert services, training regarding appropriate use of experts, and the costs associated with such use. While the numbers related to expert appointments are useful to the agency, many variables can cause fluctuation in the number of requests. For that reason, the ORPC does not use the number of parent appointments with experts as a measure of performance; rather, this number is useful strictly as an informational data point for improving representation of parents and helping to

understand the overall costs of legal representation. The performance measure below instead lists the number of experts available for appointment through the ORPC.

Additionally, the ORPC continues to expand the availability of investigators, which creates efficiencies in the amount of time spent by RPC on cases and therefore the overall cost of cases. Specifically, investigative professionals can assist in locating clients, interviewing possible witnesses, obtaining necessary records and files, and gathering information about possible family supports and kinship placements at a lower hourly cost than RPC. These lower costs also result from improved outcomes in cases. In one case, an investigator located an out-of-state parent who was unaware of the dependency and neglect case and was able to have his child returned to him from foster care.

In another case, an investigator located a client who decided to relinquish her parental rights and was supported during that process, resulting in an outcome supportive to the parent and the child and avoiding ongoing litigation in the case. Resolving a case and supporting a family through a relinquishment of parental rights can reduce the overall length of a case, case costs, court time, and trauma to the family resulting from extended litigation. These are a few examples of how using a lower-cost resource can ensure attorneys have the information they need to make parents' voices heard and to move towards permanency for children more quickly, while using agency resources more efficiently.

During the past year, the ORPC added several investigators on the Western Slope and in the mountains to provide better services statewide and to manage the cost of travel for investigation. In fact, between July 1, 2021 and November 1, 2021, the ORPC added nine additional investigators. The number of investigator appointments has increased substantially in the last year, as reflected in the table below.

In the upcoming years, as illustrated in the chart below, the ORPC plans to increase available litigation support for attorney contractors to create law practice efficiencies. The number of investigators the agency works with may begin to stabilize as agency recruiting efforts result in engaging a large percentage of the high-quality investigators suited for this work.

Performance Measure E: Recruit and Maintain Experts and Investigators		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22*	FY 2022-23
Number of experts available for appointment through ORPC	Target	175	200	265	300**	300
	Actual	192	288	350	278*	TBD
Number of investigators available for appointment through ORPC	Target	Not tracked	30	40	50	50
	Actual	Not tracked	41	44	53*	TBD
Number of expert appointments	Target	No target established	No target established	No target established	No target established	No target established
	Actual	289	304	348	104*	TBD
Number of investigator appointments	Target	No target established	No target established	200	250	250
	Actual	184	284	512	143*	TBD

**Data provided for the FY 2021-22 year includes data from July 1, 2021-November 1, 2021.*

***In upcoming fiscal years, the ORPC's goal is to maintain the existing number of vetted and available experts and to assess the list for breadth of expertise and quality.*

Legislative Initiatives: When the ORPC was created in 2016, RPC suffered from pay inequity compared to other professionals in child welfare courtrooms. RPC lacked access to interdisciplinary teams and resources such as social workers, investigators, and expert witnesses. RPC in many parts of the state also struggled to obtain necessary experts and excess fees to continue representation of indigent parent clients.

The ORPC legislative team represents the interests of parents, families, and RPC at a statewide level. This includes working with stakeholders from within and outside of the child welfare system to address barriers that families face in remaining together or reunifying. The ORPC has advanced many legislative changes crucial to supporting families, including spearheading an effort in the 2021 legislative session that culminated in HB 21-1101, *Preserving Family Relationships in Child Placement*.¹⁴

The legislative team ambitiously initiated HB 21-1101 with bipartisan sponsorship and support in the legislature to address two critical issues for families in the child welfare system: 1) early and consistent parenting time for children who are separated from their parents; and 2) the option for an enforceable open adoption agreement. The bill ultimately passed unanimously with support from all major stakeholders in the child welfare system.

Because of the passage of HB 21-1101, courts must now order contact between children and their parents within three days of their removal. The courts must also provide parents an opportunity to be heard prior to reducing or stopping contact between parents and their children, including when moving to virtual visitation. These provisions are crucial to ensuring that trauma to children is reduced and that parents remain engaged in their treatment plans and can safely reunify with their children.

Additionally, the open adoption provision of HB 21-1101 also ensures that parents who are unable to parent their children have an option to continue to have a positive relationship with their children after adoption, or at least be informed about how their children are doing. The ORPC expects this provision to reduce costs as parents now have additional options to do what is best for their children and may therefore forego further court proceedings. Further, child welfare stakeholders committed in HB 21-1101 to forming a task force that will examine best practices for parenting time and visitation in child welfare cases and support further systemic change. The ORPC will be leading efforts within the task force with plans to address issues of crucial importance for families.

The ORPC looks forward to continuing to tackle challenges that exist for families and to proactively seeking legislative solutions to address obstacles to safely keep families together.

C. Decrease Trauma to Children

Research demonstrates that children have better long-term outcomes when they are raised in their families of origin.¹⁵ The removal of children from their families is a traumatic experience for both children and parents. For children in particular, separation trauma can endure and have long-term implications for a child's educational attainment, mental and physical health, and future employability.

¹⁴ https://leg.colorado.gov/sites/default/files/2021a_1101_signed.pdf.

¹⁵ Mimi Laver, *Improving Representation for Parents in the Child-Welfare System*, October 7, 2013, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2013/improving-representation-parents-child-welfare-system/>.

In addition to the research demonstrating that children have better long-term outcomes when they are raised in their families of origin, research has also shown that when compared with youth in the general population, youth aging out of foster care experience the following:

- lower high school graduation and college enrollment rates,
- lower employment rates,
- lower incomes,
- higher rates of homelessness,
- higher occurrence of mental health problems that affect daily functioning,
- higher rates of addiction, and
- increased involvement in the criminal justice system.¹⁶

These negative, long-term traumatic effects for children experiencing out-of-home care demand system-wide efforts to prevent unnecessary family separation when possible and, if not possible, to focus on safe and timely family reunification efforts.

To decrease trauma to children, it is important to understand the changing landscape of Colorado's child welfare cases in light of the lingering effects of the COVID-19 pandemic. The substance abuse issues facing parents are now more lethal and difficult to treat, including the opioid epidemic and increase in fentanyl overdoses. In November 2021, the Colorado Health Institute reported a 54% increase in overdose deaths in 2020 alone. The Institute also highlighted the increased risk of death from COVID-19 for people addicted to opioids, which often compromise lung function.

During the twenty months prior to the pandemic, RPC reported the death of 52 clients. Over the first 20 months of the pandemic, RPC reported 103 cases closing with the death of their client, double the number of parents dying from the previous year. The ORPC does not ask for the cause of death, but many RPC have reported a stunning increase in both the number of overdoses overall and overdoses resulting in deaths during the pandemic. When RPC, social workers, and parent advocates are aware that parents are struggling with addictions, they must work harder to help the client access treatment services and to engage with clients to help the client manage their addiction before it is too late.

RPC also reported statistically significant increases in cases involving physical abuse and domestic violence during the pandemic, with 22.6% of cases opened during the pandemic involving domestic violence and a three percent increase in cases involving physical abuse. Because the parents ORPC serves are indigent, victims of domestic violence are often financially dependent on their abusers. The abuser may present better to caseworkers, resulting in children being placed with an abusive partner and victims feeling like they have to return or stay with an abusive partner in order to keep their children safe. Cases involving domestic violence are among the most challenging cases for RPC, parent advocates, and social workers to navigate. They now make up almost 1 in 4 ORPC appointments.

In addition, the shortage of affordable housing greatly impacts the ability of parents to reunify with their children and the length of cases. When parents obtain full-time employment earning minimum

¹⁶ Pecora *et al.*, *Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study*, Child and Youth Services Review (2006); *see also* Laura Gypen *et al.*, *Outcomes of Children Who Grew Up in Foster Care: Systematic-Review*. Children and Youth Services Review, Vol. 76. March 2017, pp. 74-83.

wage, they still cannot afford housing in most areas of the state. Even when a parent does everything right, obtaining sobriety and employment, they often still cannot afford stable housing, and there is not enough affordable housing for those who need it.

Finally, the ORPC often hears from long-time RPC who lament the increasing complexity of cases. Whenever a parent struggling with addiction also must deal with homelessness, co-occurring mental health issues, or domestic violence, it is much more complex to ensure the parent has access to appropriate services and to keep the parent engaged, particularly during a pandemic that has disrupted many of the service delivery systems and court systems designed to help families. As cases may linger on while families struggle to get the services they need during the pandemic, children may continue to experience family separation and trauma in the child welfare system.

The ORPC is committed to parent advocacy that supports parents' choices, including the opportunity to parent their children safely at home whenever possible. In situations where children are not able to remain home safely, RPC help parents advocate for kinship placements and articulate their children's emotional, health, behavioral, and educational needs. Parent advocacy helps ensure children and families have adequate support services to work towards a safe reunification or to make alternative arrangements that are best suited for the individual family.

ORPC Interdisciplinary Programming: The right type of representation in child welfare cases can easily mean the difference between preserving a family and seeing it permanently destroyed. Over the last decade, research from around the country has established that a family's chance of success improves dramatically when parents are provided with an interdisciplinary approach to legal representation that includes a zealous attorney, an appropriate clinical assessment for services, delivery of timely and effective services, and strong advocacy within the child welfare system by a social worker or peer advocate on the parent defense team. Interdisciplinary legal teams are a nationally established best practice standard for parent and children's defense agencies.¹⁷

Since its inception, the ORPC has both studied and piloted interventions to improve the quality of representation for parents in Colorado. In FY 2017-18, the ORPC launched a Social Worker Pilot Program (SWPP) with the goal of offering holistic, high-quality legal representation to parents. This inclusion of social workers on legal defense teams immediately produced positive results, measured through an independent evaluation conducted by Metropolitan State University in 2019.¹⁸ Put simply, the evaluation concluded that the interdisciplinary team model of parent representation practiced in Colorado reduces the time that children spend in out-of-home care and increases the likelihood of a parent and child being reunified safely at case closure.

One example highlighted in this evaluation involved reunification in El Paso County. There, parents who had a social worker assigned to their family defense team achieved reunification with their

¹⁷ American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (2006), https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-parent-rep-stds.pdf.

¹⁸ Lori Darnel and Dawn Matera Basset, *A Program Evaluation of Colorado Office of Respondent Parents' Counsel Social Work Program*, Metro State University Department of Social Work, November 2019, <https://coloradoorpc.org/wp-content/uploads/2019/11/ORPC-SWPP-Evaluation.pdf>.

children at over twice the rate of the state and county averages. This also included data showing that when placed out-of-home, the time a child spent in placement was reduced.¹⁹

Additionally, the SWPP outcomes reflected the national research. In a 2019 published study examining outcomes for 9,582 child welfare cases over seven years, researchers compared the efficacy of interdisciplinary legal teams to solo law practitioners for parents in child welfare cases. The results were staggering. Specifically, researchers concluded that the interdisciplinary teams achieved the safe return of children to their families 43% more often than solo practitioners in the first year of a case, and 25% more often in the second year.²⁰ Further, even when reunification was not possible, the interdisciplinary model allowed children to be permanently released to relatives over 200% more often in the first year of a case and 67% more often in the second year.²¹

ORPC interdisciplinary teams may also include a parent advocate. Parent advocates have lived experience successfully navigating the child welfare system and were ultimately reunited with their children. They are trained and supervised to work alongside RPC to guide and support parents with current dependency and neglect cases. Peer coaching and support has been an integral part of mental health and substance use intervention for decades, and the inclusion of peer advocates on legal representation teams is expanding across the country.

Based on the successful outcomes of interdisciplinary models that include parent advocates on legal teams,²² the ORPC received JBC approval to recruit, train, and mentor parent advocates in FY 2020-21. The agency contracted with the first class of parent advocates in November 2020, and they have since been assigned to support over 200 parents statewide.

Use of Evidence-Based Practices: The ORPC diligently engages in evidence-based analysis as the primary foundation for its budget requests. The ORPC defines evidence-based budgeting as analyzing data to project costs and justify requests based on the best empirical evidence available, including research published in peer-reviewed journals.

Performance Measure F tracks the ORPC's implementation of evidence-based practices in dependency and neglect cases, showing that the agency has steadily increased availability of and access to social workers and parent advocates. Finally, the ORPC works to ensure that its training program is focused on evidence-based practices and the use of interdisciplinary teams to increase the number of cases that conclude with reunification or kinship placement.

¹⁹ *Id.*

²⁰ Lucas Gerber *et al.*, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, July 2019, available at <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

²¹ *Id.*

²² Gerber *et al. supra* note 21.

Performance Measure F: Support the Use of Evidence-Based Practices		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22*	FY 2022-23
Number of ORPC cases with interdisciplinary representation (social worker, family advocate, or parent advocate)	Target	350	400	425	500	500
	Actual	461	843	976	350*	TBD
Number of social worker/family advocate/parent advocate contractors available for work on ORPC cases	Target	10	15	30	35	40
	Actual	13	30	33	42*	TBD

**Data provided for the FY 2021-22 year includes data from July 1, 2021 – November 1, 2021.*

D. Family Defenders Have a Strong Community

Training: For the ORPC, training creates opportunities for contractors to gather, network, and share successes, as well as to stay abreast of changes in the law and develop stronger skills related to advocating for parents at all stages of proceedings. These opportunities to share information and ideas are valuable in energizing and strengthening RPC practice for all professionals. In FY 2020-21, the ORPC executed 43 trainings. Below is a sample of RPC feedback about the agency’s trainings:

“I have done training in a lot of organizations. What I like about the training with ORPC is that there is a constant thread of the vision and purpose of the organization in the training, not just subject matter education. It makes me feel like my work, training and efforts are part of a greater purpose, to preserve and have a positive effect on families in crisis.”

*“**[F]abulous** conference yesterday. As someone who has come to dread Zoom calls in the last 6 months, I think you and the ORPC team put together an absolutely inspiring, helpful, community-building conference, and I was genuinely glad I attended. I learned a lot. So kudos and thank you for putting together such an excellent conference.”*

“One of THE best trainings. Very interesting and certainly timely.”

“This training changed the way I write motions.” . . . One of the most interesting and useful CLE’s I’ve taken.”

“I was blown away by the Carrie Ann Lucas Disability training day—it was truly extraordinary.”

In FY 2020-21, the ORPC continued to transform its training program. The ORPC’s current training director, who started on January 1, 2019, developed a consistent and cohesive training program.

Moreover, while the onset of the coronavirus pandemic required the Training Director and staff to adjust how training was conducted, this integral part of the ORPC mission continued unabated.

Throughout the prior year, the agency met and exceeded its goal of increasing attendance and improving the quality of its training program in FY 2020-21. The ORPC surpassed its highest historical training attendance (from FY 2019-20) by a significant margin in FY 2020-21. Additionally, the ORPC's training evaluation results for FY 2020-21 showed high marks for quality of ORPC trainings. On average, attendees rated ORPC trainings as "Excellent" 64.9% of the time and "Good" 28.2% of the time. This means that the ORPC's feedback about its training program in FY 2020-21 was overwhelmingly positive, even more so than in FY 2019-20. The ORPC expects this trend to continue and has already received positive feedback about its trainings in the first half of FY 2021-22.

As noted above, the coronavirus pandemic created new challenges and opportunities for the ORPC's training program. Trainings that historically were held in person have had to migrate to a virtual platform due to the pandemic. The agency viewed this as an opportunity for growth and improvement rather than a limitation. The virtual platform allows for the agency to invite many more national trainers to speak to contractors. Additionally, ORPC trainings are now much more accessible for contractors who live far from the Denver metro area. The ORPC has also been able to make training videos available more widely. The agency now has training videos from 31 prior trainings available for contractors to view at their convenience. At this time two years ago, that number was only five. The increased availability of online training videos means that ORPC contractors who are not able to attend in-person trainings, either due to conflicts or because the training took place before they began working with the ORPC, can access valuable training information that they otherwise would have missed.

Another way in which the ORPC has improved its training program in FY 2020-21 is through the development of its podcast, the Family Defender Download ("FDD"). The ORPC released five episodes in Season 1 of the FDD, covering such topics as systemic racism, caselaw and legislative updates, the ADA in child welfare, and more. Season 2 of the FDD, which began releasing episodes in December 2021, will focus on the Colorado Rules of Evidence and common evidentiary issues that come up in dependency and neglect cases.

Finally, the ORPC incorporated contractor roundtables as a consistent and recurring part of its training program in FY 2020-21. Contractor roundtables allow smaller groups of ORPC contractors to come together with ORPC staff and discuss various issues they are facing locally in their parent representation practice. The agency has held jurisdictional roundtables as part of its training program in the past, but not on a consistent, recurring basis. In FY 2020-21, the ORPC held recurring contractor roundtables for the following groups: new RPC across the state (monthly roundtables); appellate RPC (quarterly roundtables); RPC by Judicial District (quarterly roundtables); and RPC wishing to brainstorm motions issues (bi-monthly roundtables).

In the next three years, the ORPC will continue to implement trainings based on ORPC practice standards and principles of interdisciplinary practice, and to continue to offer core trainings such as the annual boot camp for new trial RPC, the annual fall conference, the annual Carrie Ann Lucas Disability Advocacy Training, and the bi-annual appellate certification. Importantly, the ORPC will add a new, annual core training dedicated to anti-racism advocacy to its training calendar in 2022. While the agency has held anti-racism trainings in the past, fighting systemic racism in dependency

and neglect proceedings will be a central focus of the ORPC’s training program going forward. The agency has succeeded in its goal of expanding online training resources and will continue to prioritize remote access to training. The ORPC will also continue to use roundtables as a part of its training program and will be introducing a disability advocacy roundtable beginning in FY 2021-22.

Performance Measure G: Provide High-Quality Trainings		FY2018-19	FY2019-20	FY2020-21	FY2021-22*	FY2022-23
Training for attorneys, associates, social workers, and court personnel	Target	10	10	10	10	20
	Actual	10	43	43	22*	TBD
Total Number of Training Hours		50	162.9	139.8	92*	TBD
Total Number of Attendees		413	833	1177	830*	TBD

**Data provided for the FY2021-22 year includes data from July 1, 2021-November 1, 2021.*

Motions Bank and Caselaw updates: The ORPC provides several resources to build and maintain a strong community of family defenders. The agency’s website offers a password-protected page designed to support ORPC contractors. Within the secured pages of the website, the agency houses resources for lawyers that include social science research information, news articles, links to government agencies, case law, and a motions bank. The motions bank has been continually updated since the ORPC took oversight on July 1, 2016, and is currently undergoing a major upgrade to improve user experience and update language. Attorneys are encouraged to share motions, and the ORPC assists with updating and drafting some motions. The ORPC has also contracted with attorneys to provide motions drafting assistance, and these attorneys are asked to share the motions they draft with the ORPC to increase resources available to contractors.

The ORPC also provides periodic written case law summaries as a service to its contractors. The agency monitors legal opinions at both the state and federal levels involving dependency and neglect cases, including published and unpublished cases, and sends out a written summary of critical opinions impacting dependency cases. The ORPC also supplements these written case law summaries with podcast caselaw summaries and caselaw updates at the agency’s annual conference.

Additionally, in 2021 the ORPC launched a new weekly email update, the *Family Defender Digest*, which provides an update on caselaw trends, resources (including draft motions), disability advocacy practice pointers, and recognition of RPC who had a significant success or otherwise deserve kudos for their efforts. The weekly caselaw update provided will also be available on the website for ongoing use.

Recruitment and Retention: An ongoing and overarching goal for the ORPC is the promotion of excellent representation for indigent parents. For the ORPC community to flourish, it is vital to retain those contractors who already provide strong advocacy for their clients. Such contractors model the correct application of practice standards for newer members of the RPC community. In creating a

strong community of family defenders, it is equally important to recruit talented, dedicated attorneys to the practice to inject energy and creativity into pursuing the ORPC's mission.

Over the past three years, the ORPC surveyed contractors regarding their satisfaction with family defense work and dependency practice. Consistently, contractors cited the culture and leadership of ORPC as reasons they feel valued and choose to continue their work. The pandemic has created new, unique stresses for contractors that the ORPC is constantly attempting to ameliorate. As a result, retention of RPC has become somewhat more challenging. One backlash from the public censure and resignation of a juvenile judge for racist and other inappropriate behavior on the bench was the loss of at least one RPC and the necessity of moving other RPC to neighboring jurisdictions in an effort to support them and prevent burnout. The work of family defense is uniquely challenging, and the agency works very hard to meet the lawyers where they are and support the challenging work of family defenders in courtrooms where their work is rarely celebrated.

The ORPC continues to develop multiple pipelines from which to recruit attorneys who are likely to excel in parent representation. The staff attorneys at the ORPC are cultivating networks of potential family defenders through law schools, specialty bars, and other professional organizations. One method of creating competent parent lawyers is to pair new lawyers with established RPC in associate positions. Pairing newer lawyers with established practitioners provides mentorship and training for the associates and injects enthusiasm into those practices. The ORPC has developed a system of tracking new applicants who are not yet qualified to work independently on a contract but would be great candidates for associate positions. When an established RPC is looking to expand her or his law firm, the ORPC aims to provide potential candidates for positions with those firms. Further, because of courtroom observations and networking within the defender community, ORPC staff attorneys are able to find opportunities to introduce high quality lawyers to the notion of becoming family defenders.

ORPC staff also proudly represent the ORPC by participating on committees and boards and appearing at speaking engagements throughout the state and the country. Traditionally, ORPC staff has participated in public interest career fairs at local law schools and attended classes, clinics, and other recruitment opportunities to share information about a family defense career path with students. While many of those in-person opportunities were curtailed by the pandemic, staff have been asked to speak at clinics remotely, and many of the staff attorneys continue to mentor law students from the local law schools. Additionally, the ORPC externship through DU's Sturm College of Law has produced externs for the agency for the past several semesters, one of whom has become an associate for a current RPC and another who shared her experiences widely with other externs doing work in the child welfare arena, thus piquing additional interest in family defense.

Agency staff routinely engage with attorneys who may be practicing in child welfare, family, or criminal law in other roles and are interested in transitioning to or adding RPC work to their practices. The agency is committed to supporting alternative business models and structures that allow competent and passionate attorneys to enter this field and to continue to represent indigent parents throughout their legal careers. Participating in these opportunities to share the agency's mission and vision with the broader community helps the ORPC recruit professionals who might otherwise be unaware of the important work of family defenders.

Establish Fair and Realistic Contractor Hourly Rates to Attract and Retain High Quality Professionals: The ORPC is responsible for paying contractors tasked with representing indigent

parents in dependency and neglect cases. Attracting and retaining experienced and effective contractors for the difficult work of representing indigent parents is critical to the ORPC’s mission and is directly impacted by the hourly rates paid.

The rates paid to contractors by the ORPC were increased by the Colorado State Legislature on July 1, 2018, but rates have not increased since that date. During this same time, private sector attorney salaries have continued to increase. This change has further exacerbated the pay disparity between public and private attorneys.

In FY 2020-21, the ORPC requested and received approval for a rate increase for contractors. However, due to the pandemic, the increase was withdrawn because of the economic downturn. In addition, salaries for state employees increased by 3% in FY 2019-20 and by an additional 3% in FY 2021-22. The FY 2022-23 budget request includes another 3% increase for State employees. However, ORPC contractors have not received any increases during these years. To attract and retain experienced attorneys and non-attorney professionals, the ORPC has requested a \$5/hour increase in the hourly rate for attorneys and a commensurate 6% increase in the hourly rates of other contractors in its FY 2022-23 budget request.

In addition to stagnant rates of pay, the pandemic has impacted the agency’s ability to recruit and retain existing attorneys. Since the start of the pandemic, the agency has noted increased turnover of RPC contractors and reduced capacity of existing RPC to manage a fulltime practice while balancing the increased demands of personal health and family obligations. Since the beginning of the pandemic, the ORPC contracted with 70 new RPC. Out of those 70, 13 of them have already left RPC work. An additional 12 previously established RPC left the work during this same period. Of the total 35 RPC leaving this work during the pandemic, the most common reason for leaving was to obtain a job with benefits. The second most common reason was burnout or feeling overwhelmed.

Compensation alone cannot completely address retention issues, but it is one means of attracting and maintaining high quality legal representation for indigent parents. Consequently, the ORPC’s current focus is on modestly increasing the hourly rates of ORPC contractors to prevent the loss of the public-spirited attorneys who provide a vital service to their clients and to the State of Colorado. Increasing the current hourly rates for contractors will also help the ORPC attract strong professionals to the practice of parent representation and family defense.

Performance Measure H: Realistic Rate of Pay		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY2022-23
ORPC average hourly attorney rate	Target	\$80	\$80	\$84	\$80	\$85
	Actual	\$80	\$80	\$80	\$80	TBD

Redefining Success: To strengthen advocacy and leadership for ORPC contractors, the agency is working to develop measures of success that encapsulate all the challenges facing parent attorneys. While family reunification is universally recognized in dependency and neglect proceedings as one measure of successful representation, success also includes providing parents with dignity, advocacy, and a voice in the proceedings. In building a strong community of family defenders, it is essential that the ORPC communicates the value inherent in contractors’ work beyond traditional measures. For

that reason, the ORPC has begun recognizing contractors for meeting many other goals of representation, including:

- successfully complying with the performance standards established in CJD 16-02;
- providing client-centered representation to parents;
- educating stakeholders regarding the impact of separation trauma when appropriate;
- successfully communicating client stories and history to opposing parties and courts;
- creating dignity for parents who have often experienced extensive trauma themselves; and
- employing parent advocates with lived experiences to work on cases and to educate the community regarding the challenges parents face within the system.

Another indicator of successful representation emphasized by the ORPC is leadership in the courtroom. A successful RPC is the most professional, well-informed, and legally knowledgeable lawyer in the courtroom. The elevation of RPC practice in courtrooms across the state is a success independent of the resolution of the case.

This slow change in culture is starting to bear fruit. ORPC contractors are now looking at success from many angles. Recently, at a new RPC roundtable, an RPC shared that after struggling for months in rural courtrooms to get the court and the local department of human services to follow the law rather than continuing to do things “the way they’ve always done them,” he started to feel discouraged. He regularly consulted with ORPC staff to discuss strategy, to double-check his understanding of the law, and to generally seek reassurance. He continued to litigate and follow the law. During the roundtable, this new contractor was proud to report that the court and DHS were finally starting to follow the law and make the changes he had been suggesting without the need for him to litigate or prompt them. This has been a great benefit to parents in those jurisdictions and is unquestionably a success that will have a lasting impact.

Even when the result of the proceeding is not what the parent or the RPC hopes, contractors are able to focus on ways that clients’ lives have improved. One appellate attorney pointed out, “I am so happy when I talk to clients who have become substance-free, even after the court terminated their parental rights.” Many times, ORPC contractors struggle to obtain justice for their clients. They can provide dignity, however, for clients who have been traumatized, belittled, or ignored their whole lives. RPC carrying the stories of their clients proudly into family engagement meetings or review hearings is often a success for parents who have never truly been listened to or heard.

The ORPC is committed to supporting contractors when their clients identify other objectives, such as allocating parental rights to other family members or relinquishing their rights, in addition to supporting contractors whose clients are pursuing reunification. Representing parents who have experienced trauma can be emotionally draining and lead to burnout, and it is crucial that the ORPC redefine success for attorneys in these cases so that they are recognized and celebrated for all critical aspects of the important work they are doing.

ORPC Collaboration with the Colorado Evaluation and Action Lab: Fulfilling the ORPC’s mission to protect the fundamental right to parent by providing effective legal advocates for indigent parents in child welfare proceedings necessitates an evidence-based, data-driven approach to investments. To that end, in FY 2020-21, the ORPC began partnering with the Colorado Evaluation and Action Lab (Colorado Lab) to develop a strategic plan for building the evidence necessary to study

the effectiveness of parent representation approaches and the capacity to evaluate the overall efficacy of the agency. In FY 2021-22, the ORPC and the Colorado Lab began the first year of a planned four-year collaboration.

The Colorado Lab is a policy lab housed at the University of Denver that uses government–research partnerships to integrate evaluation into policy making. Evaluating overall agency effectiveness to inform continuous improvement in parent representation is at the core of the ORPC and the Colorado Lab’s collaborative work. During FY 2020-21, capacity was built to access the cross-system data necessary to accomplish this task by onboarding the ORPC to the Linked Information Network of Colorado (LINC),²³ the state collaborative based out of the Governor’s Office of Information Technology that supports timely and cost-efficient research, evaluation, and analytics.

LINC facilitates the integration of data across state and local agencies including human services, health, labor and employment, higher education, housing, K-12 education, and criminal justice. This provides the ORPC with access to comprehensive data about the participants, processes, and outcomes that comprise parent representation in dependency and neglect cases. The Colorado Lab is also advising the ORPC on improving its internal data collection.

In addition to allowing an assessment of the agency’s overall performance, synthesis of this internal and external data will be used to evaluate two aspects of the ORPC’s work:

- **Interdisciplinary representation**, as discussed above, is an evidence-based model of parent representation. The three-phase evaluation plan developed by the ORPC and the Colorado Lab will further build out the interdisciplinary team model already in place to define team roles and indicators of client-centered representation within the unique context of Colorado; explore the value of the interdisciplinary model vs. attorney-only representation; and identify activities and practices associated with positive case outcomes, long-term return on investment, and systemic changes.
- **Pre-filing representation** is an innovative practice whereby parents are provided legal representation to address a range of concerns that could lead to child welfare system involvement. The purpose of this work is supporting families to safely parent in the home, avoiding the trauma of parent-child separation, and preventing either initial or further child welfare system involvement. During FY 2021-22, the ORPC, in partnership with the Colorado Lab, will launch a pilot program for pre-filing representation in Jefferson County. Evaluation of the referral and parent engagement processes, as well as the outcomes of this pre-filing representation program, will inform the implementation of this practice on a broader scale in both Colorado and around the country.

By investing in preventative legal services and advocacy as well as robust interdisciplinary representation of parents, Colorado can reduce trauma to children caused by unnecessary family separation. Investment in prevention and robust advocacy for parents and families is also far more cost-effective than the continued removal of children from their homes and overuse of foster care.

²³ Linked Information Network of Colorado, <https://lincolorado.org/>.