

# Kinship Care



A Guide for Judges, Attorneys  
and Court Participants

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May, 2012

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Disclaimer. While the review team advised us as we developed this guide, the final product does not necessarily reflect the viewpoints of the individuals who served on the team.

## FOREWORD

Never before have kin been more important to our child welfare system. After decades of resistance, federal and state governments now recognize that relatives are a preferred placement for children who must be removed from parental care because of abuse or neglect. And what a good policy it is! Relatives provide care that is just as safe, or safer, than foster care; relative placements are more stable than placements with foster families; siblings are more likely to be placed together in relative care, parent-child visitation is more easily facilitated when children are placed with relatives, and children in relative care are more likely to maintain contact with their birth family, with their communities, and with their schools.

The challenge will be implementation. Traditionally, most children removed from parental care have been placed in foster or group home care. Few communities have more than 50% of these children placed with relatives, and many have as little as 10% and 20% placed with kin. How will communities across the country modify practice that has emphasized foster and group home care so that more children will be placed with relatives? Colorado has the answer. It is contained in this booklet, *Kinship Care: A Guide for Judges, Attorneys and Court Participants*. In this Guide all participants in the complex juvenile dependency court process will find their tasks relating to identifying and engaging relatives outlined in detail.

Colorado has always been ahead of the curve in recognizing fathers as full participants in the child welfare system and in identifying relatives as possible placements for children removed from parental care. Colorado statutes mandate that both parents be noticed and included in all judicial proceedings involving dependent children. Colorado recognizes that for relatives to be engaged and considered for placement, fathers need to be full participants in the process—after all, they represent approximately one-half of every child's relatives. Even the most unlikely participant—the incarcerated father—has a family that can be engaged and that may provide support and possibly a placement for the child.

The Guide will be useful for all professionals and volunteers working in the child welfare system. In addition to providing a summary of the history and policies that form the basis for current practice, the Guide details the roles and responsibilities of all stakeholders in the juvenile dependency court. CASAs, Guardians ad litem, county attorneys, parent's attorneys, caseworkers, foster parents, relative caregivers, and judicial officers all have sections dedicated to them, outlining their roles, responsibilities, and training.

As a retired judge, I was particularly interested in the section devoted to judicial officers. The Guide points out that “[t]he judge is also responsible for setting the tone in the courtroom and promoting effective judicial leadership.” In fact, the judge is in an ideal position to ensure that all participants stay on task and fulfill their roles, that trainings are offered, and that real collaboration occurs. A primary role for the judge is to hold everyone accountable including those who search and identify relatives, those who engage family members, those who assess the relatives, those who

provide opportunities for the family to meet and problem-solve, and to those who identify and help relatives access services. Through it all, the judge also must make certain that everyone moves quickly and efficiently. The law is known for being a slow and deliberate process, but in child welfare proceedings, time is of the essence, and the judge must make certain that the child reaches timely permanency.

The Guide includes nine benchcards. A benchcard is a one-page list of questions to ask regarding critical issues. Usually it is laminated, and sits on the judge's bench, ready to be used when a particular issue arises. The Guide provides benchcards for such issues as Engaging Fathers in the Legal Process, Diligent Search, and Potential Resources for Kinship Placements. These benchcards will be invaluable to the sitting judge throughout child welfare proceedings.

The Guide has accomplished what it set out to do—provide a road map for all participants in the child welfare system—a road map that will identify and engage relatives in the placement process. Colorado is poised to use its child welfare system to achieve timely permanency for its most vulnerable children—a permanency that will include more relatives as caretakers.

Judge Leonard Edwards (Ret.)  
Judge-in-Residence  
Center for Families, Children and the Courts  
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## Section 1 ■ Introduction

Judges, attorneys and other court participants regularly come into contact with family members and others who have taken on the primary responsibility for a child or youth. Over the last two decades, the number of these arrangements has increased significantly, with kinship placement now one of the fastest growing trends in child welfare.<sup>1</sup>

As the numbers of kinship families rise, it becomes increasingly important for all members of the judicial sector to have a thorough understanding of the benefits and unique challenges of kinship placement. The purpose of this Guide is to provide the background information and tools to help judges, attorneys, CASAs, and others ask the right questions regarding kinship care and uncover the facts necessary to make the best decisions for a child's safety and well-being.<sup>2</sup>

**Most research on the outcomes for children placed in kinship care is positive.** Unfortunately, the perception in the community that “the apple doesn't fall far from the tree” may prevent the close examination of family members as potential primary caregivers. While this perception may be true in some instances, allowing this bias to control whether options for family placement are investigated means some children may lose the opportunity to achieve permanency. Studies have shown that children are no more likely to experience maltreatment when placed with relatives as compared to non-relatives. In fact, some studies have shown maltreatment to be less likely to occur in relative care. Research also has shown more positive outcomes for children who live with a relative compared to a placement in non-relative foster care, including a greater sense of well being, better placement stability and fewer behavior problems. These and other findings demand a close evaluation of all potential kinship placements for any child removed from his or her parent's care.

**State and federal legislation has increasingly supported the preference for placing children and youth with relatives.** The federal legislation, *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), includes provisions specifically promoting the use of kinship care and improving the services and supports available to kinship caregivers. When presented with a potential relative placement, judicial sector stakeholders should be aware of the state and federal laws and regulations and the resources available to those families to support their care.

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<sup>1</sup> Cuddeback, G. (2004). Kinship and family foster care: a methodological review and substantive synthesis of research. *Children Youth and Services Review*, 26, 623-639.

<sup>2</sup> The authors recognize the distinction in the child welfare community between child and youth. For the sake of brevity, the term 'child' will be used to represent all children until the age of majority.



## Terms used in this Guide

In Colorado, **kinship care** is defined as,

*“The full time nurturing and protection of children by kin. Kin are relatives or persons ascribed by the family as having a family-like relationship, or they may be individuals that have a prior significant relationship with the child or youth. These relationships take into account cultural values and continuity of significant relationships.”*

– Colorado Department of Human Services Rule Manual,  
12 CCR 2509-4 §7.304.21

This broad definition of kin reflects the diversity of personal relationships and encompasses a wide range of potential legal arrangements of the caregiver with the child.

Tribal communities also define kinship caregivers as relatives caring for a child. The details on placement decisions specific to Native American children and the involvement of the tribe are important, but due to the limited scope of this Guide are not addressed in detail. Information on the policies and services for this population is available at the Tribal Law and Policy Institute and the National Indian Child Welfare Association.<sup>3</sup>

**Informal kinship care** refers to homes in which a family has decided a child will be cared for by a relative and there is no child welfare involvement. These informal arrangements comprise the majority of kinship care settings and could result from, for example, military deployment of a parent or an inability of a parent to safely care for a child. These kinship caregivers may come in contact with the judicial sector for a range of issues unrelated to dependency and neglect proceedings and often have limited financial and legal resources.<sup>4</sup>

**Kinship family foster care** refers to caregivers who have completed the standard foster care certification process and take in their kin. The child is in the legal custody of the county. Kinship foster parents must comply with the same requirements as any foster parent and are eligible to receive foster care reimbursement. In some cases, a waiver to a foster care certification non-safety rule or regulation may be sought.<sup>5</sup>

**Non-certified kinship care** refers to caregivers who have not pursued foster care certification but are involved with child welfare. The county department may have initially taken custody, but typically temporary custody is then awarded to the kinship caregiver. In many counties, the court grants kin some legal decision-making authority regarding medical treatment and school enrollment. The home must also meet certain safety requirements and some counties may have additional financial resources available for these families.

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<sup>3</sup> <http://www.tribal-institute.org> and <http://www.nicwa.org>

<sup>4</sup> The relative, for example, may seek child support from a parent under the provisions of C.R.S. §14-10-115 or allocation of parental rights and responsibilities pursuant to C.R.S. §14-10-123.

<sup>5</sup> 12 CCR 2509-4 §7.701.13

## How to use this Guide

This Guide gives practical information and helps define...

- Who are the kinship caregivers and the children in their care?
- What are the current state and federal laws and regulations impacting kinship care?
- How do kinship placements differ from non-relative placements and why is understanding and addressing the particular needs of a kinship placement so important?
- How can different members of the judicial sector...
  - effectively engage and assess a potential kinship caregiver and extended family,
  - assess the best options within kinship care for a child,
  - help families find the supports and services needed as kin caregivers, and
  - work together to ensure a timely, safe and long-term placement?

Sections 2 through 5 provide the background on kinship, the legal framework, and the different roles within the judicial sector. Sections 6 through 9 focus on specific interactions in which members of the judicial sector may impact a child's placement decision, including how to engage the family in the process, how to ensure a thorough assessment of a potential placement, and ultimately, how to help a family access needed resources to support the placement. The final section provides information on long-term permanency planning for kinship placements.

Throughout the Guide, quotes from kinship caregivers and child welfare staff in Colorado have been used to highlight key points. These quotes were obtained from a statewide needs assessment on non-certified kinship caregivers completed by the Colorado Division of Child Welfare Services in 2010. The report is available on the Colorado Kinship Connection website.<sup>6</sup> Quotes from other sources and practice commentary are also found throughout the Guide to describe best practices and give meaning and guidance to issues presented in the text. Unless otherwise noted, all practice commentaries are those of the authors.

Located both in the Appendix and on separate cards, the accompanying benchcards are quick and easy references to use after a thorough reading of the Guide. They provide either a summary of material presented in particular sections, or, more commonly, offer the reader questions to use in different stages of the kinship placement decision-making process. Specific citations for the material presented on the benchcards can be found within the accompanying section of the Guide. Several handouts are also provided in the Appendix and may be copied and given to kin to help them navigate the court system. Informal caregivers should be provided only relevant handouts.

The goal of the Guide is to raise awareness of kinship care in Colorado for members of the judicial sector and encourage them to bring that understanding to each unique case that presents itself to the court. By providing a focused and methodical approach, we hope this Guide will help judicial sector stakeholders make informed decisions on issues related to kinship care.

<sup>6</sup> Colorado Statewide Assessment of Non-Certified Kinship Care, July 2010. Available at <http://COkinship.org>

## Section 2 ■ Background on Kinship Care

No demographic group is immune to circumstances resulting in a parent's inability to maintain primary responsibility for a child.

### **The number of kinship families in the US has been steadily increasing.**

The number of households in which the grandparent is primarily responsible for a grandchild under 18 years of age has increased dramatically from 2.4 million in 2000 to 2.9 million in 2010.<sup>7</sup> These numbers underestimate the actual number of relative caregivers since data on the additional non-grandparent households— aunts, uncles, siblings and others—are not readily available.

Colorado's experience has been consistent with the national trend. Census data from 2010 shows almost 34,000 children live in homes in which a grandparent was identified as the adult primarily responsible for them, an increase from 29,000 children in 2005.<sup>8</sup> A corresponding increase in kinship placements is reflected in Colorado Child Welfare data on out-of-home placements indicating a 10% increase in non-certified kinship placements between 2006 and 2010.<sup>9</sup>

**Kinship caregivers represent a broad and diverse background.** No demographic group is immune to circumstances resulting in a parent's inability to maintain primary responsibility for a child. Reasons for kinship care are numerous and range from child abuse and neglect allegations and incarceration, to circumstances unrelated to child welfare involvement such as military deployments and unplanned teenage pregnancies. Caregivers who step forward are most often grandparents, but may also be any family member or an unrelated adult who has a close and significant relationship with the child. When compared to non-related foster care providers, the kinship caregiver is more likely to be older, single and unemployed, with less education and of lower socio-economic background.<sup>10</sup> Kinship caregivers also experience more health problems, receive less training and financial support and are more likely to suffer from depression.<sup>11</sup>

### **In Colorado, US Census data on grandparents responsible for their grandchildren has shown the following:<sup>12</sup>**

- Grandparents come from diverse racial and ethnic backgrounds. Approximately 55% are White (non-Hispanic), 34% are Hispanic/Latino, 7% are Black/African American, 2% are Asian, and 2% are American Indian and Alaska Native.

<sup>7</sup> US Census Bureau, 2010 American Community Survey. Accessed at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_1YR\\_B10002&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B10002&prodType=table)

<sup>8</sup> Ibid

<sup>9</sup> Data obtained from CO Child Welfare Division, 2010.

<sup>10</sup> Sakai, C., Lin, H., Giores, G.. (2011). Health Outcomes and Family Services in Kinship Care. *Arch Pediatr Adolesc Med*, 165 (2), 159-165.

<sup>11</sup> Cuddeback, G. (2004). Kinship and family foster care: a methodological review and substantive synthesis of research. *Children Youth and Services Review*, 26, 623-639.

<sup>12</sup> Available at <http://www.aarp.org/content/dam/aarp/relationships/friends-family/grandfacts/grandfacts-colorado.pdf>. Accessed 12/02/2011.

- Many are single and the sole caregiver for his or her grandchild.
- Approximately 70% are under age 60, not the elderly and retired grandparent many may picture.
- Financial difficulties may be significant with 16% of these grandparents living in poverty.

### **Possible legal relationships a caregiver may pursue in the different arrangements**

	<b>Verbal Agreement</b>	<b>Power of Attorney</b>	<b>Temporary Legal Custody</b>	<b>APR</b>	<b>Guardianship</b>	<b>Adoption</b>
Informal Kinship Care	X	X		X	X	X
Kinship Family Foster Care				X	X	X
Non-Certified Kinship Care			X	X	X	L

- **A verbal agreement** means there is no written authority for the kinship caregiver to care for the child, but the parent(s) and the caregiver have agreed to this informal arrangement and it can be terminated by the parent at any time. This is the most common arrangement in informal kinship care.
- **Power of Attorney** provides the caregiver with written authority for some aspects of care for the child (e.g., medical decisions) but does not reduce the authority of the parent(s). The authority may be changed at any time by the parent(s).
- A kinship caregiver may petition the court and be granted **Allocation of Parental Responsibilities (APR)**. APR grants decision-making authority to the caregiver regarding education and/or medical care. A judge determines the rights of parents and any change requires returning to court.
- **Legal guardianship** is awarded by the court and provides the caregiver exclusive authority regarding the physical care and supervision of the child, except for decisions regarding the right to agree to adoption, the right to consent to military enlistment and consent to marriage. Change to this status requires returning to court. A specific type of guardianship under the Kinship Guardianship Assistance Program is available to eligible relatives and is described in section 4.
- The court may grant **temporary legal custody** to the caregiver. This arrangement may continue throughout the case and is discontinued once the case is closed.
- Through **voluntary relinquishment and adoption**, the kinship caregiver becomes the legal parent of the child. Under this arrangement the birth parent(s) has no remaining legal rights. Adoption can also occur following the termination of parental rights during a dependency and neglect action.

## Research on Outcomes for Children in Kinship Families

Numerous studies comparing kinship care and traditional non-relative foster care have shown better outcomes for children in the care of relatives. Findings also suggest potential areas of concern. The largely positive findings reviewed below have been a key factor in the recent promotion of kinship by both federal and state regulations. It is critical that all involved in out-of-home placement decisions for children are aware of these findings.

*For a child, it feels a whole lot better if they are able to say 'I'm going to grandma's' ...sheets smell familiar, I have my stuff there already, cousins are still there, I can still have my dog, same school ... all the same people still love me.*

—Caseworker, CO Statewide Needs Assessment, 2010

### Children placed with kin experience...

#### ...safer placements

- Children placed in kinship care are three to four times less likely to suffer maltreatment.

#### ...greater stability

- Children experience fewer placement changes over time.
- Children experience fewer disruptions in school placement.
- Children are more likely to achieve a more permanent legal arrangement such as guardianship or allocation of parental responsibilities.
- Children are more likely to keep in contact with parents and relatives.
- Children and parents are more likely to be reunified.
- Once reunified with parents, children are less likely to re-enter the foster care system compared to children who were placed in non-relative foster care.

#### ...a more positive experience overall

- Children are less likely to have new allegations of abuse or neglect.
- Children are more likely to report a desire to have their current placement become their permanent home.
- Children are more likely to have a positive sense of well-being and report liking those with whom they live.

*We got our niece when she was three and I have three boys of my own. They were very excited to have a little sister and she is their little princess. The boys help her with her homework and it's had a very positive impact on our family.*

—Kinship Caregiver, CO Statewide Needs Assessment, 2010

- Scores for children in kinship placement in the physical, cognitive, emotional, and skill-based domains are more consistent with children who remain at home following the child abuse and neglect investigation.

### ...greater connections with siblings

- Children are more likely to maintain connections with their siblings and benefit from maintaining these connections as they learn about relationships and develop a sense of attachment.

*My grandmother raised me and my twin sister my whole life. She took in my uncle's kids and had four of her own and it was hard for her to discipline us—we were wild and she was old. She was very good...had the morals like respect others don't have. It was good to be raised by her. She passed away last year at 78.*

—Young Adult Kinship Alumni,  
CO Statewide Needs Assessment, 2010

### ...fewer behavior problems

- Children are less likely to be involved with the juvenile justice system.
- Children are less likely to leave or run away from placement.
- Teachers and caregivers report fewer behavioral problems with children placed with kin.

### ... greater connection to their family's cultural identity

- Placement with kin promotes the maintenance of a child's connection to their racial, ethnic or cultural ties and identity.

**Though the above research findings suggest a predominantly positive impact of kinship care compared to non-relative care, placement with kin also has potential risks.** Managing conflicting loyalties among different family members may be a significant challenge and can create serious risks for the child. A grandparent, for example, may be torn between the needs of the child and the needs of child's parent and, as a result, allow unauthorized access to a child by his or her parent(s). Another concern is undue delay in reuniting with parents. If this occurs, possible barriers should be explored during the legal process. For example, are family members, and particularly the parent, too comfortable with the kinship arrangement? Is the case labor intensive and the caseworker overwhelmed or less motivated to seek reunification? Are there financial advantages for the family to delay reunification?

## Children placed with kin...

### ...experience higher rates of adolescent risk behaviors

- Teenage girls have a higher risk of pregnancy.
- Adolescents have twice the risk of substance abuse.

### ...are slower to reunite with their parents

- At a similar point in time, children in foster care were twice as likely as children in kinship care to have been reunited with their biological parents.

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### The Federal Initiative

Following the lead of the **Indian Child Welfare Act of 1978**, child welfare agencies and courts began to give preference to placement of children with kinship caregivers over placement with traditional non-relative foster caregivers.<sup>13</sup> This preference has continued unabated as a result of increasing demands for out-of-home placement, fewer available foster homes, litigation, and changing attitudes about kinship placement within child welfare.<sup>14</sup> The trend has been further supported by the substantial positive research reviewed in section 3 and several key federal and state laws specifically promoting kinship care.

The first federal legislation encouraging states to consider kinship care was the **Personal Responsibility and Work Opportunity Reconciliation Act of 1996**. This legislation declared that “the State shall *consider* giving preference to an adult relative over a non-relative caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards” [emphasis added].<sup>15</sup> The **Adoption and Safe Families Act of 1997** continued the trend of “allowing” states the option of considering relative placement as an acceptable permanency option instead of adoption or guardianship.<sup>16</sup> **The Child and Family Services**

**Improvement Act of 2006** (P.L. 109-288) reauthorized and amended provisions of the **Safe and Stable Families Act** to require that children be consulted in case planning in an age-appropriate manner.

#### Practice Commentary

Although the Child and Family Services Improvement Act only requires consultation with the child at permanency hearings, all stakeholders should assure that such consultation occurs at all stages of a child’s case. Children often know who their significant relationships are and are often less reticent than their parents to disclose contact information for relatives.

Most recently, the **Fostering Connections to Success and Increasing Adoptions Act of 2008** [hereinafter “Fostering Connections”] enacted policies specifically directed at promoting and supporting the placement of children with relatives as defined by each state. The Act mandates, for example, the identification, notification and engagement of relatives when children are removed from their parents. In addition, the Act provides appropriations to support Kinship Guardianship Assistance payments by the states to Title-IV eligible children and eligible kinship caregivers.

<sup>13</sup> [www.nicwa.org/indian\\_child\\_welfare\\_act/](http://www.nicwa.org/indian_child_welfare_act/)

<sup>14</sup> Edwards, L. (2010). Relative Placement in Child Protection Cases: A Judicial Perspective, *Juvenile and Family Law Journal*, 61, 1-44.

<sup>15</sup> P.L. 104-193, 42 U.S.C. §§ 621 et seq.

<sup>16</sup> P.L. 105-89, U.S.C. §§ 621 et seq.



The Act also requires states to develop an appeals process whereby a relative can apply for a waiver of non-safety related standards for care on a case-by-case basis.<sup>17</sup> (See box for further details).

**Child and Family Services Reviews (CFSR)**, conducted by the Children’s Bureau, have also had a significant impact on the increase in relative placements. First conducted in 2001, these reviews measure the effectiveness of the states’ child welfare practices to encourage improvement of those practices. Two measures used by the Children’s Bureau in the CFSR evaluation process focus on whether families have been involved in the process and whether children maintain their family connections while in care. Having these measures as part of the CFSR pushes states to improve their practices regarding the engagement of extended families.

### **Key Provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008**

The Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) is the most significant federal reform for abused and neglected children in more than a decade. The chief purpose is to promote permanent families for children who are engaged in the child welfare system. Key provisions of the Act promote the following:

- Permanent homes for children with relatives by requiring identification and notice to relatives, allowing waivers for non-safety-related licensing standards, and making the Kinship Guardianship Assistance Program available for eligible kinship caregivers;
- Adoption for foster children with special needs by doubling the financial incentives to adopt such children;
- Access to competitive Family Connections Grants for states to enhance or design programs connecting children with their relatives;
- Preserving connections between members of sibling groups by requiring the state to show reasonable efforts made to place sibling groups in the same home, and when siblings are not placed together, requiring documentation of reasonable efforts to provide frequent contact between siblings;
- Expanded support and transitional planning for older youth in foster care, including the requirement of a “personal transition plan” for youth approaching their 18th birthday;
- Enhanced educational stability and attendance requirements for children in foster, kinship and adoptive families;
- Best practices in child welfare including Family Finding, Kinship Navigators, and Family Group Conferencing;
- Coordinated health planning for children in care;
- Direct access of tribes to IV-E funds and technical assistance upon submission of a plan; and,
- Expanded funding for training agency personnel, judges, attorneys, CASA, relative guardians, private providers, and others.

For a thorough discussion of the Act and its implications see Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351), ABA Center on Children and the Law (2011). Available at <http://www.napcwa.org/Home/docs/Judicial-Guide-Fostering-Connections.pdf>

<sup>17</sup> P.L. 110-351, 42 U.S.C. §§427, 671, 471

## Colorado's Response

In many ways, Colorado, through law and regulation, has been at the forefront of the national movement to choose kinship care over traditional non-relative foster care.

The following is a review of key Colorado statutes related to kinship care. In many ways, Colorado, through law and regulation, has been at the forefront of the national movement to choose kinship care over traditional non-relative foster care. Kinship care can be viewed as one of many tools to be used to “frontload” the system and concentrate maximum effort on a child’s success at the earliest stages of placement. When frontloading is successful, children will spend less time in foster care, will move less often and, when placed, will spend more time with persons they know and love. By enacting the model legislation and regulation described below, Colorado’s legislature and State Board of Social Services have taken action designed to promote kinship care, minimize the trauma children experience upon removal from their parent’s care and provide greater opportunities for parents, siblings and children to retain important family connections.

**Diligent Search** –As defined in the Colorado Code of Regulations, “Diligent search’ is the timely good faith effort to locate and contact any noncustodial parent, all grandparent(s), and other adult relatives concerning the removal of a child or youth from the custodial home.”<sup>19</sup> The term “Intensive Family Finding” may also be used to indicate diligent search efforts and may provide more emphasis on the importance of this process. The Colorado Code of Regulations also broadens the concept of “family” by requiring county departments to adopt family engagement processes that extend “beyond the immediate family members to those identified by the family as a source of support and strength and who will serve beyond the involvement of the child welfare system to help sustain the reunification and/or ability to safely parent the children.”<sup>20</sup>

Colorado statutes require county departments to exercise due diligence regarding search efforts and adhere to strict time limits: for the noncustodial parent, the search must commence within three working days; for grandparents and other adult relatives, it must be completed within thirty calendar days.<sup>21</sup>

Throughout the life of the case and until permanency is achieved, a diligent search must be initiated at least every six months. The two exceptions to the requirement for continued diligent search efforts under regulation are:<sup>22</sup>

- The court has ordered a delay in contacting specific relatives for good cause including domestic or other family violence; or,

*The court process takes time. Delay prevents children from achieving timely permanency and can also slow or prevent the placement of children with relatives. Even in the most efficient legal systems, by the time the system identifies and clears relatives for potential placement, the child may form a connection with the current caretaker, usually a foster home, and a change in placement may result in some trauma.*<sup>18</sup>

–Judge Leonard Edward, Ret.

<sup>18</sup> Edwards, L. (2010). Relative Placement in Child Protection Cases: A Judicial Perspective. *Juvenile and Family Court Journal*, 61, 1-44.

<sup>19</sup> 12 CCR 2509-4 §7.304.52(A),(B)

<sup>20</sup> 12 CCR 2509-4 §7.300.1(H)

<sup>21</sup> C.R.S. §19-3-403(3.6)(a)(IV)

- The placement has met the following criteria:
  - The placement is stable for a minimum of 6 consecutive months;
  - The relative or kin has committed to legal permanency; and
  - Parties agree the placement is the appropriate permanency option and it is in the best interest of the child that the search be discontinued.

### Practice Commentary

Due diligence is a somewhat amorphous term that is not defined in law or statute. Case law gives us some examples of what due diligence is and is not, but what constitutes “due diligence” is largely within the discretion of the judicial officer who handles the case. Surprise and inconsistency is the enemy of good practice in many areas of the law. It is especially problematic when dealing with children and families because it often causes delay—the bane of the child welfare court system. It is therefore essential that the judicial officer clearly identify what he or she believes “due diligence” requires. Advocates in the courtroom will help the court to evolve this framework through their arguments about specific efforts by the Department.

**Notice to Relatives** – Once relatives are located, Colorado Code of Regulations requires notice be provided to all available grandparent(s) and adult relatives informing them that the child has been removed from the home. Notice must include the following:<sup>23</sup>

- the option to participate in the care or placement of the child;
- the options that may be lost by failing to respond;
- the requirements to become a foster parent, and the services and supports available to the child if placed in the family foster care home; and;
- a description of the kinship guardianship assistance program.

### Finding and Engaging Noncustodial Parents and Relatives

Colorado statutes and regulations have long recognized the State’s duty to provide full due process to *both* parents. Petitions must state the “. . . names and residences of [the child’s] *parents* . . .” and provides that “if the persons [summoned] are not the *parents* . . . then a summons shall also be issued to the *parents* . . .” [emphasis added].<sup>24</sup>

Particular emphasis should be placed on regulations requiring the identification and involvement of fathers. In the case of *Stanley v. Illinois*,<sup>25</sup> the U.S. Supreme Court held that, under the due process clause of the United States Constitution, an unwed father could not be deprived of his right to parent his child without a showing he was unfit. The Colorado Code of Regulations also provides a number of regulations requiring notification of absent parents and relatives on *both* the maternal and paternal side.<sup>26</sup>

<sup>22</sup> 12 CCR 2509-4 §7.304.52(D)

<sup>23</sup> 12 CCR 2509-4 §7.304.52(B),(2)

<sup>24</sup> C.R.S. §19-1-115(8)(b)(II) and C.R.S. §19-3-502(2) C.R.S. §19-3-503(3) See also *People in the Interest of A.M.*, 786 P.2d 476 (Colo. App. 1989). Admission by mother insufficient to sustain adjudication as to father.

<sup>25</sup> 405 U.S. 645 (1972)

<sup>26</sup> 12 CCR 2509-4

*Socially, research reveals that children have better outcomes when they have two parents involved with their upbringing. A father can be a critical person in a child's life and help a child understand who he is and how he fits into the social scheme of the world around him. The father's family provides an additional resource for the child socially, emotionally, and financially. Indeed, the father's family, on average, will provide the child with one-half of her relatives.<sup>27</sup>*

—Judge Leonard Edwards, Ret.

**The Absent Parent and Relative Affidavit** – Since 1990, Colorado courts have been required to collect information from the parents regarding the child's relatives.<sup>28</sup> In its present form, parents must supply the names, addresses and telephone numbers of “every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the child . . .” This statute requires the parent to provide the information in an affidavit and advisement JDF-559.<sup>29</sup> After the initial hearing, the form must be completed by the parent. It must then either be submitted to the county department within five business days of the initial hearing and to the court within seven business days or it must be completed prior to the next hearing, whichever occurs first. Pursuant to the statute, the advisement warns the parent that failure to provide accurate and complete information is punishable by perjury or contempt. Once completed, the court must deliver a copy of the form to the county department and to all attorneys within five business days.

#### Practice Commentary

Just because the statute says that a parent should complete the JDF-559 does not mean that it will get done. Each of the court stakeholders must act as an agent of accountability to assure that this law is followed. The court must implement a system that assures early identification. If JDF-559 is not filled out thoroughly and filed on time, the court should take action to see that it is completed. CASAs and attorneys for all parties must also insist that they receive copies of the completed form and should use the information to prepare their case and serve their client.

### Decisions Regarding Relative Placement

Although there are several references in Colorado law that the court may give preference to a grandparent or other relative who is appropriate, capable, willing and available, there is no explicit statutory *requirement* to grant *preference* to a grandparent or any other relative.<sup>30</sup> The only exception to this rule is if a child is of Native American descent as defined by the Indian Child Welfare Act (see box).

Department of Human Services regulations do, however, directly *promote* the consideration of relative care as a form of family preservation and recognize that such placements can provide many benefits to children. Regulations also broadly define kinship care as care with “. . . relatives, *persons* ascribed by the family as having a family-like relationship, or individuals that have a prior significant relationship with

<sup>27</sup> Edwards, L. (2009). Engaging Fathers in the Child Protection Process: The Judicial Role. *Juvenile and Family Court Journal*, 60, 2-29.

<sup>28</sup> C.R.S. 19-3-403(3.6)(a)(I)(A), C.R.S. §19-3-403(3.6)(a)(I)(B), C.R.S. §19-3-403(3.6)(a)(III)

<sup>29</sup> The JDF-559 form can be found at: [http://www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=50](http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=50)

<sup>30</sup> See, for example, C.R.S. §19-1-115(1)(a); C.R.S. §19-3-402(2)(a); C.R.S. §19-3-403(1), (3.6)(a)(III), and (3.6)(a)(V)

Regulations require that parents must be included as part of the planning process regarding placement with kin unless there is a reason why they are unavailable.

the child or youth” [emphasis added].<sup>31</sup> *Non-related* persons, therefore, with a close personal relationship to the child can qualify for most of the services provided to relative caregivers.

In making placement decisions, the child’s safety is always the primary concern. Once safety is assured, the following are examples of provisions favoring kinship caregivers and promoting continued connections to a child’s relatives.

- When removal from parents or guardians occurs on an emergency basis, children may be placed with kinship caregiver.<sup>32</sup>
- The child may be placed with the relative on a temporary “visitation” basis if certain other protective steps are taken.<sup>33</sup>
- Waivers may be sought for certain foster care certification rules and regulations that do not implicate the child’s safety.<sup>34</sup>
- When ranking permanency planning options, adoption by a relative as well as guardianship with a relative and allocation of parental rights and responsibilities (APR) to a relative are ranked just below reunification with a parent but above adoption by a non-relative.<sup>35</sup>
- Prior to and following termination of the parent-child legal relationship, the county department shall “consider legal custody or adoption by relatives when in the child’s best interests.”<sup>36</sup>
- Following termination of the parent-child legal relationship, grandparents, aunts, uncles, brothers, or sisters of a child may request guardianship and legal custody, and the court shall give preference to them if it determines that the placement is in the best interests of the child.<sup>37</sup>

Regulations require that parents must be included as part of the planning process regarding placement with kin unless they are unavailable.<sup>38</sup> If the parents do not agree to the specific kinship placement, an assessment of the potential placement may be ordered by the court and, if determined to be the best option for the child, the court can override the parent’s objections and order the placement.<sup>39</sup>

<sup>31</sup> 12 CCR 2509-4 §7.304.21(B)

<sup>32</sup> 12 CCR 2509-4 §7.304.21(D)(2)(e)

<sup>33</sup> *Ibid.* This provision allows the child to be informally placed with a relative for a short period of time without going through a certification process. This “visitation” period may be useful for the relative to work through the mental and emotional process of determining how best to support the family.

<sup>34</sup> 12 CCR 2509-4 §7.304.21(D)(3)(d); §7.701.13 outlines the appeal process for such waivers

<sup>35</sup> 12 CCR 2509-4 §7.304.54

<sup>36</sup> 12 CCR 2509-4 §7.304.55(H)

<sup>37</sup> 12 CCR 2509-4 §7.304.72(E). However, C.R.S. §19-3-602(2) provides that the relative must come forward within 20 days of the filing of the motion to request guardianship or legal custody. As a practical matter, delay in coming forward will not necessarily disqualify such a relative from gaining custody since Colorado caselaw requires the court to consider other less drastic alternatives. *C.S. v. People*, 83 P.3d 627 (Colo. 2004); *People in Interest of D.M.W.*, 752 P.2d 587 (Colo. App. 1987).

<sup>38</sup> 12 CCR 2509-4 §7.304.21(D)(2)(b)

<sup>39</sup> 12 CCR 2509-4 §7.304.21(D)(2)(d)

## **Indian Child Welfare Act**

Federal law modifies the procedures when out-of-home placement is necessary for a child who is a member of or eligible for membership in a federally recognized Indian tribe. Differences include the requirement to notify tribes, discretionary and mandatory tribal court jurisdiction, and higher evidentiary burdens. Placements under the Act, in order of preference, are as follows: family, foster home certified by tribal members, an Indian family foster home certified by a non-Indian licensing authority, and; finally, another non-kinship foster care setting. ([www.nicwa.org](http://www.nicwa.org))

## **Regulations Regarding Services Available to Kinship Providers**

Regulations state that potential kinship providers must be informed of all support options, including family preservation services, certification for kinship family foster care, and the Kinship Guardianship Assistance Program.<sup>40</sup> The Colorado Code of Regulations also requires the caseworker to make reasonable efforts to provide the services necessary to support the child's needs without regard to the relationship that the caregiver has with the child.<sup>41</sup> For kinship caregivers who have completed foster care certification, regulation also ensures they have access to the same level of services and financial support as a non-kinship foster care provider for children who are Title IV-E eligible.<sup>42</sup> Some services available to non-certified kinship caregivers may differ due to their availability within a specific county or the eligibility of the kinship caregiver or child.

**Kinship Guardianship Assistance Program (KGAP)** – In 2010, Colorado became one of a number of states to adopt regulations from the Fostering Connections Act to support the federal Kinship Guardianship Assistance Program (KGAP).<sup>43</sup> Colorado's KGAP provides an important alternative to long-term foster care and can provide an additional avenue for children to find permanency with a relative or a person with whom they have a significant relationship.<sup>44</sup> The program is not a substitute for and shall not supplant diligent efforts to achieve permanency through reunification with parents or adoption by relatives.<sup>45</sup>

To qualify for this program, the caregiver must be a relative or a person who either is ascribed by the family as having a family-like relationship with the child or who has had a prior significant relationship with the child.<sup>46</sup> Participation also requires continued contact with child welfare and a review of the agreement every three years. Additional eligibility requirements include:

- removal occurred as a result of court order or voluntary placement agreement;
- the prospective relative guardian was a certified foster family for at least six consecutive months;
- the child demonstrates a strong attachment to the relative;

<sup>40</sup> 12 CCR 2509-4 §7.304.21(D)(1)(c)

<sup>41</sup> 12 CCR 2509-4 §7.304.21

<sup>42</sup> 12 CCR 2509-4 §7.304.21(D)(1)(d)

<sup>43</sup> 12 CCR 2509-4 §7.311 et seq.

<sup>44</sup> Previously referred to as Colorado's Relative Guardianship Assistance Program (RGAP)

<sup>45</sup> 12 CCR 2509-4 §7.304.21(D)(6)(a)

<sup>46</sup> CRS 26-5-110 as amended by SB12-066 effective August 7, 2012

To promote sibling placements, specific regulations provide for siblings who are not IV-E eligible to be added to the KGAP agreement at any time and thus become eligible for payments and other supportive services.

- the prospective guardian has a strong commitment to the permanent care of the child;
- children who are 12 and older have been consulted about their wish to be placed with the relative;
- reunification and adoption are found not to be appropriate permanency options for the child; and;
- guardianship with the relative and receipt of a Guardianship Assistance payment is in the best interests of the child.<sup>47</sup>

To promote sibling placements, specific regulations provide for siblings who are to be added to the KGAP agreement at any time and thus become eligible for payments and other supportive services. The provision requires that the child, the caregiver and the county Department agree the joint placement is in the best interests of the child in the program.

Under Department regulations, the guardianship assistance may continue until the youth reaches the age of eighteen.<sup>48</sup> The amount of financial support may be up to, but not exceed, the level of support for foster care reimbursement minus the amount paid for respite. The program also provides a one-time payment of up to \$2,000 per child for non-recurring expenses such as legal fees, court, and other costs.<sup>49</sup> For Title IV-E eligible participants, eligibility for the contracted support and services continues regardless of the family's state of residence so long as the child remains in the relative's care.<sup>50</sup> For non-Title IV-E participants who move out of state, the county would continue to provide the KGAP support but the child would need to apply for Medicaid eligibility in the new state.

The potential benefits of KGAP for a caregiver and child are significant for emotional, financial and legal reasons. When in certified kinship foster care, the dependency case must remain open with court reviews at least every six months. For children and caregivers, this may present obstacles to the feeling of permanency they need. In addition, for many kinship providers, the essential financial benefits they receive through the foster care program may prevent them from pursuing the more permanent options of adoption or guardianship. KGAP removes this conundrum by potentially providing a level of financial and other support kin would receive as certified foster parents and, at the same time, provides the advantage for both caregiver and child of the more permanent guardianship status for the child.

#### Practice Commentary

As a practical matter, a Petition for Guardianship must be filed in the probate court of the judicial district. In order to maintain the best practice of "one family, one judge," it is important for courts to develop a protocol so that the probate case is heard by the same judicial officer who heard the dependency case. This judicial officer will have the historical background to make the most accurate assessment of how the guardianship will serve the best interests of the child. In addition, the petitioning relatives will likely feel much more at ease before the same judge who placed the child with them.<sup>51</sup>

<sup>47</sup> 12 CCR 2509-4 §7.311.1

<sup>48</sup> 12 CCR 2509-4 §7.311(6)(A)

<sup>49</sup> 12 CCR 2509-4 §7.311.72

<sup>50</sup> 12 CCR 2509-4 §7.311.6(C)(1).

<sup>51</sup> Because the Denver Juvenile and Probate courts are separate constitutionally created courts, it is not possible to transfer jurisdiction of probate matter to the Juvenile court.

A child's concept of time is much different than that of an adult. Any delay, often routine or expected with other types of litigation, risks doing harm to the child.

Children removed from their parents for their own safety often suffer significant emotional trauma upon their removal. They are expected to adjust to new relationships and surroundings and accept the loss of those with whom they had strong emotional bonds. To minimize unintended harm, all involved must work together in a professional and timely manner to determine the plan that is in the best interest of the child. In this section of the Guide, the roles and responsibilities of each stakeholder will be briefly reviewed. Understanding the roles and responsibilities of all stakeholders and holding them accountable promotes the collaborative process necessary to achieving good outcomes for children and families.

In each individual case, time is of the essence. A child's concept of time is much different than that of an adult. Any delay, often routine or expected with other types of litigation, risks doing harm to the child. Though the best interest of the child should always be paramount, stakeholders at times have discretion about how they conduct their practice in dependency and neglect (D&N) cases. When deciding whether to ask for or grant a continuance, when to conduct required investigations, or when to file reports or motions, for example, each stakeholder should view the effect of each decision through the eyes of the child and choose the action that results in a more timely result for the child.

Each individual involved in a case brings his or her own educational background, personal experiences, and, at times, personal biases regarding relative care. Individuals must not allow personal biases regarding kinship care—positive or negative—to impact the child's options. Each stakeholder must assure that any preconceived notions about kinship care do not influence their ability to assess the unique strengths and potential challenges that may be present in each case.

Fostering Connections promotes expanding educational opportunities on issues related to out-of-home placements for a broad range of stakeholders *outside* of child welfare, specifically citing those within the judicial sector. Judges and other members of the judicial sector are encouraged to promote additional educational opportunities when available.

*We should all take this work, every child, every case very seriously, very respectfully, as we play a role in providing the court the best possible, most thorough information and advocacy of all perspectives to allow a reasoned, just and appropriate decision in each case. People's lives and the quality of those lives hang in the balance. We can never allow ourselves to be totally comfortable in court or at any other event related to a case.*

—A Court Improvement Program Training Participant



## **Court Appointed Special Advocate (CASA)**

When available, the court has the option of appointing a CASA if the judge or Guardian ad Litem (GAL) feels it is in the child's best interest. A CASA is a trained volunteer from the community who gives the child a voice in court.<sup>52</sup> The primary benefit of having a CASA volunteer is that he/she has a caseload of one family and is required to see each child at least once a week for the life of the case. The GAL, Department of Social/Human Services and other agencies must cooperate and share information with the CASA.

### **Training**

CASA volunteers are generally not attorneys. Their educational background varies but their core training includes significant discussion of the benefits and possible pitfalls of kinship care. Each CASA volunteer is supervised by a professional who is on staff with the local CASA program.

### **Primary responsibilities<sup>53</sup>**

- Conduct an independent investigation, including interviews or observations of the child, interviews with other interested persons (including parents and relatives), and a review of records and reports.
- Make recommendations consistent with the best interests of the child regarding placement, visitation and appropriate services for the child and family.
- Determine if an appropriate treatment plan has been created.
- Monitor the case to ensure that the child's essential needs are being met.
- File reports to be distributed to all parties.
- Appear as a witness for any party, if requested.<sup>54</sup>

### **Questions for the CASA volunteer to ask at or before every hearing**

- Is there evidence the Department has made diligent and continuing efforts to locate absent parents and relatives? What are the results of those efforts?
- Has the child been asked about relatives and any other persons who have a significant connection to the child?
- Has the Relative Affidavit (JDF-559) been completed and provided to the CASA?
- Have the caseworker and the court informed relatives of support they could receive if the child is placed with them?
- Are there any concerns regarding unmet needs of the kinship caregiver?
- Have relatives been enlisted to provide other support for the child and the family?
- Has the GAL visited the child's place of residence and has the caseworker made monthly contact with the child, parents and caretaker?

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<sup>52</sup> Most jurisdictions in Colorado have CASA programs.

<sup>53</sup> See generally, C.R.S. §19-1-201 et seq.

<sup>54</sup> C.R.S. §19-1-208

In order to take an independent position, it is necessary for GALs to conduct their own comprehensive and independent investigation.

## **Guardian ad Litem (GAL)**

A GAL is always appointed by the court in a dependency and neglect case to represent the child's best interest in court.<sup>55</sup> As such, the GAL does not establish an "attorney-client" relationship with the child and may ethically take a position to which the child is opposed.<sup>56</sup> The GAL will endeavor to hold the child's communications confidential, but the child should be made aware that those communications may be revealed if it is thought to be in his or her best interest.

### **Training**

Every GAL appointed in a D&N case in Colorado is required to be a lawyer and is therefore generally bound by the same rules as the Assistant County/City Attorney (ACA) and the Respondent Parent Counsel (RPC). A GAL is overseen by the Colorado Office of Child's Representative and must complete specific training requirements.

### **Primary responsibilities**

- Conduct an independent investigation (see below).
- Attend all court hearings and examine witnesses in adjudicatory and dispositional hearings.
- Cooperate with an appointed CASA volunteer if involved.
- Establish and maintain a good relationship with the child and represent the child's best interests with paramount concerns for health and safety.
- Advise the court of the child's position on matters unless specifically directed by the child not to do so even if the GAL does not share the child's views.
- Facilitate reunification when possible and take timely action to reduce the risk of disruption to the child's placement.
- Identify and preserve the child's significant relationships including transmitting relevant information regarding relatives to DHS and the court.

In order to take an independent position, it is necessary for GALs to conduct their own comprehensive and independent investigation.<sup>57</sup> A GAL who merely rubber stamps the recommendations of DHS or other stakeholders is not fulfilling his or her duties under the law. In addition to personally interviewing or observing the child in every new placement, the investigation shall include:

- talking with the child about relationships he or she considers significant, and providing that information to the caseworker and others;
- personally meeting with and observing the child's interaction with the parents, proposed custodians or foster parents, including kinship care providers;
- reviewing court files and relevant records;
- interviewing the parents, with the consent of their attorney;

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<sup>55</sup> C.R.S. 19-1-203(3)

<sup>56</sup> *People v. Gabriesheski*, 262 P.3d 653 (Colo. 2011). See also, CJD 04-06(V)(B)

<sup>57</sup> This investigation is required by C.R.S. §19-3-203(3) but its content is more fully described in Chief Justice Directive (CJD) 04-06(V)(D)(4).

- interviewing other people involved in the child’s life, including foster parents, caseworkers, CASA volunteers, relatives, school personnel, therapists, child care providers and any other persons or professionals necessary to assess and serve the child’s best interests;
- confirming that the county department’s investigation has included a search for any prospective kinship provider or tribal affiliation; and;
- when appropriate, visiting the home from which the child was removed.

**Questions for the GAL to ask at or before every hearing**

- Is there evidence the Department has made diligent and continuing efforts to locate absent parents and relatives? What are the results of those efforts?
- Has the Relative Affidavit (JDF-559) been completed and provided to the GAL?
- Has the child been asked about relatives and any other persons who have a significant connection with the child?
- Are there any concerns regarding unmet needs of the kinship caregiver?
- Have relatives been enlisted to provide other support for the child and the family?
- Has the caseworker met the child, parent and kinship caregiver contact requirements of Volume 7?

## **Assistant City/County Attorney (ACA)**

The City or County Attorney represents the best interests of the child as expressed by the Department of Human Services (DHS) caseworker, or in some counties, assumes the role of representing the “People.”<sup>58</sup> In either model, this attorney consults with the caseworker about whether a case should be filed.

### **Training**

As attorneys, ACAs are bound by the professional and ethical responsibilities set forth in the Colorado Code of Professional Conduct (Colo. R.P.C.). Although ACAs in counties with large populations frequently spend most of their time handling D&N cases, in counties with smaller populations, the ACA may have many other duties and more limited training and experience in kinship care.

### **Primary responsibilities**

- Initiate the case on behalf of DHS or the People.
- Contact the court to set up the initial hearing and file the petition, summons and related paperwork at the first hearing before the court.<sup>59</sup>
- Assume an advisory role with an understanding of law and regulation.
- Ensure that options to assure safety and permit the child to remain in his parents’ care are fully explored.
- Make certain the caseworker has considered relatives as a placement or as a resource for other familial support.

### **Questions for the ACA to ask at or before every hearing**

- Has the Relative Affidavit (JDF-559) been completed and provided to the court and all parties?
- Is there evidence the Department has made diligent and continuing efforts to locate absent parents and relatives? If not, is this failure to make such efforts reasonable?
- Have absent parents been served and has proof of service been filed with the court?
- Has the caseworker fulfilled the duty to inform relatives of support they could receive if the child was placed with them?
- Are there any concerns regarding unmet needs of the kinship caregiver?
- Have relatives been enlisted to provide other support for the child and the family?

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<sup>58</sup> In this latter role, the attorney listens to the caseworker as she would any other investigator; however, he or she is not bound by the caseworker’s opinion. Where there is a conflict in the positions of the ACA and the caseworker, the caseworker may be left without representation.

<sup>59</sup> This hearing must take place within 48-72 hours of the child’s removal from the home. Although C.R.J.P. 4(a) only requires that the Petition be filed within 10 days of removal, most ACA offices file the Petition and Summons at the first court hearing. This procedure represents a best practice.

## Respondent Parent Counsel (RPC)

This attorney has the duty to zealously represent a parent in a D&N case. Under Colorado law, every parent who is indigent is entitled to representation at state expense.<sup>60</sup> An RPC should advocate for an effective treatment plan and may advise clients to cooperate with DHS. It is also ethically appropriate for an RPC to advise his or her client to challenge the authority of the county and to test the strength of the county's evidence.

### Training

As attorneys, RPCs are bound by the professional and ethical responsibilities set forth in the Colorado Code of Professional Conduct (Colo. R.P.C.). Practical and role-specific training and experience may vary widely.

### Primary responsibilities<sup>61</sup>

- Collect information from the investigating caseworker and client.
- Recommend to client the most effective strategy to achieve their goals.<sup>62</sup> The client maintains the absolute right to decide whether to admit or deny the petition or to make other motions.
- Advise his or her clients to complete the Relative Affidavit form.
- Advise the client of potential benefits and possible pitfalls when involving relatives.

### Questions for the RPC to ask at or before every hearing

- Has the Department made reasonable efforts to prevent or eliminate the need for placement?
- Has the Relative Affidavit (JDF-559) been completed and provided to the court and all parties?
- Is there evidence the Department has made diligent efforts to locate and support relatives with whom the parents would like to have their children placed?
- Has the tribe been notified of the pending action if there is a possibility that the Indian Child Welfare Act may apply?
- Are there any concerns regarding unmet needs of the kinship caregiver?
- Have relatives been enlisted to provide other support for the child and the family?

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<sup>60</sup> C.R.S. §19-1-202

<sup>61</sup> The duty of zealous representation applies to all attorneys and is found in the Preamble to the Colorado Rules of Professional Conduct (Colo. R.P.C.). However, the duty of zealous representation is not unlimited. See for example Colo. R.P.C. 1.2 regarding requirements that an attorney not counsel a client to engage in criminal conduct; Colo. R.P.C. 3.1 regarding the requirement that a lawyer not bring or defend a proceeding where there is no meritorious defense; Colo. R.P.C. 3.3 regarding candor toward the tribunal; Colo. R.P.C. 3.4 regarding fairness to opposing party and counsel; Colo. R.P.C. 3.5 regarding ex parte communication; and Colo. R.P.C. 4.1 regarding truthfulness in statements to others.

<sup>62</sup> Colo. R.P.C. 1.2(a) When it comes to the goals of the case, it is the client who is in charge and a lawyer's representation of the client does not constitute an endorsement of the client's views or activities.

## **DHS Caseworker**

The actions of the DHS caseworker are critical to the effectiveness of the D&N process and its concurrent and sometimes conflicting goals of child safety and reunification with family. The duties presented below are only a partial representation of the responsibilities for many caseworkers. The time demands of a complex kinship case can sometimes place an additional burden on a caseworker that may seem overwhelming. For this reason, other stakeholders must understand caseworker duties, provide support when possible and, if necessary, take timely action to assure they are fulfilled.

### **Training**

Caseworkers are provided with extensive core training through the Child Welfare Training Academy before they are assigned to any D&N case. This training includes material on the importance of engaging both parents, providing notice to adult relatives, and preserving the child's important connections to siblings, school, community and relatives.

### **Primary responsibilities**

- Comply with Colorado Code of Regulations Volume 7.
- Assess the safety of the child.
- Find, engage and maintain a good working relationship with the family.
- Ensure the family has been fully informed of options available to them.
- Work with the family towards reunification or another alternative for child.
- Create safety, case and concurrent permanency plans.
- Arrange for supports and services as needed for kinship caregiver and child, including the child's educational and health needs.
- Adhere to regulations concerning contact with parents, child and treatment providers, as well as duties in such areas as record keeping, confidentiality, etc.

### **Questions for the Caseworker to ask at or before every hearing:**

- Has the Relative Affidavit (JDF-559) been completed and provided to the court and all parties?
- Do the Department's actions support a finding that diligent and continuing efforts have been made to locate absent parents and relatives?
- Has paternity been established and have absent parents been served?
- Have potential kinship caregivers been informed of support they could receive if the child was placed with them?
- Are there any concerns regarding unmet needs of the kinship caregiver?
- Have relatives been enlisted to provide other support for the child and family?
- Has ongoing inquiry been made regarding the applicability of the Indian Child Welfare Act?

## Foster Parent and Kinship Caregiver

The role and value of a foster parent or kinship caregiver in court proceedings should not be minimized. Their knowledge of the child's needs and other issues potentially affecting a placement can significantly impact the decisions made in court. Notice of court hearings must be provided to the child's caregiver, who may be a foster parent, pre-adoptive parent, or kinship caregiver.<sup>63</sup> The law also ensures these persons have the right to be heard at any hearing.

### Training

Foster care certification requires completion of specific training. Some counties may require trainings for non-certified kinship caregivers as well. Additional educational opportunities may be available to any caregivers through the Colorado Department of Human Services, the Court Improvement Program, online and through other community resources.

### Roles and responsibilities

- Provide food, clothing, shelter and a nurturing environment.
- Oversee educational progress and health needs.
- Work with parents in appropriate cases and willingly return the child to parents when determined by court.
- Provide notice to the child, when age appropriate, of all hearings and reviews regarding the child.
- Cooperate with the caseworker and other participants to assure the child receives the services and supports needed.
- Assure that the child is available for contact with siblings and parents when appropriate.
- Comply with all court orders, including orders for parental contact, or face the possibility of having the child removed from their home or being found in contempt of court.

#### Practice Commentary

Despite receiving notice, foster parents infrequently attend court hearings. As a result, the court must receive information on the child from secondhand sources. Relatives, whether named as Special Respondents or not and whether certified or not, are more likely to attend court hearings than non-related foster parents. Judicial officers should take steps to ensure that all caregivers receive notice of hearings and are specifically encouraged to attend. These individuals often have the most direct knowledge of the child's behavior, needs and concerns. Without their input, the judge may not have information that could impact the child's plan.

### Questions for the Foster Parent and Kinship Caregiver to ask at or before every hearing

- Are the caseworker, GAL, CASA and parents aware of the challenges faced by the child and of the challenges for the foster parent in having the child live in their home?
- Has the Department provided what is needed to support the stability of the child in placement?
- Have they been given notice of hearings and have they been encouraged to attend?
- Have the GAL, caseworker and CASA met with the child to learn where their strongest connections lie and with whom they would like to live?

<sup>63</sup> The Child and Family Services Improvement Act of 2006 (P.L. 109-288) as well as C.R.S. §19-3-502(7). Although the statute requires that the court ensure that notice is provided, it is DHS who must provide notice as the court often does not know the specific address where notice should be sent.

## Judicial Officer

The judicial officer (Judge) in a D&N case may be a District/Juvenile Court Judge or a District Court Magistrate and is responsible for making decisions based upon law and evidence. He or she must have a clear understanding of the rules and regulations related to kinship care and ensure that plans are adhered to and are in the best interest of the child. The judge is also responsible for setting the tone in the courtroom and promoting effective judicial leadership. The following are examples of questions which, when asked by a judge, will set expectations in the courtroom for how kinship cases will be conducted.

- At each review, is there documentation of continued diligent search efforts, when appropriate? If so, what have been the results?
- Has the Relative Affidavit (JDF-559) been completed, submitted to the court, and have copies been distributed to the parties?
- Are different stakeholders promoting adherence to statutory timelines to minimize delays in the case?
- Were foster parents, parents and kinship caregivers, and, when age appropriate, children provided notice and encouraged to attend and participate?
- When did the GAL last speak with the child and how is the child doing in the placement? In school (IEP, 504 plan)? In other activities?
- What progress has the child made in the different areas needing support as identified within the plan?
- Are there any concerns regarding the needs of the kinship caregiver?
- Have appropriate inquiries been made regarding the applicability of the Indian Child Welfare Act?

The Judge's leadership can also significantly impact outcomes for children through his or her activities *off* the bench. In addition to requiring diligence and impartiality in the performance of judicial duties, Canon 3.1 of the Code permits judges to engage in appropriate extra-judicial activities to improve the law, legal system and the administration of justice.<sup>64</sup> A judge may be responsible for leading the district's Best Practice Court collaborative team of stakeholders to improve outcomes for children and families. In such a case, the judge, in collaboration with the team, may promote

### Practice Commentary

Unlike kinship caregivers working with both the courts and child welfare, the *informal* kinship caregiver seeking guardianship or APR for a child often approaches the court with little support and guidance. Though these caregivers' commitment may actually prevent the future need for foster care placement, few resources are available to support their interactions with the legal system. The majority are dependent on pro-bono legal and other advisory community resources if available. In such cases, the judge and others should be particularly attentive to acknowledging their commitment to the child, supporting them in the court process and directing them to available resources whenever possible.



educational opportunities for child welfare court and agency stakeholders or refine the diligent search practices of all stakeholders to assure all absent relatives are contacted and engaged. These types of activities are permitted by the Colorado Code of Judicial Conduct governing the ethical behavior of judges and magistrates.

### **All Stakeholders as “Agents of Accountability”**

The above questions for the judicial officer are examples of how the judge, as the ultimate legal decision-maker, can hold others accountable to live up to their ethical and procedural roles and responsibilities. Although not holding the same position of power as the judge, when *all* stakeholders are armed with knowledge of everyone’s roles and responsibilities, *every* stakeholder can take action to hold others—including the judge—accountable to the ethics and responsibilities that each role entails. It is the duty of each stakeholder to promote collaboration and assure through their knowledge and dedicated efforts that children and their parents have the best opportunity for success when they are brought into the child welfare system.

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<sup>64</sup> C.R.J.P. Rule 3.1, Comment [1] provides as follows: “To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice.” Permitted activities include but are not limited to speaking, writing, teaching, or participating in scholarly research projects. However, Rule 2.9 (A) of Canon 2 requires that in the conduct of extra-judicial activities the judge must make certain that ex parte communications do not occur.

## Section 6 ■ Challenges for Kinship Caregivers

All involved must recognize the emotional and psychological demands placed on kinship caregivers and address those needs whenever possible.

Much of the discussion when considering placement options focuses on meeting the needs of the child within a given placement. It is also important to acknowledge the challenges faced by the kinship caregiver, challenges that are not issues in *non*-relative placement. The stability of the placement depends on the kinship caregiver's capacity to provide a caring and safe home for the child and on the state's ability to provide the caregiver with the supports needed to do so. All involved must recognize the emotional and psychological demands placed on kinship caregivers and address those needs whenever possible.

**The varied potential kinship arrangements presenting to the courts can make deciding the best plan for each child particularly challenging.** As noted earlier, kinship caregivers come from diverse socio-economic, racial and ethnic backgrounds with a wide age range, varied income levels, and different familial and legal relationships to the child. They also have more health problems, higher levels of depression and have received less training and less financial support compared to certified foster care providers.<sup>65</sup> At times relatives also must contend with preconceived notions and negative biases that some stakeholders may have about who they are, their motivations and whether they can provide a safe home for the child. The children in their care also have a high incidence of mental and physical health-related needs placing additional and often significant demands on the kinship caregiver.

**The challenges facing kinship caregivers may result in the court and other stakeholders being presented with widely disparate placement options within one case.** A thorough assessment must focus on the potential kinship caregiver's personal ability to care for the child and to adhere to the plan as determined by child welfare and the court. For example, the supports and services required for placement with an aunt on limited income will differ significantly from a placement with an elderly great-grandparent with significant resources.

Kinship caregivers often volunteer or are approached by child welfare on an emergency basis to care for a child solely due to their relationship, with no training specific to the task and with varying degrees of support. Such circumstances highlight what is unique about kinship care as compared to non-relative foster care—the strong emotional attachment of the kinship caregiver to the

*The importance of addressing the potentially complex relationships was reinforced by one caseworker who stated it is often more the family dynamics than the child which can undermine a placement.*

CO Needs Assessment, 2010

<sup>65</sup> Cuddeback, G. (2004). Kinship and family foster care: a methodological review and substantive synthesis of research. *Children Youth and Services Review*, 26, 623-634.

birth parent and child and the resulting strong commitment to meeting the child's needs. This bond, however, may make the arrangement more personally challenging for the kinship caregiver than for a non-relative caregiver. The personal challenges of different family members need to be recognized and addressed at hearings, particularly when those challenges may be significant enough to cause dismissal of a placement option or ultimately disrupt a placement. Several clinical issues faced by kinship caregivers are described below.

*To say if I had to do it again, I probably wouldn't. Not with a family member. It is too hard. We are to the point where the relationship is strained with my sister because it is her daughter. It has caused a lot of conflict. They don't appreciate it. Everything is my fault. I am caught in the middle.*

–Kinship Caregiver, CO Needs Assessment, 2010

**Loyalty/Disloyalty:** Family dynamics, conflicting loyalties and changes in the different relationships within the extended family need to be recognized and addressed when they risk impacting the placement negatively.

*When we were asked to take our granddaughter, my wife was hesitant, but my attitude was 'What's another kid?' I was blown away by the change of bringing in another child. She has problems sleeping and gets aggressive with our kids. Our own children are feeling neglected. We are trying really hard to balance keeping in touch with our kids and not making our granddaughter feel like an outcast who doesn't belong.*

–Kinship Caregiver, CO Statewide Needs Assessment, 2010

**Loss:** Caring for a relative child can result in a sense of loss for caregivers.

They must alter their plans for the future, give up their privacy and alter their priorities, and accept changed relationships throughout the extended family system.

*Having the kids has caused tension in the home. Me and my husband argue a lot because he thinks I put the kids ahead of him. He loves the kids, but he misses his time. We don't have as much alone time.*

–Kinship Caregiver, CO Needs Assessment, 2010

**Changing Role:** Kinship caregivers must change from being the child's supportive advisor and friend to assuming the role of primary caregiver with new authority and decision-making responsibility.

*Kinship caregivers said the most confusing part of their new responsibilities was the change from their previous role within the immediate and extended family. Many kinship caregivers discussed their personal conflict about being the mother versus the grandmother or the uncle versus the father.*

–CO Needs Assessment, 2010

**Guilt:** The need to involve family members when a child is removed from a parent's care can lead to guilt. Grandparents, for example, may feel responsible for the situation and guilty over having to disclose negative information about their own child.

*I felt so stupid that it was my daughter who did this and I raised her, so it must be my fault. I felt like a total failure. I want to blame myself for what is going on.*

–Kinship Caregiver, CO Needs Assessment, 2010

**Stress Management:** Though many of the needed resources for a caregiver may be material, the stress of caring for a child or several children may place significant emotional demands on a kinship caregiver. Particularly in emergent situations, they may have difficulty coping and may struggle to access the supports needed to manage the child and their own additional responsibilities.

*It just happens and everybody is supposed to know how to deal with it, but they don't. When you have your own children that feel they are being pushed aside because of this new child, it is difficult. You have to figure it all out on your own. You are dealing with all the emotions of everyone involved. What do you do with all that? It could end up tearing apart a family.*

–Kinship Caregiver, CO Needs Assessment, 2010

**Anger and Resentment:** Many believe the decision to care for a child is a relative's responsibility and therefore an easy one, but in reality, the unanticipated disruption and strain often results in anger and resentment on the part of the kinship caregiver.

*I am still cleaning up some of the things that were done to those kids and that is so difficult. What it did to me was make me so angry and so bitter, and this is my daughter. I would like to sock her one just for the kids. It is so sad that they are the ones that suffered. Now she is back in their lives and is playing goody-two shoes. I don't know what to believe, I really don't. Is it going to be for a month? For a year? I don't know. The trust isn't there. I don't know what to think.*

–Kinship Caregiver, CO Needs Assessment, 2010

*There is a different level of emotion when it is your relative versus when it is a non-relative. I was told I shouldn't be angry. My anger was justified. When you see this grandchild be born, there is a connection. I am pulled. I love my son, he is evil, but I will always love him. What he did was horrible. I have forgiven him because God forgives me, but that doesn't mean I have forgotten it. I don't want other people to put me on that same pedestal because I am angry.*

–Kinship Caregiver, CO Needs Assessment, 2010

<b>Clinical Issue</b>	<b>Examples of Factors Contributing to Issue in Kinship Care</b>
<b>Loyalty/Disloyalty/ Dual Loyalties/Denial</b>	Split loyalties and dual loyalties to both the birth parents and the child; feeling disloyal by placing the child's needs before the birth parents; fear of hurting parent's feelings and being rejected
<b>Loss</b>	Interruption of life-cycle; changes in relationship; future plans; space, privacy; priorities
<b>Changing Role</b>	From supportive to primary caregiver, advisor to decision-maker, friend to authority
<b>Guilt</b>	Fearful of contributing to family disruption; more committed to meeting the child's needs instead of parent's needs; child becoming attached to the relative rather than the birth parent; being a better parent than birth parent
<b>Stress Management/ Physical Limitations</b>	Developing coping skills and support to manage children and additional responsibilities
<b>Anger and Resentment</b>	Birth parent's absence, attempts to regain custody, continued contact, sabotage or competition for child's loyalty; involvement of agencies and professionals
<b>Projections/Transference</b>	Unresolved issues with parent transferred to the child; Difficulty perceiving the child's personality as different from the birth parent
<b>Embarrassment</b>	Having to ask for services or assistance from public or private agencies, disclose negative information about the birth parent or family, explain to friends or relatives "where are the parents"
<b>Bonding and Attaching</b>	Establishing a parent/child relationship instead of a relative/child relationship
<b>Morbidity and Mortality</b>	Concerns of illness/death triggered by previous losses and separations; planning for the child's continued care in case of illness or death; finding secondary caregivers for respite
<b>Fantasies and Hope</b>	Parents fantasizing about reuniting with child; unrealistic expectations about reunification
<b>Overcompensation</b>	Caregiver trying to make up for the parent's failings or mistakes and challenged to provide balance and consistency
<b>Competition/Sabotage</b>	Parent undermining authority of caregiver and agreements regarding visiting or giving child permission to defy caregivers and professionals
<b>Intrusion</b>	Home studies/evaluations; invasion of privacy; disclosures

Adapted from "Assessing Adult Relatives as Preferred Caretakers in Permanency Planning: A Competency-Based Curriculum," Greenblatt, S., et al. (2002) National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work and Dr. Joseph Crumbley, "Clinical Issues and Interventions with Relative Caregivers," Colorado Kinship Forum (2010), Denver, Colorado.

## Section 7 ■ Family Engagement in Kinship Care

Over the last few decades child welfare best practice and policy has placed increased emphasis on family involvement in the design and implementation of case planning for children removed from their parent's care. Research has shown that involving extended families in the process improves positive outcome measures. Family engagement has therefore become the overarching value of Colorado's Practice Model and Program Improvement Plan with the stated goal of adopting engagement strategies and principles in all counties and requiring family engagement training for child welfare caseworkers.

*Family engagement and engagement of systems external to child welfare services are critical to children, youth, and families receiving the services they need.*<sup>66</sup>

—CO DHS, CFSR,  
Performance Improvement Plan

**Diligent search is often the initial step in engaging relatives.** As presented in section 4, courts can play a direct role in promoting diligent search efforts. A thorough and a timely search is the responsibility of all involved—court officials, caseworkers, lawyers, CASAs and others. **BENCHCARD A** provides questions to assess the diligent search process.

**Full disclosure is also an essential early component of any family engagement strategy.** The court and other stakeholders must be certain that parents, kinship caregivers and those directly involved in the case have a clear understanding of the court process to ensure open communication and fully promote their involvement. Use of the questions on **BENCHCARD B** will ensure that family members know the roles and responsibilities of those involved as well as the potential placement options. Additional material for kinship caregivers and family members is provided in the Appendix and relevant materials should be copied and made available early on and whenever deemed necessary.

**Various approaches and models exist to engage the family group at all stages of the decision-making process.** Colorado counties may use specific models of family engagement including, for example, Family Group Decision Making, Team Decision Making, Family Team Meetings or Family Conferences.<sup>67</sup> Such meetings, using trained personnel and specific procedures, should be held as early as possible when a child has been removed from a parent's care and at important decision points thereafter. In many counties, court-based mediation is also available. These group meetings provide opportunities to engage key people impacting a child's life, generate a plan and identify resources to support the placement. Different member's involvement in the process serves as a rich source of information and also

<sup>66</sup> <http://www.chaffee-hhs.org/hhs/wp-content/uploads/2010/06/Program-Improvement-Plan-Proposed-2011-Pages-1-39.pdf>

<sup>67</sup> Edwards, L, Sagatun-Edwards, DI. (2007). The Transition to Group Decision Making in Child Protections Cases: Obtaining Better Results for Child and Families. *Juvenile and Family Court Journal*, 58(1), 1-16.

increases the family's 'buy-in' to the placement selected. Questions to promote the engagement of family members and others in the legal process are provided on **BENCHCARD C**.

Failure to recognize and take steps to remove bias in the planning and decision-making process undermines effective family engagement and can seriously interfere with finding the best possible placement for a child.

Particular attention should be paid to engaging absent fathers and the paternal side of the family from the beginning of the case. Recent efforts to understand the barriers to engaging fathers have identified the initial contact with the Department as the critical time to effectively involve fathers. Fathers who perceive a general atmosphere of blame or bias from the Department or the courts during the initial contact will be more difficult to engage. Extensive resources are available to promote the engagement of fathers in custody cases and throughout the legal process.<sup>68</sup> The judge can play an important role by focusing on a father's strengths, defining the father as a resource for the child, and calling on the father to participate in all the decisions related to the case. **BENCHCARD D** provides questions to promote the engagement of fathers from the bench.

#### Practice Commentary

Fathers may come into this system expecting the worst and often get discouraged if they feel like they are not treated fairly. They expect to be discriminated against and often don't try once they receive the slightest hint that we are relegating them to the traditional role of 'breadwinner' and excluding them from the more satisfying roles of nurturer and caretaker.

**Barriers to effective engagement must be taken into account early in the process and addressed whenever possible.** Personal biases about the qualities of different family members may come from anyone involved in the case, including family members and professionals. Failure to recognize and take steps to remove bias in the planning and decision-making process undermines effective family engagement and can seriously interfere with finding the best possible placement for a child. As noted above, bias against fathers can push them away and result in a serious loss for the child. Biases directed at different members may also result in miscommunication and mistrust or failure to identify potential strengths or serious concerns regarding a potential placement.

Other challenges to effective engagement may include language barriers, difficulty with transportation, or factors related to socio-cultural issues, power struggles and generational differences. Consultation by a caseworker with an expert may be necessary when significant service needs such as substance abuse, mental or physical health limitations influence a family member's involvement in the process.

**In certain cases, an individual family member may be identified by others as an ideal or most accessible caregiver for a child but he or she refuses.**

Ideally, if the family has been successfully engaged in the decision-making process, the choice to decline will have been explored in a safe and supportive environment. The resulting fully-informed decision is then likely to be respected by the courts, child welfare and other family members. Pressuring a reluctant relative puts that placement and the safety and well-being of the child at risk from the beginning.

<sup>68</sup> See <http://fatherhoodqic.org>. Also, a checklist designed for courts to assess their operations for the father's involvement in the courtroom is available at [www.americanbar.org/content/dam/aba/migrated/2011\\_build/child\\_law/ffcucourts\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/child_law/ffcucourts_final.authcheckdam.pdf).

## Core Principles of Family Engagement

Family engagement, to be successful, requires making and then maintaining a connection with the child, parent and all the other important individuals and resources potentially impacting a child's life. All stakeholders involved in the discussion of a child's potential placement should therefore adhere to the core principles of family engagement as summarized by the National Resource Center for Permanency and Family Connections.<sup>69</sup>

Encourage intensive authentic engagement with child and family.

- Relate with respect, genuineness, empathy and honesty.
- Develop an in-depth understanding of family.
- Respond quickly to needs.
- Understand personal biases and use of full disclosure.
- Validate each family member's role in planning and decision making.

Promote meaningful partnerships.

- Provide support to help parents and kinship caregivers understand and manage issues.
- Provide opportunities for parents to build relationship (if appropriate).

Share planning and decision making with the family.

- Recognize importance of involving the family in planning and making decisions.
- Embrace and make diligent effort to convey respect for all family members.
- Actively seek collaboration and leadership of the family in creating and implementing plans.
- Recognize the family's use of own histories to create plans.
- Ensure shared decision making is inclusive, direct and transparent.

Engage cross systems partners—including courts, mental health and other agencies—to ensure timely and seamless delivery of services.

- Use common language to ensure understanding by all.
- Promote that families are their own experts and need to be actively involved.
- Clearly define roles and responsibilities of all partners.
- Include partners in discussion and decisions.

Create formalized partnerships with critical stakeholder groups including birth families, family caregivers and children to provide ongoing information and insight to improve organizational policy, procedures and practices regarding family engagement.

- Establish critical stakeholder groups and obtain input to improve service delivery.
- Obtain guidance from stakeholder groups and their unique perspective on services, supports and opportunities that support family engagement and promote safety, well-being and permanency.

<sup>69</sup> Adapted from National Resource Center for Permanency and Family Connections. Family Engagement: A Web-based Practice Toolkit. Retrieved from <http://www.hunter.cuny.edu/socwork/nrcfcpp/fewpt/index.htm>



## Section 8 ■ Assessment of the Kinship Placement

Asking questions from the bench and holding all stakeholders accountable will create the expectation that all who come to court must be prepared to provide the information requested.

Kinship families coming in contact with the court system may or may not have completed an extensive assessment by their county Department. In child welfare cases, without detailed case and family information, judges often face significant challenges in making determinations and creating plans that best address the needs of the child and the family. Asking questions from the bench and holding all stakeholders accountable will create the expectation that all who come to court must be prepared to provide the information requested. The decisions made and the plans created through this dialogue are more likely to address the true needs of the child and family and promote long-term, safe and stable placements.

Questions are provided to highlight the areas to assess. In informal kinship arrangements presenting for guardianship or APR, for example, the judge should select only relevant questions from the benchcards to obtain needed information. In child welfare cases, more detailed inquiries should be made when necessary to ensure compliance with the law and best practice. In a child welfare case involving a child with special health care needs or a learning disability, for example, the judge should request more specific information to ensure the health care and educational plan is in compliance with the Fostering Connections Act.<sup>70</sup> Examining each case's unique needs will increase the likelihood of a successful outcome for the child. For child welfare cases, absent new allegations of abuse or neglect, the county Department will no longer have the ability to intervene on behalf of the child once the case is closed.

The material presented on assessment is divided into three sections: the initial assessment of a potential placement, the more thorough assessment of the selected placement and, in section 10, the assessment of a placement for long-term permanency. Assessments are rarely completed in such discrete stages, particularly in informal arrangements presenting to the courts, and questions from the different stages overlap and should be used whenever indicated.

### Initial Assessment of Potential Kinship Placements

**The initial placement assessment focuses on issues specifically related to safety and whether the potential caregiver has the capacity to meet the immediate needs of the child.** Though placement decisions in child welfare cases are often made urgently and multiple options may not be available, the following questions should be asked of parents, potential caregivers and others

<sup>70</sup> More detailed questions from the bench specific to ensuring compliance with Fostering Connections' requirements are outlined in the "Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoption Act of 2008 (PL 110-351)", 2011, ABA Center on Children and the Law. Available at <http://www.napcwa.org/Home/docs/Judicial-Guide-Fostering-Connections.pdf> .

to help select the best initial placement. A summary of these questions is available on **BENCHCARD E** and could serve as a reference, for example, during preliminary protective, dispositional and adjudicatory hearings.<sup>71</sup>

- How has the family member been involved with the child and family in the past?
  - Has the child ever stayed for an extended period with the family member?
  - Does the family member know the circumstances that led to need for placement?
  - What kind of relationship does the child have with the family member?
  - Has the child been asked, in an age-appropriate manner, about his or her relationship with the relative?
- Have the required background checks on family members and members of their household uncovered any history of abuse or maltreatment?
- Will the family member be able to protect the child from further abuse or maltreatment?
  - Will visits to the parent's home be safe?
- Is the family member willing to work with the agency and the court?
  - Will they work with the agency to develop and enforce a safety plan?
  - Will the family be able to adhere to the rules set down by the court and caseworker in the face of pressure from the parents to the contrary?
  - Are they willing to share personal information about their past and present circumstances by being part of the family study/assessment process?
  - Are they willing and able to provide short-term care and to support reunification efforts if required?
- Can the family member meet the child's immediate physical and emotional needs?
  - Do they have a secondary caregiver available if needed?
- At the time of placement, were they provided information on the option to become a certified caregiver as required by Colorado Rule?
- Are any family members potentially willing and able to provide a permanent home for the child?
  - If so, do they have an interest in becoming a licensed foster parent, adoptive parent or legal guardian if this should become necessary?

When *several* placement options are available, questions regarding whether the initial placement has the potential to become a long-term placement should be asked. Assessing this early on decreases the likelihood the child will experience the stress of moving to a different home. Also, when a search uncovers additional interested kin, these questions may serve to identify individuals who either may be available to provide critical ongoing support or who may create serious conflict, jeopardizing the safety and well-being of the child.

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<sup>71</sup> Adapted from Crumbley, J. (2002). "Assessing Families for Kinship and Relative Placements," in *Assessing Adult Relatives as Preferred Caretakers in Permanency Planning: A Competency-Based Curriculum*. Greenblatt, S., Crumbley, J., Morse, J., Adamy, D., Johns, M., and Blunt, J. National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work.

## General Assessment of Kinship Placements

After the initial placement, the degree of further assessment may vary and is dependent on the circumstances of the out-of-home placement.<sup>72</sup> In child welfare cases when the county has *not* taken legal custody, the county department may support the family to make voluntary arrangements for temporary custody or guardianship by kin. The county departments must complete criminal background checks for each adult 18 years and older in the home but are not required to complete a full or modified Structured Analysis Family Evaluation (SAFE) for the kinship caregiver.

In addition to addressing safety, the assessment should identify the services and supports necessary for both the kinship caregiver and the child.

When the county department *has* legal custody, the county department must complete a more thorough evaluation to assess the suitability of the kin in accordance with foster care certification requirements.<sup>73</sup> The court may grant temporary custody of the child to the kin. Since many placements occur under urgent conditions, several other arrangements may also occur. Children may be placed with kin who are provisionally certified and kin must then meet all foster care requirements within 60 days. The caseworker may also place the child with a caregiver on an emergency “visitation” basis for up to 60 days while a determination is made regarding placement. Emergency visitation requires that an assessment of the home begin as soon as possible, including a non-fingerprint-based criminal history check on all adults in the home.

**In addition to addressing safety, the assessment should identify the services and supports necessary for both the kinship caregiver and the child.** Such assessments are often time consuming, require multiple family engagement meetings and, as additional information is obtained, may result in a change of placement for the child. Particular attention must be paid to identifying the supports necessary for the kinship caregiver if he or she is expected to be able to adequately address the needs of the child. Requiring a child to attend multiple medical appointments, for example, is of little value if the caregiver does not have transportation.

**The assessment of a kinship placement is an ongoing process and involves input from all stakeholders.** When the questions outlined below and provided on **BENCHCARD F** are asked, they will elicit important information to identify areas that must be addressed. The use of ‘what if?’ questions may also help to anticipate challenges that could arise and identify supports that need to be put in place. A discussion of assessments specifically related to long-term permanency will be reviewed in section 10.

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<sup>72</sup> 12 CCR 2509-4 §7.304.21

<sup>73</sup> 12 CCR 2509-4 §7.500.2

## Family relationships

Relationships between family members may be supportive or potentially harmful. Since family dynamics may vacillate from time to time, stakeholders must be aware of changing family dynamics and take action where needed if the changes provide new opportunities for support or have the potential to negatively impact the child and the kinship caregiver. Thus, questions regarding family relationships must be a regular component of each review. A review should also include documentation of continued diligent search efforts when appropriate until permanency is achieved. Suggested questions at hearings, court review hearings in particular, include the following:

The judge must ensure reasonable efforts have been made to connect both the child and the kinship caregiver to the supports and services necessary to address their needs.

- What are the feelings of the primary caregiver and the child regarding the current placement?
- What is the frequency and quality of contact between the child and birth parents, and between the kinship caregiver and birth parents?
- Do parents, guardians and others understand their roles and responsibilities? Are those roles and responsibilities changing and, if so, is there any impact on the child or kinship caregiver?
- Is the child developing a genuine and supportive relationship with the kinship caregiver?
- Have reasonable efforts been made to maintain sibling relationships? Is there a separate documented sibling visitation plan and is it consistent with the child's wishes?

## Services and Support

The judge must ensure that reasonable efforts have been made to connect both the child and the kinship caregiver to the supports and services necessary to address their needs. Suggested questions at each review include the following:

- Does the kinship caregiver have the resources to provide a safe and stimulating environment?
- Is there documentation of the child's physical and mental health visits? If an assessment has uncovered problems, how are they being addressed?
- Were referrals made to appropriate agencies or is it necessary to order the agency to make referrals? What were the outcomes of referrals?
- Are core services as identified in the plan being provided? Is there documentation of progress towards specific goals?
- Has the kinship caregiver established a strong formal and informal support system to maintain the placement for the long term?
- How has the child been engaged and encouraged to participate in the court process?
- How is the child progressing academically? If the child requires academic support, are IEPs and 504 plans appropriate and current? For younger children, is their developmental progress being monitored and are they receiving needed early childhood intervention services, including enrollment in a quality early care and education program?

## Safety Plans

Kinship caregivers must provide a safe environment for the children in their care and ensure the child is protected from future abuse or maltreatment. Particular attention should be paid to exploring the kinship caregiver's safety plan for the child. Suggested questions at each review include the following:

- Who are the members of the household (permanent, temporary, transient individuals)?
- Are the activities of different members disruptive or unsafe for the child?
- Are the primary and secondary caregivers in agreement on implementing the safety plan?
- Has the kinship caregiver shown the ability to consistently implement and follow a safety plan?
  - If not, what assurance is there that the caregiver can keep the child safe when the Department and others involved in the dependency and neglect case are no longer involved?

## Section 9 ■ Accessing Resources

The services and supports necessary for relative placements often differ significantly from those required to support non-relative foster care placements.

A thorough assessment will identify the services and supports needed for the initial temporary placement and for the permanent home for a child should that become necessary. All stakeholders should regularly review the assessment questions presented in section 8 to address changes that may require either the addition or removal of different services and supports. This section will summarize the resources kinship caregivers and the children in their care may be eligible to receive.

**The services and supports necessary for relative placements often differ significantly from those required to support non-relative foster care placements.** Non-relative foster parents have made a deliberate decision to care for a child and, in general, have personal and county-supplied resources necessary to bring a child into their home. They have completed training and an evaluation process prior to placement. Certification also provides them access to ongoing financial resources, additional training and caseworker support. In a national study, foster parents were also significantly more likely to have peer support groups or respite care than kinship caregivers.<sup>74</sup>

**A potential kinship caregiver who first appears before the court may not be fully prepared for the placement and may not know how to navigate the multiple systems necessary to care for a child.** In any discussion of a possible relative placement, it is critical to connect caregivers with the resources addressing both the child and the caregiver needs. For informal kinship caregivers in particular, the court can play an important supportive role in providing information on the different resources available. For child welfare cases, regulations specifically state “services to kinship care providers shall include training, support and services specific to the needs of kinship care providers.”<sup>75</sup> Failure to adequately address a kinship caregiver’s needs as well as the child’s can result in either excluding kin who might otherwise be available as prospective caregivers or undermining the success of a kinship placement.

*A few county staff said that occasionally the cost of child care is the “deal breaker” in a prospective kinship caregiver’s decision not to care for a child. A kinship caregiver in a small rural county, for example, explained that she used half of the Child-Only TANF money she received to pay for child care, leaving little to pay for food, clothing, and other necessities.*

—CO Needs Assessment, 2010

<sup>74</sup> Sakai, C. Li, H., Flores, G. (2011). Health Outcomes and Family Services in Kinship Care. *Arch Pediatr Adolesc Med*, 165, 159-165

<sup>75</sup> 12 CCR 2509-4 §7.304.21(D)(4)

## **Potential Support Needed for Kinship Placement**

- Financial resources
- Child care
- Transportation
- Help navigating the legal system
- Educational support for the child
- Emotional support for the kinship caregiver and child
- Medical care for the child
- Basic household and related materials
- Parenting education
- Child support from parent(s)
- Public benefits information
- Support/counseling for strained relationships within family
- Safety

**The informal support network of relatives, friends, and members of the community can go a long way in making a placement successful.** Family members may be willing to provide, for example, transportation, child care, or respite for the caregiver. Given the emotional and social stressors many caregivers experience, another valuable resource may be the caregiver support groups available in many communities. Helping caregivers to identify and put these social supports in place early on can have a significant impact on their ability to maintain the placement, particularly after the support and guidance of the court system and different agencies are no longer available.

**Once necessary services and supports are identified, successfully accessing them and sustaining them over time may be challenging.** A kinship caregiver may be unable to obtain the services needed due to concrete issues such as inadequate transportation or language barriers. In other cases, kinship caregivers may be resistant to using available resources due to bias, pride or reluctance to work with the agency. For example, a kinship caregiver who has had a negative experience with a mental health provider may be reluctant to take a child for needed mental health services; another caregiver may refuse to accept needed support from family members and, as a result, may jeopardize her own health; or, a caregiver may turn down parenting courses that are highly recommended but not required by the Department or the court. It is important in these situations to explore with the kinship caregiver whether deciding not to use available resources serves the best interest of the child. If the court determines that the resource would significantly benefit the child, these barriers need to be addressed from the bench at case reviews.

## Resources to Consider

All stakeholders can play a part in informing kinship caregivers of the resources available to them and should encourage and support them in accessing those supports. The following is a list of potential resources available to eligible caregivers (see **BENCHCARD G** and **BENCHCARD H**). More detailed information on kinship care, including information on different state, county and community resources can be found in the Colorado Kinship Connection website [www.COkinship.org](http://www.COkinship.org). Maintained by the Colorado Division of Child Welfare Services, the website provides comprehensive information on issues related to kinship care, including eligibility criteria for various services, county-specific contact numbers, caregiver support group locations, child care resources and a discussion forum for questions related to kinship care. All stakeholders should review the website and encourage caregivers to access the site for important information. Additional helpful material for grandparents in Colorado raising grandchildren is available on the Colorado State University Extension website [www.ext.colostate.edu/grg/](http://www.ext.colostate.edu/grg/).

All stakeholders can play a part in informing kinship caregivers of the resources available to them and should encourage and support them in accessing those supports.

### Direct Funding for Kinship Placements

- **TANF Child Only Grants:** only the financial resources of the child (child support, social security, trust fund) are considered in application; no welfare program work requirements or time limitations for the kinship caregiver; not eligible if the child receives foster care funds.
- **Regular TANF Grant:** kinship caregiver applies for self as well as the child and others in the home and must comply with work participation requirements; up to maximum of 5 years.
- **Title IV-E Relative Foster home:** funds are available only to kinship family foster homes and is the same amount available to non-relative foster care providers.
- **Title IV-E Kinship Guardianship Assistance Program:** rate cannot exceed foster care rate, minus respite; must meet eligibility criteria (See Section 4).
- **Title IV-E Adoption Assistance:** assistance cannot be higher than foster care payment minus respite; eligible for expense reimbursement funds.

**Supplemental Nutrition Assistance Program (SNAP)** – Caregivers do not need legal custody or guardianship to apply for food stamps on behalf of other children.

**Women, Infants, and Children Program (WIC)** – Based on eligibility.

**Disability Benefits** – Additional income for child through Supplemental Security Income or Supplemental Security for Disability Income.

**Educational Support** – Early Intervention Services through Part C of the Individuals with Disabilities Education Act (IDEA); school-based supports through Part B of IDEA.

**Child Support** – Legal services through the county Title IV-D child support office; when the family also receives child only TANF, child support must be refunded to county TANF agency; caution that, under some conditions related to safety, families should not pursue parental support.



**Social Security and Other Death Benefits** – Apply through local federal Social Security Office.

**TRICARE** – Military health benefits.

**CORE Services** – Includes a wide range of services such as intensive family therapy, mental health services and special economic assistance provided to children at imminent risk of out-of-home placement and their families.<sup>76</sup>

**Health Care** – Relatives can apply for Medicaid on behalf of the children they are raising; do not need to have legal custody; caregiver's income is not counted in determining child's eligibility nor do caregivers have to submit any proof of absent parent's income to enroll child.

**Child Care Support under Colorado Child Care Assistance Program (CCCAP)**

**Child Welfare Child Care** – Referrals must come through Child Welfare; if eligible, assistance to maintain child in own home or in least restrictive out-of-home care when no other option available; must be reviewed every 90 days.

Other assistance, if eligible, may be through **Low Income, Colorado Works or Employment First** programs. Application must be made directly to these programs.

**Legal Services** – Kin should be informed of legal resources available to indigent persons in the community.

**Promoting Safe and Stable Families** – Provides local funding for services that address family support, family preservation, time-limited family reunification and adoption promotion and support.

**Respite Care** – May be arranged informally with kin; few formal arrangements available.

**Mental Health Services** – May be available for caregiver and/or child.

**Training** – Parenting education courses in the community and on the internet. Kinship caregivers involved with Child Welfare can take courses through the CDHS Academy free of charge and can access them through the Academy website at [www.cdhsacademy.com](http://www.cdhsacademy.com).

**Community Supports** – Supports such as food banks, kinship caregiver support groups dependent on community.

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<sup>76</sup> <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251588683608>

## Services and supports available to different kinship arrangements

	Informal Kinship Care	Kinship Family Foster Care	Non-Certified Kinship Care
TANF	X		X
Medicaid	X	X	X
Child Support	X		X
Tricare	X	X	X
Social Security and/or death benefits	X		X
Supplemental Security Income or Disability Income	X	X	X
Colorado Child Care Assistance Program (CCAP)	X		X
Child Welfare Child Care		X	X
Foster Care reimbursement		X	
CORE services		X	X
IV-E or state adoption assistance		X	
Kinship Guardianship Assistance		X	
Possible county specific kinship resources	X	X	X
Community supports and support groups	X	X	X

## Section 10 ■ Long-term Planning and Permanency

Simply being provided the information on the different long-term options does not ensure kin have entirely processed the implications of his or her decision.

The ultimate goal of all child placement decisions is to find stable, nurturing and permanent homes and relationships for children that will serve them in childhood and throughout their lives. Though research has shown many benefits to kinship care, studies also have shown that children living with kin are less likely to achieve a permanent *legal* status with their caregiver. Reasons may include financial disincentives, cultural differences, complex legal processes, a fear of losing supportive services, or, for some informal kinship caregivers, a perception that permanence does not include the need for a more permanent legal relationship with the child.

**Effective permanency planning begins early in discussions with prospective caregivers and continues well past closure of a case, when the child is fully independent.** The initial assessment of a potential caregiver as a guardian or adoptive parent is an important element of “frontloading” and could avoid a child’s having to make an additional, often stressful move should reunification not be possible. Particularly under emergent conditions, caregivers may not want to discuss permanent care options as they are often flooded with information and overwhelmed with the demands of caring for the child. In other cases, caregivers, hopeful for reunification, may resist the need to discuss long-term planning.

**The judge should ask whether the kinship caregiver has a full understanding of the legal, financial and other implications of each option if they choose to care for a child on a permanent basis.** Simply being provided the information on the different long-term options does not ensure kin have entirely processed the implications of their decision. Some kinship caregivers, feeling pressured by family members or other stakeholders, may not be fully aware of the seriousness of the commitment they are being asked to make. Until permanency is achieved or the case is closed, a discussion of all appropriate options should be revisited at each hearing and the barriers to achieving legal permanency identified and addressed proactively.

A commitment to provide a child with a permanent home requires a long-term plan extending at least until the child reaches adulthood. Any permanency planning must therefore include inquiries as to how the family will manage upcoming issues, particularly after the county department and the court are no longer involved. For example, a child with special needs or an elderly caregiver with health concerns may create significant challenges to a placement several years into the future. Anticipating such potential difficulties is an important component of successful permanency planning and can help avoid the family returning to child welfare or the courts in the future. Below are questions to consider in reviewing long-term planning, particularly at permanency planning hearings (see **BENCHCARD I**).

A commitment to provide a child with a permanent home requires a long-term plan extending at least until the child reaches adulthood.

- Have potential caregivers been provided information on *all* the options available to them, including the Kinship Guardianship Assistance Program?
- Have they been given adequate support and time to make an informed decision?
  - If so, do they demonstrate a clear understanding of the legal, financial and other implications of each option available to them?
- What are the family's long-term permanency plans for the child?
  - Will the legal arrangement chosen best meet the needs of the child and provide the kinship caregiver the authority to ensure a safe and stable environment for the child?
  - If guardianship is chosen, what evidence is there to support a finding that the preferred permanency goals of reunification or adoption are not available options?
- Has the child demonstrated an attachment to the kinship caregiver and been consulted in an age-appropriate manner regarding the long-term permanency options?
- Has the kinship caregiver demonstrated the commitment and ability to care for the child until the child reaches adulthood?
  - Should the current caregiver become unavailable, are there alternative arrangements to provide for the child's care until such time as the child is an adult? Is there a designated guardian? A will?
  - What are the long-term care plans for a child with special needs?
  - Has the kinship caregiver demonstrated a commitment to continue in a supportive role even after the child leaves the home?
- Has the kinship caregiver shown the ability to consistently implement and follow a safety plan?
  - Is there assurance that the provider can keep the child safe when the Department and others involved in the dependency and neglect case are no longer involved?

## Closing remarks

The goal of courts in kinship cases is to find permanent and safe homes for children with relatives or other close, significant individuals when they are unable to be cared for by their birth parents. The challenges for courts are many. Priority must be given to the best interests of the child with consideration for the needs of the family. When a case presents to the courts, there is often inadequate information about a case or family member, complex and changing family dynamics, and limited available resources. This Guide aims to address many of those challenges. Information is provided on the benefits of kinship care as well as the unique stressors for families who have made the sacrifice to care for a relative's child or, at times, multiple children. The questions provided are designed to obtain the information needed to support family engagement, promote the completion of thorough assessments and ultimately ensure that the courts design effective and appropriate plans for each unique case.

The material presented in this Guide promotes the use of a positive, strengths-based, collaborative approach to encourage families to share information and work together with agencies and the courts. Only when all stakeholders work together will children gain a greater opportunity for safety, permanency, well-being, and essential relationships that will support them throughout their lives.

We are guilty  
of many errors and many faults  
but our worst crime  
is abandoning the children,  
neglecting the fountain of life.  
Many of the things we need can wait.  
The child cannot.  
Right now is the time bones are being formed,  
blood is being made,  
senses are being developed.  
To the child we cannot answer "Tomorrow."  
The child's name is "Today."

Gavriel Mistral  
Nobel Prize-winning poet from Chile

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## Advisement to Potential Kinship Caregivers

People in the Interest of \_\_\_\_\_ Case Number \_\_\_\_\_

As a relative of the child in a dependency and neglect case, you should know certain information when considering taking a relative's child into your home. You should also know how the county can help support you and the child if you decide to care for the child. Please be aware of the following and talk further with the caseworker, CASA and other individuals who can help you learn more:

- Federal, State and local law gives you the opportunity to be considered as the person responsible for the care of the child. Child protection and courts prefer a relative when considering where the child should live, as long as the relative can take good care of the child and the placement will serve the child's best interests.
- Don't delay. Your chance to have your home considered as a placement for the child may be lost if you delay in asking for the child to be placed in your home.
- If you take the child into your home, the Department of Human/Social Services will work with you to find help to make the placement stable. Those supports could include financial help as well as services specifically for the child such as medical care.
- It is possible that you could become a certified foster parent if you meet the qualifications. This means you would have to follow the rules of a foster parent. As a certified foster parent, you would also receive money and other support from the state to help you care for the child.
- Under some circumstances, you or another relative may be eligible for the Kinship Guardianship Assistance Program. This program provides financial and other assistance to support the placement.
- If the child is placed in your home, the placement may not necessarily be permanent. Until the court decides otherwise, the goal of the case is to try to return the child to one or both of their parents. The court may also decide a different placement is necessary to meet the best interests of the child.
- If the child is placed in your home your cooperation with the Department of Human/Social Services will be required. You must follow all court orders, including those that say when and where the parents can or cannot have contact with the child. You must also allow the caseworker, Guardian ad Litem and CASA volunteer to see and visit with the child on a regular basis. These people will want to hear your observations and opinions, but sometimes they will need to visit with the child without you being in the same room.
- It is very important that the child find a permanent home where the person caring for the child has some legal authority to take care of the child. If after some time it is decided a child cannot be returned to his or her parents, the court and others involved in the case will try to find a different permanent home for a child. This may mean that the child will be adopted by you or another person or it may mean that custody or guardianship is awarded to you or another person.

## Glossary of Terms Used in Dependency and Neglect Cases

**Allegation** – The reason the county Department of Human/Social Services is involved.

**C.A.S.A. – Court Appointed Special Advocate.** A CASA Volunteer is a person who might be appointed by the judge or magistrate to help decide what is in your child's best interests.

**Caseworker** – This person is employed by the county Department of Human/Social Services. The Intake Caseworker completes the initial investigation and manages the case for a short time. The Ongoing Caseworker takes over from the Intake Caseworker until the case is closed. These caseworkers help protect the child and manage the case so the child, family and the child's caregivers get what they need. The caseworker must visit the child at least monthly to assure safety and well-being. In some counties, the same caseworker may complete the intake and be the ongoing caseworker.

**County Attorney** – This is the lawyer for the county Department of Human/Social Services. If you live in Denver, this person is called a City Attorney. This person prepares and files the paperwork with the court.

**Court hearing or trial** – This is when the judge or magistrate listens to the caseworker, witnesses and attorneys in a case so a decision can be made about what should happen.

**Dependent or neglected** – If the court decides that a child is dependent or neglected, it means that the child needs help from the County Department of Human/Social Services and the court to make sure the child is safe. This may be referred to as a Dependency and Neglect (D&N) petition.

**Diligent search** – The court and the county Department of Human/Social Services are required to search for and try to locate parents and family members who may be a resource to the children and family. This may also be referred to as Intensive Family Finding.

**GAL or Guardian ad Litem** – The judge or magistrate assigns a lawyer to represent the best interests of all children involved in your case. Sometimes a GAL may also be appointed to represent a parent.

**Judge/Magistrate** – The judge or magistrate is in charge of your case and makes decisions about the law and evidence in a case. He or she also makes sure everyone does their job in the case.

**Protective orders** – These are the parent or a Special Respondent's responsibilities that are ordered by the court to protect your children.

**Reasonable efforts** – County Department of Human/Social Services have a legal obligation to provide services to the child and family during a child welfare case. The Department must make reasonable efforts to prevent removal of the child from parental care, to assist the parents in reunifying with the child after removal, and ensure the child reaches a permanent home in a timely manner.

**Respondent** – This is the legal term that the court uses for the parent or person who has had custody of the children involved in a dependency and neglect case.

**Respondent Parent Counsel** – The attorney hired by or appointed by the court to represent a parent in a dependency and neglect case.

**Reunification** – The time when the child is returned to one or both parent.

**Special Respondent** – Someone other than a parent involved in the case either because he or she is accused of abusing a child or because he or she can provide support or care for the child.

**Termination of the parent-child relationship** – This is sometimes also called termination of parental rights. If this occurs the child could be adopted by someone else.

**Treatment plan** – Parents, children and sometimes Special Respondents have treatment plans. The treatment plan describes what the parents, Special Respondents, and helping agencies have to do to provide a safe home for the child.

Source: Adapted from "A Handbook for Families in Dependency and Neglect Cases." (2004). Office of the State Court Administrator, State of Colorado Judicial Department, Denver, CO.



## Helpful Ideas for Court Appearances

- **Be on time for court.**
- **Be on time for appointments. Call the person you are to meet with if you are going to be late or need to cancel the meeting. Missed appointments may delay the case.**
- **Quickly return telephone calls from the lawyers and caseworker.**
- **If you have more than one phone number, you should give all of these numbers to the people involved in the case.**
- **Be polite at all court hearings and meetings.**
- **Be prepared for court:**
  - It may be helpful to write down what you want to say. When you write down what you want to say you won't forget when it is your turn to talk.
  - Bring all important papers to court and have them available to show to the court or other parties.
  - Wear clean clothes in good repair. It is not necessary to wear your Sunday best, but you should not wear ripped jeans, halter tops, tank tops, or revealing clothes. If you wear a hat, take it off before going into court.
  - Do not come to court under the influence of alcohol or drugs.
  - At times the children are welcome in court but you should ask the caseworker or Guardian ad Litem whether the children should attend. In general, children who are not part of the case should not come with you to court.
- **While in court:**
  - Do not bring food and beverages into court.
  - Do not make faces when someone says something you don't like.
  - Do not chew gum.
  - Turn off cell phones and pagers.
  - Respond by saying "yes" or "no" when a question requires a "yes" or "no" answer. Do not nod, shake your head, or use words such as "yeah," "yah," "uh-huh," "nah," "yup," or "nope" because the hearing is being recorded and your answers need to be clear for the record.
  - Do not swear.
  - Do not interrupt other people when they are speaking. You will have a chance to talk.
  - Call the judge or magistrate "Your Honor" or "Judge."

Additional material and videos on what to expect in court include "Exploring Legal Options – Tips for Grandfamilies" available at the Colorado State University website <http://www.ext.colostate.edu/grg/>.

Source: Adapted from "A Handbook for Families in Dependency and Neglect Cases." (2004). Office of the State Court Administrator, State of Colorado Judicial Department, Denver, CO.

## Different Hearings In a Potential Dependency and Neglect Case

The following gives brief definitions of the types of hearings that parents, relatives and foster care providers may be attending in court during an open case.

### First Hearing, Emergency Hearing, Preliminary Protective Hearing or Temporary Custody Hearing

The judge or magistrate decides if there is evidence the child is not safe and needs to be temporarily removed from home and placed someplace else. If the child has been removed from the home by law enforcement or by a court order, this hearing happens within 48-72 hours of the removal. At this hearing, the court may authorize the filing of a Dependency and Neglect (D&N) petition, even if the child is returned home at this hearing. The Advisement Hearing may also be done as part of this hearing.

### Adjudicatory Hearing (Trial)

The judge decides if there is enough evidence to prove the child is dependent or neglected based on the law. This must happen within 60 days if child is less than 6 and within 90 days for children 6 or older.

### Dispositional Hearing

This might happen at the same time as the Adjudicatory Hearing or within 30 days for children under age 6 or within 45 days for children age 6 or older. The judge is given the family service plan by the county caseworker and any other important information. The plan covers what everyone involved needs to do to provide a safe home for the child. The judge then decides where the child will live for the time being and who will have legal custody.

### Permanency Planning Hearing

If any child in the case is under age 6, this hearing happens within 90 days of the Dispositional Hearing; if all the children are over 6, this hearing is within 12 months from the time of removal from the home. In cases where at least one of the children is under 6, the courts must find a permanent home within one year (called “Expedited Permanency Planning”).

### Court Review Hearings

The reviews are held at least every 180 days. The judge hears how parents are progressing, how the child is doing and reviews the plan and goals for the child. Changes are made in the plan if needed.

## OTHER SPECIFIC HEARINGS

### Advisement Hearing

Parents are advised of their legal rights and relatives are told how they can be involved.

### Termination of Parental Rights Hearing

This hearing might happen if the judge decides the parents cannot or have not met the goals in their plan and cannot have the child move back home. The judge will then decide what legal rights the parents have and what kind of relationship the parents can have with the child.

## Important Note on Hearings

Important decisions are made at each hearing. Your input is important. Kinship caregivers, as part of the team, should have knowledge and input to the treatment plan presented by the child welfare caseworker. Stay informed about the different hearings, arrive on time and be prepared. Should you have any questions about your rights and what you can do before and during a hearing, speak to your lawyer or others who may be helpful such as a caseworker, a GAL or CASA, or a court contact.

## **Rights of Parents, Caregivers and Children in Dependency and Neglect Cases**

Coming to court requires that everyone knows what is expected of them and what their rights are. The more informed you are, the better you will understand what goes on in court and have a chance to be heard. Should you have any questions, ask your caseworker, lawyer, CASA, GAL, or RPC or check the website [www.COkinship.org](http://www.COkinship.org).

**Notice of proceedings:** Both parents and other caregivers of a child have the right to be told of any petition being filed in the court regarding a child. They also have the right to be told when any hearing regarding the child will take place so they can attend.

**Right to a hearing:** Parents have the right to be heard in a court case. Parents also have the right to an interpreter if they do not speak or understand English.

**Rights as relatives:** Colorado statute requires parents to identify relatives of the child who will then be considered as a potential placement for the child. The final placement decision is made by the court by reviewing the best option for the child.

**Right to counsel:** Parents have the right to have a lawyer and, if they cannot afford one, they may be able to get a court appointed lawyer.

**Right to a GAL:** A child who may have been maltreated and is involved in a dependency and neglect case will be provided a Guardian ad Litem (GAL). This person acts independently for the child, must visit the child in a timely manner—usually within 30 days of initial placement—and makes sure the child’s best interests are the priority in case planning. Parents and caregivers have the right to talk about the case with the caseworker and the GAL. Any concerns about a GAL can be directed to the Office of Child Representation ([www.coloradochildrep.org](http://www.coloradochildrep.org)).

**Entitlement of reasonable effort:** Families have the right to expect the agency to make reasonable efforts to reunify the family. They have the right to actively participate in the development of a treatment plan. It is important to meet with the caseworker to talk about what will be included in the treatment plan and presented at court.

**Caregiver’s right to file for custody:** Caregivers can file in court to ask for custody of a child if they have had the child for 6 months or it is within 6 months since they had the child for that time.

**Rights of Native American families:** You may have additional rights if you or your child are enrolled or eligible to enroll in a Native American tribe.

## **BENCHCARD A** Diligent Search

- Has the parent(s) completed the Relative Affidavit JDF-559?
- Does the parent need to be asked under oath about the identification and location of relatives?
- Have the child and other family members been asked by the caseworker, GAL and/or CASA for additional close relationships and their contact information?
- Does the kin search extend to a broad range of relationships?
  - Does it include blood relatives and adults with a strong emotional attachment to the child, including godparents, friends, neighbors, etc.?
- Does the search include any absent parent, specifically father and paternal side of family?
- Has the county conducted a diligent search and made reasonable efforts to locate and engage kin?
- What efforts, including Family Finding and other search tools, and contact information for possible relatives, are clearly documented in the Family Service Plan and retained in the child's case file?
- Has the relative search been ongoing?
- Was it done initially, when any placement change was made, and when permanency plans were reviewed or revised?
- Have either of the following specific conditions to discontinue diligent search efforts been met:
  - the court has ordered a delay in contacting specific relatives for good cause including domestic or other family violence; or
  - the placement has met the following criteria:
    - placement has been stable for minimum of 6 consecutive months;
    - relative or kin has committed to legal permanency; and,
    - parties agree placement is an appropriate permanency option and discontinuing search is in the best interest of the child.

## **BENCHCARD B** Disclosure

The following questions will help assess whether parents, identified caregivers and older youth are prepared for the legal process.<sup>77</sup> Judges may ask questions directly or ask the caseworker or RPC if he or she has reviewed these issues with the family. Relevant Handouts from the Appendix section of the Guide should be provided to participants for additional information.

- Are the parents and kin involved in the case aware of why the Department has intervened? Specifically, are they aware of the threats or risks to the child or kinship caregiver’s safety that may exist?
- Have they been told of the court and Department’s process for assessing and planning where the child will be placed?
- Have they been told what they can and should expect from the Department and the courts?
- Have they been told what the courts will expect from them, including their rights and responsibilities throughout the legal process?
- Have family strengths and other resources to support the placement been identified?
- Are parents and family members aware of the urgent need for their involvement in planning, visiting and decision making for the child both now and in the future?
- Have the child’s developmental needs for safety, continuity of care, and connection to family and culture been discussed?
- Has the family been told of the court’s obligation to give first consideration to available and willing adult kinship caregivers and assess their capacity to serve as a possible permanency resource?
- Are family members aware of the various placement options for kinship caregivers: non-certified kinship care, kinship family foster care, legal guardianship (including the Kinship Guardianship Assistance Program); and adoption?
- Have family members been provided the material from this Guide? (Handouts on Rights, Different Hearings, Glossary, Helpful Ideas, and the Advisement to Potential Relative Caregivers)

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<sup>77</sup> Adapted from “Assessing Adult Relatives as Preferred Caretakers in Permanency Planning: A Competency-Based Curriculum”, Greenblatt, S., et al. (2002) National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work.

- Has a diligent search been conducted and is it ongoing, if indicated, to identify available relatives and other close relationships? (See Benchcard A Diligent Search)
  - Has each adult relative been located and provided with notice of the proceedings?
  - Have appropriate efforts been made to contact the absent parent? (See Benchcard D Engaging Fathers)
- Are relatives and others aware of their rights and what to expect from the courts? (See Benchcard B Disclosure)
  - Have relatives been provided handouts from the Guide including the Advisement Regarding Rights of Potential Relative Caregivers?
- Have attorneys for the parents and a Guardian ad Litem for the child been appointed at the time of the initial filing or application?
  - Specifically, have attorneys received the petition and other papers that will be filed at the initial hearing regarding the child before the initial hearing so that they can meet their client, begin to establish a trusting relationship, and be prepared for that hearing?
- Has the Department been encouraged to convene a meeting of family members, attorneys, and caseworkers before the initial hearing?
  - If the Department is unable to do so, can the Best Practice Court Team be utilized to consider a protocol to assure involvement of all parties prior to initial hearing?
- What group decision-making practices, including mediation, are available to convene the family and empower them to engage in the process and propose solutions for the child's current situation?
  - Are alternative dispute resolution protocols necessary to help family members overcome past quarrels and grievances?
  - What engagement protocols are county Departments using to encourage extended family members to become involved and provide resources for the child?

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<sup>78</sup> Adapted from Edwards, L. (2010). Relative Placement in Child Protection Cases: A Judicial Perspective, *Juvenile and Family Court Journal*, 61, Appendix B.

## **BENCHCARD D** Engaging fathers in the legal process<sup>79</sup>

- Have all potential fathers been identified?
  - Has the mother completed Form JDF-559 to name all fathers and paternal relatives?
  - Is it necessary to question the mother under oath regarding the father's identity and location?
  - Has the question of identity and location of the father(s) occurred, if necessary, at all subsequent court hearings?
- Has the caseworker used good faith efforts to follow up on information gained from JDF-559 and additional sources to identify and locate potential fathers?
  - Has the caseworker obtained the child's birth certificate as required by CO Rule to determine whether the father signed a paternity declaration at the hospital?
  - Has each possible or presumed father been provided notice of the legal proceedings?
  - Is it necessary to use the "no reasonable efforts" finding?
- Is the father a danger to the mother or child? If so, are protective orders sufficient to allay this concern?
- Is the caseworker involving the father throughout the child protection process whenever possible?
- If no legal father has been identified, have measures been taken to complete testing for paternity as soon as possible?
- Has the father been acknowledged in court as an important person in the child's life?
  - Has he been told, specifically, once his paternity is established, he will be treated as a parent in all subsequent court proceedings?
  - Has the father been informed he may be a placement possibility for the child?
  - Has visitation been ordered to begin as soon as possible with supervision or other protective measures, if necessary?
  - Has the father been appointed counsel at least as soon as paternity has been established, with the possibility of reimbursement?
- Has the paternal side of the family been engaged in the process?
  - Does the father's extended family know about the legal proceedings?
  - Do they know they will be considered as possible placements if placement is necessary?
  - Have caseworkers involved the extended family in group decision-making processes, visitation, and court hearings as required in the family engagement process?

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<sup>79</sup> Adapted from Edwards, L. (2010). Relative Placement in Child Protection Cases: A Judicial Perspective, *Juvenile and Family Court Journal*, 61, Appendix A.

- How has the family member been involved with the child and family in the past?
  - Has the child ever stayed for an extended period with the family member?
  - Does the family member know the circumstances that led to need for placement?
  - What kind of relationship does the child have with the family member?
  - Has the child been asked, in an age-appropriate manner, about his or her relationship with the relative?
- Have the required background checks on family members and members of their household uncovered any history of abuse or maltreatment?
- Will the family member be able to protect child from further abuse or maltreatment?
  - Will visits to the parent's home be safe?
- Is the family member willing to work with the agency and the court?
  - Will they work with the agency to develop and enforce a safety plan?
  - Will the family be able to adhere to the rules set down by the court and caseworker in the face of pressure from the parents to the contrary?
  - Are they willing to share personal information about their past and present circumstances by being part of the family study/assessment process?
  - Are they willing and able to provide short-term care and support reunification efforts if required?
- Can the family member meet the child's immediate physical and emotional needs?
  - Do they have a secondary caregiver available if needed?
- At the time of placement, were they provided information on the option to become a certified caretaker as required by Colorado Rule?
- Are any family members potentially willing and able to provide a permanent home for the child?
  - If so, do they have an interest in becoming a licensed foster parent, adoptive parent or legal guardian if this should become necessary?

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<sup>80</sup> Adapted from Crumbley, J. (2002). "Assessing Families for Kinship and Relative Placements," in *Assessing Adult Relatives as Preferred Caretakers in Permanency Planning: A Competency-Based Curriculum*. Greenblatt, S., Crumbley, J., Morse, J., Adamy, D., Johns, M., and, Blunt, J. National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work, 84 – 90.



**Family relationships**

- What are the feelings of the primary caregiver and, when age appropriate, the child regarding the current placement?
- What is the frequency and quality of contact between the child and birth parents, and between the kinship caregiver and birth parents?
- Do parents, guardians and others understand their roles and responsibilities? Are those roles and responsibilities changing, and if so, is there any impact on the child or kinship caregiver?
- Is the child developing a genuine and supportive relationship with the kinship caregiver?
- Have reasonable efforts been made to maintain sibling relationships? Is there a separate documented sibling visitation plan, and is it consistent with the child's wishes?

**Services and Support**

- Does the kinship caregiver have the resources to provide a safe and stimulating environment?
- Is there documentation of the child's physical and mental health visits? If an assessment has uncovered problems, how are they being addressed?
- Were referrals made to appropriate agencies or is it necessary to order the agency to make referrals? What were the outcomes of referrals?
- Are core services identified in the plan being provided? Is there documentation of progress towards specific goals?
- Has the kinship caregiver established a strong formal and informal support system to maintain the placement for the long term?
- How has the child been engaged and encouraged to participate in the court process?
- How is the child progressing academically? If the child requires academic support, are IEPs and 504 plans appropriate and current? For younger children, is their developmental progress being monitored and are they receiving needed early childhood intervention services, including enrollment in a quality early care and education program?

**Safety**

- Who are the members of the household (permanent, temporary, transient individuals)?
- Are the activities of different members disruptive to or unsafe for the child?
- Are the primary and secondary caregivers in agreement on implementing the safety plan?
- Has the kinship caregiver shown the ability to consistently implement and follow a safety plan?
  - If not, what assurance is there that the caregiver can keep the child safe when the Department and others involved in the dependency and neglect case are no longer involved?

**BENCHCARD G****Eligibility for Supports in different kinship arrangements**

	<b>Informal Kinship Care</b>	<b>Kinship Family Foster Care</b>	<b>Non-Certified Kinship Care</b>
TANF	X		X
Medicaid	X	X	X
Child Support	X		X
Tricare	X	X	X
Social Security and/or death benefits	X		X
Supplemental Security Income or Disability Income	X	X	X
Colorado Child Care Assistance Program (CCCAP)	X		X
Child Welfare Child Care			X
Foster Care reimbursement		X	
CORE services		X	X
IV-E or state adoption assistance		X	
Kinship Guardianship Assistance		X	
Possible county-specific kinship resources	X	X	X
Community supports and support groups	X	X	X

**Direct Funding for Kinship Placements**

- **TANF Child Only Grants:** only the financial resources of the child (child support, social security, trust fund) are considered in application; no welfare program work requirements or time limitations for the kinship caregiver; not eligible if the child receives foster care funds.
- **Regular TANF Grant:** kinship caregiver applies for self as well as the child and others in the home and must comply with work participation requirements; up to maximum of 5 years.
- **Title IV-E Relative Foster home:** funds are available only to kinship family foster homes and is the same amount available to non-relative foster care providers.
- **Title IV-E Kinship Guardianship Assistance Program:** rate cannot exceed foster care rate, minus respite; must meet eligibility criteria.
- **Title IV-E Adoption Assistance:** assistance cannot be higher than foster care payment minus respite; eligible for expense reimbursement funds.

**Supplemental Nutrition Assistance Program (SNAP)** – Caregivers do not need legal custody or guardianship to apply for food stamps on behalf of other children.

**Women, Infants, and Children program (WIC)** – Based on eligibility.

**Disability benefits** – Additional income for child through Supplemental Security Income or Supplemental Security for Disability Income.

**Educational support** – Early Intervention Services through Part C of the Individuals with Disabilities Education Act (IDEA); school-based supports through Part B of IDEA.

**Child support** – Legal services through the county Title IV-D child support office; when the family also receives child only TANF, child support must be refunded to county TANF agency; caution that, under some conditions related to safety, families should not pursue parental support.

**Social Security and other Death Benefits** – Apply through local federal Social Security Office.

**TRICARE** – Military health benefits.

**CORE Services** – Includes a wide range of services such as intensive family therapy, mental health services and special economic assistance provided to children at imminent risk of out-of-home placement and their families.<sup>81</sup>

**Health Care** – Relatives can apply for Medicaid on behalf of the children they are raising; do not need to have legal custody; caregiver’s income is not counted in determining child’s eligibility nor do caregivers have to submit any proof of absent parent’s income to enroll child.

**Child Care Support under Colorado Child Care Assistance Program (CCCAP)**

**Child Welfare Child Care** – Referrals must come through Child Welfare; if eligible, assistance to maintain child in own home or in least restrictive out-of-home care when no other option available; must be reviewed every 90 days.

Other assistance, if eligible, may be through **Low Income, Colorado Works** or **Employment First** programs. Application must be made directly to these programs.

**Legal Services** – Kin should be informed of legal resources available to indigent persons in the community.

**Promoting Safe and Stable Families** – Provides local funding for services that address family support, family preservation, time-limited family reunification and adoption promotion and support.

**Respite care** – May be arranged informally with kin; few formal arrangements

<sup>81</sup> <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251588683608>

## **BENCHCARD I**

### **Assessment of long-term permanency plan**

- Have potential caregivers been provided information on all the options available to them, including the Kinship Guardianship Assistance Program?
- Have they been given adequate support and time to make an informed decision?
  - If so, do they demonstrate a clear understanding of the legal, financial and other implications of each option available to them?
- What are the family's long-term permanency plans for the child?
  - Will the legal arrangement chosen best meet the needs of the child and provide the kinship caregiver the authority to ensure a safe and stable environment for the child?
  - If guardianship is chosen, what evidence is there to support a finding that the preferred permanency goals of reunification or adoption are not available options?
- Has the child demonstrated an attachment to the kinship caregiver and been consulted in an age-appropriate manner regarding the long-term permanency options?
- Has the kinship caregiver demonstrated the commitment and ability to care for the child until the child reaches adulthood?
  - Should the current caregiver become unavailable, are there alternative arrangements to provide for the child's care until such time as the child is an adult? Is there a designated guardian? A will?
  - What are the long-term care plans for a child with special needs?
  - Has the kinship caregiver demonstrated a commitment to continue in a supportive role even after the child leaves the home?
- Has the kinship caregiver shown the ability to consistently implement and follow a safety plan?
  - Is there assurance that the provider can keep the child safe when the Department and others involved in the dependency and neglect case are no longer involved?

# NOTES

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