

2007

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Recommended Citation

Clare Huntington, *Ensuring Effective Representation of Parents in Dependency and Neglect Cases*, 36 COLO. LAW. 37 (2007).

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Ensuring Effective Representation of Parents in Dependency and Neglect Cases

by Clare Huntington

Juvenile Law articles are sponsored by the CBA Juvenile Law Section to apprise practitioners of substantive and procedural information concerning the field of juvenile law.

Since 2005, the Colorado Supreme Court Respondent Parents' Counsel Task Force has been working to ensure the effective representation of parents in dependency and neglect proceedings. This article describes the work of the Task Force.

When the state of Colorado initiates a dependency and neglect case against a parent, it is alleging that the parent has abused or neglected a child and state intervention is necessary to protect the child.¹ Dependency and neglect cases often result in the temporary removal of a child from the home.² If the parent is unable to address in a timely manner the issues that led to the dependency and neglect case, the state may move for the termination of parental rights.³ In short, a great deal is at stake, and family integrity and child safety hang in the balance.

Parents are entitled to an attorney at every stage of the dependency and neglect case, and will be appointed an attorney at the state's expense if they are financially unable to secure counsel on their own.⁴ The lawyers representing parents in these proceedings are referred to as respondent parents' counsel (RPC). RPC receive a flat fee of \$855 per case, and an additional \$959 if the case proceeds to a filing by the state for termination of parental rights. Dependency and neglect cases typically last for months and sometimes years.

Recent research demonstrates that when respondent parents are well-represented in dependency and neglect proceedings, everyone benefits.⁵ Effective representation ensures better protection of parents' constitutional rights to the care and custody of their children. Effective representation also contributes to faster rates of reunification, serving the permanency needs of children. Finally, effective representation reduces the time children spend in foster care, saving the state money.⁶

Since the fall of 2005, the Colorado Supreme Court Respondent Parents' Counsel Task Force (Task Force) has been working to ensure the effective representation of respondent parents in dependency and neglect cases in Colorado. This article discusses the work of the Task Force.

Creating the Task Force

In the fall of 2005, Colorado Supreme Court Chief Justice Mary Mullarkey appointed thirty-two individuals to the Task Force. Members of the Task Force include state court judges and magistrates, RPC, guardians *ad litem*, county

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sor Huntington is a member of the Respondent Parents' Counsel Task Force.

The interest of parents in the care, custody, and control of their children is fundamental. Representing the parents faced with severance of the parent-child relationship is difficult work, but the importance of the role is undeniable.

—Chief Justice Mary Mullarkey, Colorado Supreme Court

attorneys, social services representatives, legislators, family court facilitators, court administrators, and legal academics. The Task Force is sponsored by the Court Improvement Committee, with the assistance of the Standing Committee on Family Issues. The main impetus for the Task Force was the recommendation from the PEW Commission on Children in Foster Care that parents should be effectively represented in dependency and neglect proceedings.⁷ The Task Force was charged with improving the representation of respondent parents by focusing on three main areas of concern: training, compensation, and standards of representation.

After its first meeting, the Task Force adopted the following mission statement: The mission of the Respondent Parents' Counsel Task Force is to improve the well-being of Colorado's children and families who are involved in our dependency courts by assuring the effective legal representation of parents in dependency and neglect proceedings.⁸ The mission statement reflected the Task Force's belief that effective representation of parents would benefit the entire family.

Investing in RPC

At the first meeting of the Task Force, members heard from several leaders in the field of child welfare, including Joanne Moore, Director of the Washington State Office of Public Defense. Moore described the work Washington has done for RPC.

Respondent parents' counsel are "decent lawyers doing a decent job in a tough system."

—Colorado Respondent Parents' Counsel Needs Assessment: Preliminary Findings

The state implemented a pilot program in two juvenile courts. The program reduced caseloads of RPC by establishing a ninety-case limit for full-time attorneys, increased the level of staff support, and made paralegals and social workers available to attorneys.⁹

After comparing data from before and after implementation of the pilot program, evaluators found that the program benefited parents, children, and the state. Children in the program had markedly shorter stays in foster care and higher rates of reunification: the average stay in foster care decreased from 291 days to 235 days,¹⁰ and the reunification rate increased from 37 percent to 56 percent.¹¹ Thus, children were returned to their parents more quickly and more families were reunified. The shorter stays in foster care saved the state money, which off-set the costs of the program. Importantly, these benefits did not come at the price of children's safety. Moore informed the Task Force that reentry rates into foster care did not increase despite the quicker reunifications. Based on this success, Washington since has expanded the two-court pilot to a statewide program.

Challenges Facing RPC

RPC face numerous challenges in their work. They must represent their clients with the same zealous advocacy as guardians *ad litem* and county attorneys, but they are paid less money. They are held to the same standard of representation as public defenders, but do not have access to a public defender's resources, such as investigators, support staff, training, and a central office. They also must pay their own expenses and face societal disapproval of their work and their clients.

To ensure an accurate assessment of the needs of RPC in Colorado, the Task Force decided to gather information documenting the issues facing RPC. In 2006, three well-established national organizations—the National Center for State Courts, the National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children—conducted a needs assessment of RPC in Colorado. The researchers observed court proceedings, reviewed case files, and conducted interviews and focus groups with judges, guardians *ad litem*, county attorneys, RPC, court administrators, and respondent parents. The assessment was conducted in the Second, Fourth, and Twentieth Judicial Districts. Researchers also looked at statewide data using the judicial case management system.

The needs assessment report found that, in general, RPC take their work seriously, advocate strongly, and do not compromise the interests of their clients. Although there is room for improvement, the report found that RPC are "decent lawyers doing a decent job in a tough system."¹²


The report concluded that RPC generally are prepared for court, actively participate in court proceedings, do not unnecessarily request continuances, and obtain needed social services for their clients. Additionally, the report found that it takes an average of 2.4 days for counsel to be appointed to a respondent parent; that the appointed RPC typically remains with the case until it ends; and that there are sufficient RPC available to do the work.

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To safeguard children's best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them.

—PEW Commission on Children in Foster Care

The needs assessment report identified several aspects of RPC practice that could be improved. For example, the report found that enhanced litigation skills, additional training on the child welfare system, and a different compensation structure (moving from a flat fee to an hourly rate) would help RPC provide more effective representation. Additionally, the report concluded that RPC need access to more resources, including investigators, paralegals, clerical staff, expert witnesses, and independent evaluations.

The needs assessment report made several specific recommendations. First, the report recommended that Colorado adopt standards of representation for RPC that are consistent with the model standards drafted by the American Bar Association.¹³ Second, Colorado should provide standardized training to RPC, with an

emphasis on litigation skills. Third, Colorado should review the compensation structure for RPC. Finally, the report recommended that Colorado develop an infrastructure to support RPC at the state and local levels.

Work of the Task Force

The work of the Task Force has paralleled the recommendations of the needs assessment report and is largely conducted by four subcommittees, discussed below. The Task Force plans to finish its work in 2007. At that time, the Task Force will submit recommendations to the Chief Justice of the Colorado Supreme Court.

Guidelines Subcommittee

Under the leadership of District Court Judge Lael Montgomery of the Twentieth Judicial District, a subcommittee of the

Task Force drafted guidelines for the representation of respondent parents. The guidelines are based on the ABA's standards of representation for RPC.

After discussion and approval by the Task Force, the guidelines were disseminated for comment among practicing RPC, the CBA Juvenile Law Section, and county attorneys. The Task Force received 120 comments and produced a final draft responding to concerns expressed in the comments. In January 2007, the Task Force sent the guidelines to Chief Justice Mary Mullarkey, the Co-Chairs of the Court Improvement Project, legislators, the CBA, the CBA Ethics Committee, the CBA Juvenile Law Section, the Office of the Child's Representative, and the Colorado County Child Welfare Attorneys.

Training Subcommittee

A second subcommittee, under the leadership of former Court of Appeals Judge Karen Metzger, has been developing training for RPC. The subcommittee organized a National Institute of Trial Advocacy training provided to RPC in January 2007 at a reduced cost. The training subcommittee also has estab-



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lished a listserv for RPC to exchange information and receive notices of Juvenile Law Section and CLE sponsored trainings. Colorado's Department of Human Services has invited RPC to attend all training sessions. Topics relevant to RPC include child maltreatment, developmental delays, and substance abuse. In sessions with space limitations, priority is given to caseworkers. Attorneys, as well as others interested in training sessions, can sign up for courses at <http://www.co.cwtraining.com>.

Models Subcommittee

A third subcommittee, led by Colene Flynn Robinson, Clinical Professor of Law at the University of Colorado Law School, has been exploring various models of representation. Some of the models under consideration include a small public advocacy office, a public defender's office, appointment by local rotation lists, and appointment by a central organization. The subcommittee also has been examining models of compensation, including a set salary, payment by the hour, and a flat fee for each case. Further, the models subcommittee is considering how RPC can use support staff, such as investigators and paralegals, and how to handle legal conflicts. After the subcommittee receives the final needs assessment report, it will conduct additional investigation of the models recommended by the report.

Advocacy Subcommittee

A fourth subcommittee, led by Boulder County RPC Stanlee West-Watt, has been developing an advocacy strategy for the changes the Task Force will recommend. To provide effective representation, the advocacy subcommittee has been particularly focused on the need for increased services, as well as increased compensation for RPC to help lower caseloads.¹⁴

Conclusion

The effective representation of respondent parents benefits parents, children, and the state of Colorado. Although RPC make great efforts to represent their clients well under difficult circumstances, increased support, training, and compensation would greatly improve this representation. The Task Force is working to this end.

NOTES

1. See CRS § 19-3-102.
2. See, e.g., CRS § 19-1-113.
3. See CRS §§ 19-3-602 and -604.
4. See CRS § 19-3-202.
5. See, e.g., National Council of Juvenile and Family Court Judges, "Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation" (Aug. 2003) (Technical Assistance Brief), available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/watabriefcolorfinal.pdf>.
6. See *id.*

7. See PEW Commission on Children in Foster Care, "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care" (2004) at 41, available at <http://pewfostercare.org/research/docs/FinalReport.pdf>.

To safeguard children's best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them.

8. The Mission Statement is available at <http://www.courts.state.co.us/supct/committees/courtimprovementdocs/rptf.htm>.

9. See National Council of Juvenile and Family Court Judges, *supra* note 5.

10. See *id.*

11. See *id.*

12. National Center for State Courts, National Council of Juvenile and Family Court Judges, National Association of Counsel for Children, "Colorado Respondent Parents' Counsel Needs Assessment: Preliminary Findings" (2006).

13. The American Bar Association Model Standards are available at <http://www.abanet.org/child/clp/ParentStds.pdf>.

14. Cf. Davidson and Pitchal, "Caseloads Must be Controlled So All Child Clients Can Receive Competent Lawyering," *NACC Children's Law Manual* 19-34 (Duquette and Ventrell eds., 2006). ■

MALPRACTICE DEFENSE, DISCIPLINARY MATTERS, BAR ADMISSIONS, AND OPINIONS ON ETHICAL ISSUES

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