

JUDICIAL BRANCH
FY 2010-11 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, November 16, 2009
1:30 pm – 5:00 pm

JUDICIAL DEPARTMENT (including the Supreme Court, Court of Appeals, Courts Administration, Trial Courts, and Probation)

1:30-1:45 INTRODUCTIONS AND OPENING COMMENTS

4:40-5:00 *OFFICE OF THE CHILD’S REPRESENTATIVE*

INTRODUCTIONS AND OPENING COMMENTS

DISCRETIONARY APPOINTMENTS IN TRUANCY AND JUVENILE DELINQUENCY CASES

1. Has the Office of the Child’s Representative (OCR) studied whether the appointment of a guardian ad litem (GAL) in truancy or juvenile delinquency cases affects outcomes for children (i.e., are expenditures for GALs in these cases cost-effective early intervention efforts)?

The OCR is not aware of any research addressing the specific question of whether the appointment of a GAL in a truancy case affects outcomes for children. However, the research and best practice models that the OCR has reviewed suggest strongly that community liaisons and partnerships (with, for example, social services and mental health agencies) are an important component of truancy reduction efforts. Because GALs play a role in identifying and advocating for such services for children and families when appropriate in the cases on which they are appointed, their involvement helps support this piece of an effective truancy reduction effort for children and families who are court-involved.

Similarly, the OCR is not aware of formal research regarding how the appointment of GALs in delinquency cases affects outcomes. Statutorily, GALs are appointed for children in delinquency cases when no parent appears, there is a conflict between the child and parent or if the court finds that appointment of a GAL serves the child’s best interest. The delinquency GAL is often involved in identifying and advocating for appropriate sentencing options and supports for children. Research does exist showing improved outcomes for children in D&N cases in the form of more timely permanency and increased family placements when attorneys for parents and children receive increased resources and supports.

2. Does the OCR or the Department have data indicating how much time individual judges spend on truancy cases? If so, is there evidence that the time spent on such cases affects the student dropout rate? Is there other data correlating certain practices or programs with decreases in the student dropout rate?

The OCR is not aware of any specific research addressing the amount of time that judges spend on cases and its correlation to the student dropout rate. While a 2003 study of three truancy intervention programs in Colorado found significant improvements in attendance for program participants, a longitudinal analysis that included graduation rates for program participants was not conducted or available. From the report's description of the three programs, it appears that while much of the work was done external to the judicial process, the courts continued to play a significant role in the truancy programs. In places such as Pueblo, Adams, Trinidad, Boulder, and Arapahoe County, judges have taken a leadership role in developing comprehensive programs that involve in-court and out-of-court interventions and supports. It is the OCR's understanding that some of these programs will continue to be studied through the Colorado Department of Education's Exceptional and At-Risk Student Services Programs. The OCR has also learned from Judge Maes of the Tenth Judicial District that Pueblo's graduation rates have significantly increased and its dropout rate significantly decreased since the inception of Project Respect, Pueblo's truancy program.

A great deal of research sets forth the correlation between truancy and future problems, including alcohol and substance abuse, juvenile delinquency cases and incarceration, detention, and expulsion. Many studies assert that, given the long-term costs of truancy—or the problems correlated with truancy—even minimal success justifies the expenditure of funds in truancy prevention programs.

3. Does the OCR have any comments on the use of incentives and disincentives to address truancy? For example, would a policy of tying a student's cell phone use to school attendance have a positive impact?

The OCR does not have any comments regarding the use of incentives and disincentives to reduce truancy, other than to state that an array of community-based services to assist in addressing underlying stressors and problems appear to be an important component of any truancy prevention or reduction program.

- In 2006, the General Assembly increased the age requirement for compulsory school attendance from 16 to 17. Has this change increased the number truancy cases filed?

Senate Bill 06-73, which increased the age requirement for compulsory school attendance from 16 to 17, became effective July 1, 2007. The State Court Administrator's annual reports have identified a steady trend of increased truancy filings since Calendar Year 2004:

Calendar Year	Filings	Insert column with % increase?
2004	2,062	
2005	2,080	0.9%
2006	2,325	11.8%
2007	2,677	15.1%
2008	3,197	19.4%

This data is limited in that it is provided on a calendar year basis, and it does not isolate the age of the students in the truancy filings.

OTHER

- The Joint Budget Committee sent a letter to Chief Justice Mullarkey on April 27, 2009 with several requests for information. Item #2 asked the State Court Administrator's Office (SCAO) to work with the Office of the Child's Representative (OCR) to explore options for providing the OCR with timely access to filing and appointment information for the purpose of allowing the OCR to better monitor its caseload and manage its annual appropriation. The SCAO recommended that the OCR consider creating a data reporting plan with its contractors to accurately determine the number and types of appointments involving OCR contractors. Please discuss any actions the OCR has taken or plans to take to improve its ability to monitor its caseload and manage its annual appropriation.*

The OCR has implemented changes since the beginning of the new fiscal year including several new billing procedures. The OCR now requires that all new appointments are entered into the billing system within 48 hours of the appointment, and that bills are submitted within 90 days. We have adjusted our online billing system to reflect these changes. For instance, there is a pop-up screen on display if the bill is submitted outside of the 90 day time frame. In order to obtain more specific case data, there are information boxes where the attorneys may choose whether the case is a specialized court case or a case involving bringing youth to court, as these are areas where we have seen cost increases in the past few years. With these changes the OCR will be able to run additional queries to pull data for budget purposes.

In the Domestic Relations section, there is a breakout option for CFI or CLR appointments in order to track what type of appointments judges are using in Domestic Relations

proceedings. Similar to the Public Defenders, OCR is now screening all domestic relations appointments requiring indigency for accuracy.

OCR staff has worked with SCAO on the footnote data request, and on the 5th day of each month OCR will obtain the filing numbers for the previous month, and the actual appointment data by all case type from SCAO. As part of a continued effort to monitor costs per case, the OCR Director and Controller meet regularly to track actual appointments and expenditures. OCR staff continue to scrutinize excess fee requests and promote efficiencies among the attorneys.

6. What would be the impact of a statutory change providing government immunity to the attorneys your office contracts with? Specifically, would such a change provide any financial benefits to the State?

OCR attorneys have quasi-judicial immunity through *Short v. Short*, 730 F. Supp. 1037 (D. Colo. 1990). A statutory change is not needed as OCR attorneys are appointed by the court and act as an “agent of the court” when they are “determining and recommending alternatives that are in the best interest of the court.” *Short*, 730 F. Supp. 1038.

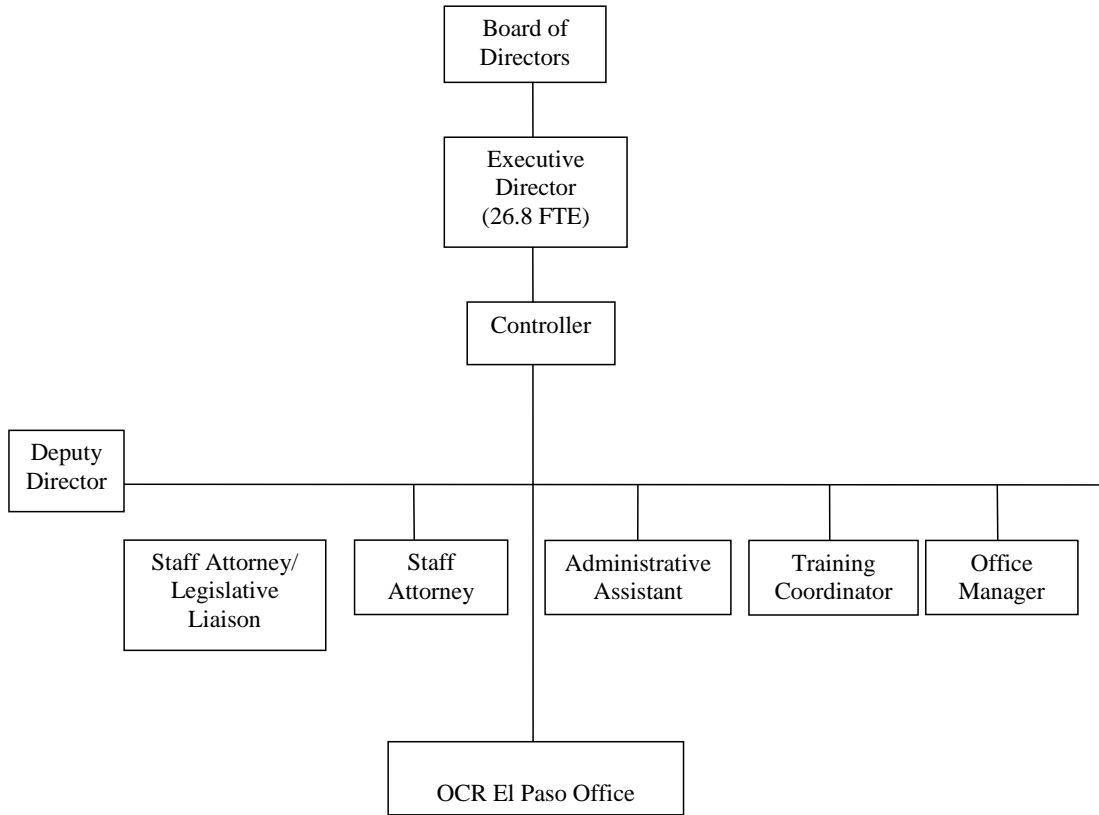
7. [Decision Item #2 – IT Asset Maintenance] Has OCR considered working with the Office of Information Technology (OIT) for purposes of purchasing/replacing hardware? Please inquire whether the OIT could provide or sell the OCR a server or computers at a lower cost than OCR could achieve on its own.

OCR contacted the Office of Information Technology (OIT). OCR plans on meeting with Todd Olson, Chief Financial Officer, within the next couple weeks to discuss OCR’s infrastructure and the possibility of purchasing IT equipment through OIT.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

Please provide:

8. Organizational charts for your department, showing divisions and subdivisions (with geographic locations).



9. Definitions of the roles and missions of your department, its divisions and subdivisions.

Office of the Child's Representative (OCR) Definition of Roles:

Role	Staff Member
Interim Executive Director	Linda Weinerman
Deputy Director	Vacant
Controller	Lynne Winchell
Staff Attorney and Legislative Liaison	Sarah Ehrlich
Staff Attorney	Sheri Danz
Billing Administrator	Sheree Coates
Office Administrator	Melanie Jannicelli
Training Coordinator	Ryan Burke
El Paso Office	Debra Campeau – Managing Attorney

OCR's Mission

The mission, as legislatively mandated, of the OCR is to provide competent and effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, victimized by high conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings. As a state agency, the OCR is accountable to the State of Colorado to achieve this mission in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children. The OCR is committed to ensuring that the children represented by GALs, Colorado's most vulnerable and marginalized population in the courts, receive the best legal services available to ensure that their safety and well-being are protected throughout all aspects of the case.

Office of the Child's Representative El Paso Office's (OCREPO) Mission

The mission of the OCREPO is to provide high quality GAL representation to children involved in dependency and neglect (D&N) and juvenile delinquency (JD) proceedings in El Paso County in a cost-effective manner through a centralized law office of skilled and dedicated attorneys and multidisciplinary support staff in compliance with all aspects of applicable Chief Justice Directives, statutory requirements, and ethical obligations, and to serve as a community leader on issues impacting children involved in the child welfare system.

10. The number of current personnel and the number of assigned FTE by division and subdivision (with geographic locations), including all government employees and on-site contractors.
 - a. Total FTE = 26.8
 - i. OCR – 7.35 FTE
 - ii. OCR El Paso Office – 19.45 FTE

11. A specific list of names, salaries, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year in FY 2009-10.
 - a. OCR Executive Director currently vacant. Unable to determine at this time.
 - b. Debra Campeau, OCR El Paso Office Managing Attorney - \$101,928.00

12. A specific list of names, bonuses, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year who received any bonuses in FY 2008-09.

- a. Theresa Spahn, OCR Executive Director - \$128,598.00
- b. Debra Campeau, OCR El Paso Office Managing Attorney - \$101,928.00

13. Numbers and locations of any buildings owned or rented by any division or subdivision (by location) and the annual energy costs of all buildings.

- a. OCR – 1580 Logan Street, Ste. 340, Denver, CO 80203
 - i. Energy cost is included in monthly rent costs
- b. OCR El Paso Office – 102 South Weber Street, Colorado Springs, CO 80903
 - i. Total FY 2008-09 energy costs \$6,782.91
 - Electric - \$4,101.03
 - Gas - \$2,681.88

14. Any real property or land owned, managed, or rented by any division or subdivision (by geographic location).

Not applicable.

15. List essential computer systems and databases used by the department, its divisions and subdivisions, with their actual FY 2008-09 expenditures.

Between the OCR and the OCREPO there are approximately thirty-three workstations, three servers, two operating systems, and three uninterruptible power supply systems in operation. Each office contracts with separate information technology support services due to physical location of each office. Actual FY 2008-09 expenditures for routine maintenance, license renewal, and other services totaled \$33,266.95:

- OCR - \$20,748.27
- OCR El Paso Office - \$12,518.68

16. Any actual FY 2008-09 expenditures over \$100,000 total from the department or from its divisions and subdivisions to any private contractor, identifying the contract, the project, and whether the contracts were sole-source or competitive bid.

The following contractors provided best interest attorney services for children at the state hourly rate of \$65 per hour.

Miller, Gregory	Susan L Street PC
Glaeser, Tammy	Mann, Cassandra
Gagliano & Matuszczak LLC	Catherine A Madsen PC
Ross, Terry	Michael A Brass PC
Macias, Dorothy	Laura Dunbar PC
Reid, Karen	Bernuth, Mary T
Dalessandro, Mark Richard	Buechler, Ruth Anne
Stacey E Nickolaus Law Office	James, Philip R
Bischofs, Regina	Bartlett, Howard PC
Hale & Associates Ltd.	Verhoeff, Kim
Tweedell, Robert	Law Office of Mary McWilliams
Ruth M. Acheson	Glover, Glover & Haynes LLP
Elizabeth Martinez Ltd.	Debra Dodd PC
Krohn, Carole	Law Office of Jami Vigil
Lajoie, Michael	Brandes & Schmidt PC
Mary Camp Attorney at Law LLC	Barbara J Remmenga PC
Jody J Pilmer LLC	Fulks, Peggy
Timlin, Jeffery	Clark & Associates PC
Ward Law Firm PC	Rocky Mountain Children's Law Center
Beverly A Lopez PC	
Plettner, Sharon	
Calvert, Michael Todd	
H Clay Hurst & Associates PC	
John Traphagan Vap PC	
Schwartz, Patricia	
Joffe, Danyel S	
Flowers, Carol	
Marin Law Firm LTD	
Law Office of Doris A Waters	
Meinster, Ann Gail	
Hillary D Lipton PC	

These contractors do not meet the definition of either sole source or competitive bid contractors. Instead, the OCR engages in a statewide annual contract process in which attorneys submit an application for contract indicating their relevant experience and qualifications, as well as a certification that they are able to comply with relevant Chief Justice Directives and standards. From these applications and according to the existing need for attorney services, the OCR interviews and selects the most qualified attorneys to provide best interests attorney representation to children in each of Colorado's 22 judicial districts.

The OCR's contract application process does not include the submission of competitive bids regarding the overall cost of the contract. Each attorney who applies to contract with the OCR applies to provide services at the legislatively approved statewide hourly rate for the upcoming fiscal year. OCR's attorney contracts do not guarantee or contemplate the payment of a specific amount of money per year, as a variety of factors outside of the control of the OCR (e.g., case filings, judicial officers' appointment decisions, the amount of hours required on each specific case) ultimately determine the amount of hourly bills any attorney will submit in a given fiscal year.

The following contractor provides lease office space for the OCREPO, which does not qualify as either a sole source or competitive bid contract.

Help Fund Corp	\$101,450
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17. The amount of actual FY 2008-09 expenditures for any lobbying, public relations, gifts, public advertising, or publications including:

- a. expenditures for lobbying by public employees, contract lobbyists, or "think tanks;"
- b. expenditures for lobbying purposes at other levels of government;
- c. expenditures for lobbying purposes from grants, gifts, scholarships, or tuition;
- d. expenditures for publications or media used for lobbying purposes;
- e. expenditures for gratuities, tickets, entertainment, receptions or travel for purposes of lobbying elected officials; or
- f. expenditures for any public advertising. Include all advertising campaigns, including those that are not for public relations.

None of the above are applicable to OCR.

18. List of all boards, commissions, and study groups, including ~~all funding~~, actual FY 2008-09 expenditures, travel, per diem budgets and assigned FTEs.

OCR's Board of Directors:

Member Name	FY 2008-09 Expenditures	Description
Marsha Caplan	\$622.12	OCR Conference in Keystone-Hotel, mileage reimbursement, meal reimbursement.
Shirley Rowe	\$133.71	OCR Board Retreat-Mileage reimbursement, hotel.
Paul Garcia	\$238.00	OCR Conference in Steamboat-Hotel
Representative Cheri Jahn	\$238.00	OCR Conference in Steamboat-Hotel
Lynne Hufnagel	N/A	
Laura Hunt	N/A	
Peggy Rudden	\$119.00	OCR Conference in Steamboat-Hotel
Joseph Wallis	N/A	
Terraine Bailey	N/A	
Ember Beamon	N/A	

19. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 12.5% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.

The OCR has explored every possible option for achieving a budget and/or staff reduction, and it cannot in good faith recommend any reduction, as any reduction would place in peril the safety and well-being of children and/or place the OCR in a position of violating our enabling statute or mandated time frames for processing attorneys' bills.

The OCR cannot recommend any cuts to its attorney services program, which constitutes 96% of the OCR's budget. OCR attorneys represent the best interests of children—the most vulnerable population in Colorado's court system. The overwhelming majority of children represented by GALs are involved in the court system because they have been subject to abuse or neglect, and the children represented by OCR attorneys in other case types (JD, domestic relations, truancy, probate, and mental health) are increasingly at risk of abuse or neglect due to the increasing pressures placed on families and the growing limitations on departments' of social services ability to provide services in the current economic crisis. Attorneys who contract with the OCR are compensated at an hourly rate of approximately one-third to one-fifth of the rate they would be able to bill in the private sector. Attorneys who contract with the OCR are subject to statutory and ethical requirements, as well as minimum practice standards set forth by Chief Justice Directive. Compliance with these requirements and standards is mandatory from an ethical and professional standpoint—and

absolutely essential to the safety and well-being of children represented by OCR attorneys. ***The OCR cannot recommend its attorneys fail to dedicate the amount of time necessary to meet their ethical and statutory obligations and the standards set forth in Chief Justice Directive.***

Similarly, the OCR cannot recommend any reductions in staff hours or FTE. 7.35 of the OCR's FTE comprise its administrative staff, and 19.45 of its FTE work at the OCREPO. Because only 4% of the OCR's overall budget is dedicated to its administration, any hour reductions or position eliminations would not achieve a significant reduction in the OCR's overall budget. More importantly, it would have the unintended consequences of undermining the safety of children and increasing contract attorney costs. Like OCR attorneys, OCR administrative staff is a critical safeguard to the safety and well-being of children. The OCR was created because of serious deficiencies in GAL performance, and its enabling legislation recognizes that "children often have no resources with which to retain the services of an attorney or advocate, they are unable to efficiently provide or communicate to such an attorney or advocate the information needed to effectively serve the best interests or desires of that child, and they lack the ability and understanding to effectively evaluate and, if necessary, complain about the quality of representation they receive." § 13-91-102(1)(a), C.R.S. The continual monitoring and statewide presence maintained by the OCR's small administrative staff is essential to ensuring that GALs are in compliance with their obligations to the children they represent. OCR staff also monitor attorneys' billing requests and achieve overall efficiencies in the OCR's attorney costs through the identification and implementation of appropriate systemic and practice measures. To reduce the hours of this staff or any positions would undermine the safety of children and result in increased contract attorney costs.

The remaining FTEs employed by the OCR work at the OCREPO. These attorneys provide best interests representation to children in D&N and JD proceedings in El Paso County, which has consistently experienced among the highest D&N filings in the state. Like the OCR's contract attorneys, their work is essential to preserving the safety and well-being of children. OCREPO attorneys are subject to the same ethical obligations as OCR contract attorneys, as well as caseload standards. Any reduction in hours and/or FTE would reduce the number of cases the OCREPO would be able to handle, resulting in an increased number of cases to be handled by OCR contract attorneys in the Fourth Judicial District. Because OCREPO attorneys provide cost-effective GAL representation services at a rate of \$40 per hour as compared to the state hourly rate of \$65 per hour, any furloughs or reduction in staff in this office would only increase costs for contract attorneys in the Fourth Judicial District.

Over the past two fiscal years, the OCR has taken steps to achieve all possible efficiencies in its budget. It has worked to reduce the number of discretionary appointments in JD, truancy, and DR cases through legislation and ongoing education and collaboration with appointing judicial officers and other impacted agencies. It has reached out to key judicial districts in which GAL costs exceed the statewide average to identify and address factors driving those costs. It has refrained from adding attorneys to appointment lists and worked

to streamline those appointment lists where appropriate. It has worked with its contract attorneys to identify and implement efficiencies in attorney practice that will not undermine the safety and well-being of children. Unfortunately, the need for mandated GAL services continues to increase as Colorado's families and agencies are impacted by the State's budget crisis, and these measures have served at best to stabilize the OCR's budget.

The OCR has also explored the option of eliminating all discretionary best interests attorney appointments for children. As the appointment of a GAL is mandated for each child in every D&N case and is legally necessary in some JD cases,¹ this measure would constitute the elimination of truancy, domestic relations, paternity, probate, mental health, and an estimated 50% of OCR's JD appointments. The elimination of these appointments would require legislative change and could result in savings of approximately 11% in Fiscal Year 2010-11. The OCR does not recommend this alternative, as the elimination of these services is inconsistent with its mission and potentially harmful to children. Courts rely on the work of OCR attorneys in making decisions on behalf of children in these case types, and any reduction in these services would deprive the courts of necessary information. Additionally, the OCR understands that discretionary appointment types increasingly involve child protective concerns as budgetary constraints continue to limit county department's ability to open or file D&N cases.

The only budget reduction alternative available to the OCR is to cease paying attorney bills once the OCR reaches 87.5 % of its budget. ***The OCR cannot recommend this alternative, as it would be patently unfair to its attorneys and place the OCR in violation of state fiscal procedures and at risk of litigation.***

20. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 25.0% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.

As detailed in the OCR's response to Question 13, the OCR cannot in good faith recommend this reduction in its budget, as it would place in peril the safety and well-being of children and/or place the OCR in a position of violating mandated time frames for processing attorneys' bills.

The only budget reduction alternative available to the OCR is to cease paying attorney bills once the OCR reaches 75%. ***The OCR cannot recommend this alternative, as it would be patently unfair to its attorneys and place the OCR in violation of state fiscal procedures and at risk of litigation.***

¹ While Title 19 provides that a court "may" appoint a GAL in JD cases in certain circumstances, a GAL is necessary in JD cases in which parents do not appear or have a conflict of interest with the youth. In such circumstances, a GAL is required to confirm to the court that key decisions serve the child's best interest and to render these decisions legally valid.