

# **Child Protection Caseflow Management Plan**

## **Fifth Judicial District**

### **Statement of Purpose**

This caseflow management plan will be administered consistently with Idaho's Statewide Caseflow Management Plan.

The purpose of this plan is to ensure fair, just, and timely case resolution in the courts of the Fifth District by:

1. Preventing unnecessary delay in case processing.<sup>1</sup>
2. Ensuring that each case receives individual time and attention proportional to need in order to ensure a just result in each case.
3. Promoting judicial leadership and instituting continuous court oversight over the progression of cases from filing to disposition.
4. Creating consistency and predictability for users of the court system.
5. Setting reasonable and mutually understood clear expectations for judges, litigants, the Bar, and the public.
6. Ensuring that judges, court clerks, and trial court administrator have consistent, meaningful case management information to inform their efforts.

Nothing in this plan should be construed to create a substantive right.

This plan is not intended as a comprehensive guide for implementing best practices in child protection cases. The Child Protection Benchcards and Child Protection Manual should also be referenced. These and other resources are located on the Idaho Supreme Court website at <http://www.isc.idaho.gov/child-protection/judges>

### **Section 1: Assignment of Judges in the Fifth District**

All magistrate judges are assigned matters specified in Idaho Code 1-2208 and Chapter 23, Title 1, Idaho Code. Additional matters may be assigned by the administrative district judge pursuant to Idaho Code 1-907. In addition, the Idaho Supreme Court may, by rule, specify additional categories to magistrate judges pursuant to Idaho Code 1-2210.

Backup judge coverage may be provided in instances of scheduling conflicts, judicial conferences, vacations, illness, etc., by assignment to either senior or sitting judges, as available. Assignments shall consider the specialized knowledge and experience required and the possibility to consult with the regularly assigned judge. Backup judges presiding over child protection cases should follow Juvenile Rules, statutes and local custom or practices.

For child protection cases, a cadre of specially trained senior judges exists and is maintained by the Administrative Office of the Court. The trial court administrator will use senior judges with child

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<sup>1</sup> According to Article I, Section 18 of the Idaho Constitution..."justice shall be administered without...delay." According to the American Bar Association's *Standards Relating to Court Delay Reduction*, delay is "any elapsed time other than reasonably required for pleadings, discovery, and court events."

protection experience or training, whenever possible, to provide backup coverage on child protection cases. A list of senior judges who meet these requirements and have expressed an interest in hearing child protection cases and termination of parental rights trials is available at the Administrative Office of the Courts.

The administrative district judge is responsible for the overall assignment of judges and caseloads to ensure effective caseload management. Each administrative district judge considers carefully the number and types of judges available within the district, as well as the availability of senior judges. Other considerations include population density, distribution and mix of caseloads, number of counties, geography and driving distances, the feasibility and desirability of specialization of caseloads, and societal and workload trends. The administrative district judge and trial court administrator continually monitor the assignment of judges and the effective use of existing resources.

## **Section 2: Management of Child Protection Cases**

### **Section 2.1: Timelines for Processing Child Protection Cases**

Delays in the processing of child protection cases can have dire consequences for children and families. Children may spend years of their childhood waiting to find permanency. If too much time is spent in foster care during a child's formative years, lifetime problems can be created. Time is of the essence in child protection cases. Courts should ensure timely decision-making at all stages of a child protection cases, from shelter care through permanency.

Idaho Court Administrative Rule 57 establishes time standards for case processing for individual case types. Per the rule, the time standards "are adopted as guidelines for judges, trial court administrator, lawyers, and litigants to assist them in determining the length of time it should take to conclude a case in the trial courts." Time standards establish reasonable, mutual expectations for the courts, attorneys, and the public and can be an effective way of boosting public confidence in the Idaho courts. Pursuant to ICAR 57, time standards for child protection cases are "as provided in the timeframes established in the Idaho Juvenile Rules."

When monitored regularly, time standards serve as a tool to assist courts with managing caseloads, preventing backlog, and assessing progress towards case processing goals. In short, they are a tool for ensuring that Idaho Courts are meeting their goal to provide timely case resolution as reflected in the Mission Statement of the Idaho Judiciary and as mandated in the Idaho Constitution. The identification and monitoring of processing times for key interim case events for each case type is an additional tool to assist with case management efforts, allowing for the identification of specific areas of delay in the case process.

Judges, clerical staff, and trial court administrator consistently monitor time standard reports each month and use the information to take action in particular cases and to adjust processes and reallocate resources to meet case processing goals.

In child protection cases, the following timelines must be met pursuant to Idaho statute and the Idaho Juvenile Rules:

**Shelter Care Hearings:**

The shelter care hearing must be held within 48 hours of the child(ren) being removed or within 24 hours of an alleged offender being removed, excluding weekends and holidays. I.C. §§ 16-1608(2) and (3) and 16-1614(4); I.J.R. 16(b) and 39(c), (d) and (f).

**Pretrial Conference:**

The pretrial conference must be held outside the presence of the court between three (3) and five (5) days before the adjudicatory hearing. I.C. §16-1619(2).

**Adjudicatory Hearing:**

The adjudicatory hearing must be held no later than thirty (30) days after the filing of the petition in the child protection case, or the date the court orders a Juvenile Corrections Act case expanded to a child protection case, or service of the order of removal, whichever occurs latest. (IJR 39(k); *see also*: I.C. §16-1614(6), I.C. §16-1619(1), and IJR 41(b))

The following time standards for adjudicatory hearings have been approved by the Idaho Supreme Court for piloting and tracking beginning in 2015:

90% within 30 days

98% within 60 days

Measured from filing of petition to completion of hearing

**Case Plan Hearing:**

The case plan hearing must be held within thirty (30) days after the adjudicatory hearing or a child coming back into foster care after having been under protective supervision. I.C. §§ 16-1621(1) and 16-1623(5). Case planning hearings are not held if the court has found aggravated circumstances. I.C. § 16-1620.

**Redisposition hearings:**

Redisposition hearings occur when a child under protective supervision comes back into foster care. The hearing must be held within 48 hours of removal, excluding weekends and holidays. I.C. § 16-1623(3).

**Review Hearings:**

Review hearings must be held no later than six (6) months after entry of the court's order taking jurisdiction, generally at the Adjudicatory Hearing, and at least every six (6) months thereafter. I.C. 16-1622(1)(a).

**Permanency Hearings:**

Permanency hearings must be held at any time, but no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction, whichever occurs first, and every twelve (12) months thereafter. I.C. § 16-1622(2)(b). **If the court has found aggravated circumstances**, the first permanency hearing must be held within thirty (30) days of the finding. I.C. § 16-1620(1).

Time standards for Adjudicatory and Permanency hearings have been approved by the Idaho Supreme Court commencing in 2015 and will be adhered to by the Fifth District.

**First Permanency Hearing:**

98% within 365 days

Measured from the date the child was removed from the home or the date the court took jurisdiction, whichever was first, to completion of hearing.

**Subsequent Permanency Hearing:**

98% within 365 days

Measured from the earlier of the date of the previous timely permanency hearing or the last date on which the previous permanency hearing would have been heard timely to the completion of the hearing. (I.C. §16-1622(2))

**Timelines for Achieving Permanency Goals:**

Timelines for permanency goals should be addressed at the case plan hearing:

**Reunification:**

**If the court has not found aggravated circumstances**, reunification should be accomplished within 12 months from the date of removal; provided, however, if it is in the child's best interest, the court may approve an extension of up to 3 months to finalize reunification. I.J.R. 44(a)(1). **If the court has found aggravated circumstances, the Department is not obligated to make efforts to reunify the family.** (§16-1620)

**Guardianship:**

If the permanency goal is guardianship, it should be finalized within 13 months from the date of removal. I.J.R. 44(a)(2). **If the court has found aggravated circumstances**, guardianship should be finalized within 5 months from the date of the determination of aggravated circumstances. I.J.R. 44(b)(1). Any extension of time to finalize guardianship must be approved by the court.

**Termination/Adoption:**

If the permanency goal is termination of parental rights and adoption, the court shall order the Department to file a termination petition within 30 days of approval of the goal. Termination must be finalized within 18 months and adoption within 24 months from the date of removal. I.J.R. 46. A termination petition is not required to be filed as stated above if the court finds that the child is placed permanently with a relative; there are compelling reasons why termination is not in the best interests of the child; or the Department has failed to provide reasonable efforts to reunify the child with his/her family. I.C. § 16-1622(2)(g). **If the court has found aggravated circumstances**, termination of parental rights should be finalized within 6 months and adoption within 12 months from approval of the permanency goal. I.J.R. 44(b)(2). Any extension of time to finalize termination and adoption must be approved by the court.

In the case of a safe haven baby, shelter care and adjudicatory hearings are held as set forth above. No case plan hearing is held. The Department is required to petition for termination of parental rights as soon as practicable following the initial 30 day period from the date the child was delivered to the safe haven. I.C. § 39-8205.

## **Section 2.2: Overlay of Federal Law**

In addition to the time standards and time lines as set out in Idaho statute and rule, child protection cases must be managed in compliance with several federal statutes. Failure to comply can result in unnecessary case delay or may negatively impact outcomes for children in care.

**1. Reasonable Efforts Findings and IV-E funding.** In order for an Idaho child who is placed in foster care to establish and maintain eligibility to receive federal IV-E foster care maintenance payments, the presiding judge must make specific findings at specific times in the child protection case. Failure to make the required findings may delay permanency for the child, and may also result in the loss of federal foster care match and adoption assistance funding for the child.

Judges hearing child protection cases must make the following findings at the following times:

### **A. Contrary to the Welfare.**

The judge hearing a child protection case must make a finding that it would be “contrary to the welfare of the child to remain in the home.” 42 U.S.C § 672(a)(2)(A)(ii); I.C. §§ 16-1615(5)(d), 16-1619(6).

The finding must be made in the **first order pertaining to the removal of the child** from the home.

If the Rule 16 Expansion Order is the first order of removal, the contrary to the welfare finding **must** be included in the IJR 16 Expansion Order. Failure to make this finding in the first order will render an otherwise eligible child ineligible for foster care maintenance payments for the duration of the child’s stay in foster care and for federal adoption assistance payments.

### **B. Reasonable Efforts to Prevent Removal.**

A judicial determination must be made as to whether or not the Department made reasonable efforts to prevent the removal of the child from his/her home.

The finding must be made **no later than sixty (60) days from the date the child was removed from home.**

### **C. Reasonable Efforts to Finalize the Permanency Plan.**

A judicial determination must be made as to whether the Department did or did not make reasonable efforts to finalize the permanency plan that was in effect.

The finding is a retrospective review of the efforts to finalize permanency and must be made **within twelve (12) months of the date the child is removed from the home or the date of**

**the court's order taking jurisdiction, whichever occurs first, and at least once every twelve (12) months thereafter. (§16-1622(2)(c))**

The Fifth District employs the following process to ensure that the above findings are made at the specified times:

At or before twelve (12) months from the date of the removal of the child(ren), or from the court's order taking jurisdiction, the court will hold a hearing to determine the reasonableness of the permanency efforts of the Department. At that hearing, the court will adopt the appropriate permanency plan for the child(ren). The Department shall file with the court and serve a copy on all parties, five days prior to the hearing, its proposed permanency plan. At the hearing all parties shall have the opportunity to present evidence to the court concerning the proper permanency plan for the child(ren).

Permanency is an issue that should be considered throughout the case. Reunification is recognized as the primary statutory and constitutionally mandated focus of planning and effort by all parties and the Department. However, concurrent planning for the child(ren) in the event reunification should fail, must also be a priority for the court, parties and the Department. As such, concurrent planning will occur throughout the case and the court will inquire at each review hearing to ensure that concurrent planning for the child(ren) is occurring.

## **2. Special Circumstances that Can Contribute to Delay.**

### **A. Indian Child Welfare Act (ICWA) determination.**

Failure to comply with the standards required by the ICWA may result in substantial delay in finding permanency for Indian children. Early and accurate identification of any unmarried child who is a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe is critical. The court should inquire about the application of the ICWA at the earliest possible time in the case and continue to do so until a determination is made. If the ICWA is applicable in a case, there are a substantial number of unique issues that must be addressed. Judges should employ the bench cards, child protection manual, and the BIA Guidelines.

The Fifth District employs the additional following process for early identification of Indian Children in child protection cases:

- The Court asks at Shelter Care and Adjudicatory but no follow up
- Clerk can bring it to the Judge's attention that we don't have a final outcome for the status of ICWA
- Court can ask question better...."Is child eligible to be registered as an Indian Child?"
- DHW will get the answer back to the court as soon as possible as concerns the status of ICWA.

### **B. Interstate Compact for the Placement of Children (ICPC).**

The ICPC is a federal law that governs the out-of-state placement of children. Delay can result from failure to timely initiate the ICPC process or from delay by the receiving state in their response to the placement request. Whenever out-of-state placement is a possibility for a child, the court should inquire about the application of the ICPC (specifically, Regulation 7) at the earliest possible time. ICPC Regulation 7 is a tool to expedite ICPC approval or denial and applies in a specific set of circumstances.

The Fifth District employs the additional following procedures to manage and/or prevent unnecessary delay in the ICPC process:

- At the first hint of delay, the court should require regular status report to keep this case moving along.
- Attorneys will file a motion and Order asking the judge to call for this information.

**Section 2.3: Early identification and engagement of family.** Early identification of family members helps to ensure timely permanency for children. Failure to engage parents can delay the court process. In addition, family members may provide the most appropriate placement or may provide guidance about the most appropriate placement for the child and information helpful in addressing ICWA.

Federal law requires that the Department identify all extended relatives within the first thirty (30) days of a child protection case. Failure to do so may result in substantial delay throughout the life of a case, including late appointment of counsel for a parent, delay in ICPC processing, delay in genetic testing, or conflicting orders.

The Fifth District employs the following process to ensure early identification of family members in child protection cases:

- Attorneys for parents and the Department are inquiring of the parents about family that can be a resource
- Add birth certificate to order at shelter care
- Judge order from bench that parents communicate with the department about family resources

**Section 2.4: Concurrent planning.** Concurrent planning is a planning model that prepares for and implements different outcomes at the same time. I.C. §16-1602 (11) Concurrent planning is essential from the outset of a child protection case. If there is no finding of aggravated circumstances, the case plan must include a plan for reunification as well as a concurrent permanency goal and a plan for achieving that goal. The plan for reunification and for the alternate permanency goal should be implemented concurrently from the outset of the case. Initiating concurrent planning late in a child protection case will result in substantial delay in permanency for the child.

The Fifth District employs the following process to ensure that concurrent planning is initiated early in a child protection case and is implemented along with the plan for reunification:

- Court shall initiate inquiry as to status of concurrent planning no later than the case plan hearing and shall have follow-up inquiry to make sure it is in place.
- Court should explain the entire Child Protection Act process to the parents at the Shelter Care hearing including the existence of concurrent planning.

## **Section 2.5: Case Assignment and Case Coordination**

### **1. Assignment of Child Protection Cases to Judges and Deputy Court Clerks**

The purposes of a case assignment policy are to 1) establish for the district the process by which cases will be assigned (individual case assignment or an alternative calendar system); 2) ensure continuity of judicial attention; 3) designate the instances in which cases involving the same family will be assigned or consolidated for adjudication by the same judge; and 4) put in place case assignment processes that ensure the public that the assignment of cases to judges within the Fifth District is not susceptible to control or manipulation by parties or attorneys.

Judges assigned to child protection cases have the responsibility to protect the rights of participants before the court and ensure safe, permanent homes for abused and neglected children. Judges assigned should have training, resources (Bench Cards and Child Protection Manual) and support necessary to accomplish this task and ensure that all participants are accountable for their duties and responsibilities to the family and the case.

Judges shall provide close judicial oversight of child protection cases and to the fullest extent possible preside over all hearings to insure one family/one judge assignment.

Clerks assigned to child protection cases shall have or be supervised by a clerk having specialized training for the processing and clerking of these proceedings. Best practice is for the same clerk to be responsible for all stages of a case both in and out of the courtroom and to work with the assigned judge in scheduling proceedings to meet time deadlines and data entry requirements.

The Fifth District employs the following case assignment process for child protection cases:

- One judge and 1 clerk from beginning until termination
- At termination the case may be given to another judge for the contested termination hearing.
- All random assignments – no chance for manipulation

The Fifth District adheres to the provisions of IRCP 40 in responding to recusals, disqualifications, and the need for additional judges to handle lengthy trials by assigning cases to other sitting judge or available senior judges.



## 2. Case Coordination

### A. Case Coordination with Other Pending Cases

Timely resolution of a child protection case is often affected by parallel court cases involving the parents and/or children. The court, to the extent possible, coordinates with all cases involving the family to identify additional resources and reduce obstacles to timely resolution in the child protection case. This includes identifying and utilizing the Idaho Department of Health and Welfare “child identification number”. Additionally, the court considers at least the following:

1. Information provided on the Family Law Case Information sheet
2. Obstacles created by criminal cases for parents, including, but not limited to, the impact of “no contact orders” issued between the parents and children and the discouragement of parents to participate in evaluations pending criminal trials
3. Any case involving the family, including but not limited to:
  - a. Guardianship or Conservatorship
  - b. Custody (including out-of-state orders)
  - c. Child Support/Paternity
  - d. Juvenile
  - e. Companion criminal cases
  - f. Criminal Problem solving court
  - g. Domestic violence

### B. Late Appearing Parent/Late Appearing Child

Following the initiation of a child protection case, a child or parent may be identified who is connected to an existing child protection case. If the court already has jurisdiction over a child it has jurisdiction over the cause of action (*in Rem*) and has jurisdiction to engage the newly discovered or appearing parent.

If a child is identified that is connected to an existing case, that child may be brought into the existing case by: (1) If prior to adjudication, with proper notice, amending the petition to include the child; or, (2) if, after adjudication, jurisdiction is found, by filing a new petition and if jurisdiction is taken, merging it into the original case and follow the timeline of the original case.

When a sibling is removed from a home after the initiation of a Child Protection Case and after the adjudicatory hearing, the Prosecuting attorney will amend the petition in the existing Child Protection Case and the family will be afforded all due process rights including a Shelter Care Hearing within 48 hours and an Adjudicatory Hearing within 30 days thereafter. Additionally, the parents shall be afforded the right to an additional Disposition Hearing, as well as a Case Plan Hearing within 30 days of the Disposition Hearing. Thereafter, the court will afford the parents regular review hearings before the court and assist the parents to follow the timeline of the existing Child Protection Case.

When an additional Parent is added after the initiation of a Child Protection Case and after the Adjudicatory Hearing, the parents shall be afforded the right to an additional Disposition

Hearing, as well as a Case Plan Hearing within 30 days of the Disposition Hearing. Thereafter, the court will afford the parents regular review hearings before the court and assist the parents to follow the timeline of the existing Child Protection Case.

#### **C. Problem Solving Courts**

When a family has an open child protection case and is simultaneously participating in a problem solving court, **and the same judge is not hearing both cases**, communication between the child protection and problem solving courts is essential.

Information-sharing protocols should be developed to ensure that information shared between the problem solving court and other systems that is critical for informed decision-making and treatment planning while protecting parents' privacy and due process rights. The protocols must also ensure that information is shared in a timely way.

The Fifth District follows these practices to ensure good communication between child protection and problem solving courts:

- Consider reassignment to put both cases before one judge.
- Put duplicate minutes in both files.

#### **D. Transfer of Venue**

Transfer of venue in a child protective act case is governed by IJR 50. Prior to the transfer, the judge of the sending county court will communicate, either verbally or in writing, and obtain consent to the transfer from a judge of the receiving county court. (IJR 50(c)(6)) Venue may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the child protective act.

The Fifth District follows these practices when venue is transferred to another Idaho district:

The Department from Region V will confirm that the Department in the receiving Region will accept case management responsibilities for the children and their family.

The Prosecuting Attorney will contact the Prosecuting Attorney's Office of the receiving county to insure that the receiving county will accept prosecutorial responsibilities on the Child Protection case.

The court will contact the judge in the receiving county to insure that the receiving county court will accept the Child Protection case. The court will insure that all hearings have been conducted in a timely fashion and that transfer of the case will not jeopardize statutory timelines.

The Fifth District follows these practices when venue is transferred from another Idaho district:

The judge of the sending county contacts the receiving county judge to request that the case be transferred;

The Judges confirm with necessary agencies that a Case Plan had been conducted and determine that it is in the best interest of the parties to transfer venue;

The receiving court's prosecuting attorney's office confirms to the receiving judge that the prosecutor and the Department of Health and Welfare (DHW) are willing to accept the transfer.

The receiving judge then confirms with the sending judge that the case transfer is acceptable.

Receiving judge advises sending judge to have TCA send case file to receiving court's TCA, who will then issue a notice of case assignment of the receiving judge.

## **Section 2.6: Proactive Case Management**

All cases and calendars are set in such a way to prevent unnecessary delay in case processing, while balancing the effective use of the time of parties, judges, attorneys, and court personnel. The presiding judge adopts a scheduling policy that accomplishes this and reduces the likelihood of scheduling conflicts requiring rescheduling of events. The judge maintains early and continuous control of all cases from initiation through resolution by the use of:

1. Appropriate case assessment;
2. Scheduling of hearings that comply with time standards adopted by the Idaho Supreme Court, Idaho statutes, and Federal law; and
3. Court control of continuances for purposes of fostering timely resolution of most cases and achieving trial date certainty for those cases that are resolved by trial.

## **Section 2.7: Early and Continuous Assessment, Scheduling of Events, Calendar Setting**

### **1. Early and Continuous Assessment**

Judges continually assess cases to ensure that every case receives individual attention and to make sure that the amount of individual attention is proportional to need. The amount of court time and resources devoted to a case and the pace at which a case progresses depends on the complexity and individual needs of that case. Some cases can be resolved quickly with little court involvement while other cases require more time, court appearances, and judicial oversight to reach resolution. Through an early and ongoing assessment process, the judge manages the progress of a case in a manner that will result in the most timely and just resolution possible, given the individual circumstances of that case. Prompt screening and assessment help to ensure compliance with Adoption Safe Families Act (ASFA) timelines and provide the greatest chance of the family's success.

There are people from many disciplines that the court may draw from in order to assess the case and reach its findings. Judges are encouraged to conference on the record with parties and interested

persons throughout the life of a child protection case. These people may include but are not limited to:

- \*Parents
- \*Children and Youth
- \*IDHW Staff
- \*Foster Parents
- \*Guardian *ad litem*
- \*Extended family
- \*Tribal Representatives
- \*Medical and Behavioral Health Professionals

The Child Protective Act is silent as to whether or not the Idaho Department of Health and Welfare is a party to a child protection case. Judges should solicit the perspective of the Department either directly from IDHW staff, or if represented by a Deputy Attorney General, their counsel.

Early and ongoing assessment for substance abuse/dependency, mental health issues and trauma is also necessary to identify cases that are appropriately referred to a problem solving court, other appropriate community service, or for enhanced treatment or services, in order to ensure that the necessary amount of judicial time and oversight is provided in the case.

When determining the most appropriate plan for a child protection case, the court considers at least the following:

1. Parental attitude
2. Questions regarding paternity
3. Housing status of family at the time of removal
4. Substance abuse or dependency, trauma, or mental health issues
5. Prior history with IDHW including prior terminations
6. Re-entry cases
7. Long – term Incarceration of one or both parents
8. Domestic violence
9. Developmental disability
10. Family constellation (genogram)
11. Type and quality of legal representation (public vs. private counsel)
12. Inadequate or inappropriate parenting
13. Psychological or physical abuse

Note: not listed in order of importance

The Fifth District follows these practices to ensure early and ongoing assessment in child protection cases as well as appropriate early assignment to problem solving courts or appropriate community resources:

Consider having a Case Coordinator

If little to no progress towards case plan parameters has been made at the end of 6 months from case plan adoption, it may be appropriate to file a petition for termination of parental rights unless there are extenuating circumstances existing as determined by the magistrate court. If any party believes that little to no progress has been made, such party shall provide notice and set a hearing to allow the presiding court to determine the issue of the appropriateness of initiating termination proceedings and/or whether there are extenuating circumstances that may exist in the case prior to the filing of the petition for termination of parental rights.

## **2. Scheduling of Events and Ensuring Meaningful Hearings**

All scheduled case events are meaningful events, defined as events that (a) move a case toward disposition and (b) prompt the attorneys and parties to take necessary action. Monitoring the effectiveness and timeliness of interim case events between filing and disposition helps to prevent unnecessary delay. A number of key interim case events, including those listed in Section 2.1 of this plan, will be tracked in the case management system for informational and case management purposes. The following guidelines are used to ensure that case events are meaningful:

1. Hearings and trials are scheduled in a manner that minimizes delay, respects the participants' time and reduces the potential need for continuances.
2. Adequate time should be set aside for contested hearings, which should be completed without interruption rather than parsed out over several days.
3. Every event is a meaningful opportunity for case resolution.
4. Every event is potentially more meaningful when parents are able to see and hear from the judge. A short hearing should be held when the parties have stipulated to a matter to allow face-to-face communication between the judge and parents. *See IJR 38.*
5. Future action dates (based on interim case events) are always assigned and deadlines for those dates are enforced.
6. Requests for continuances are considered pursuant to Section 2.10 of this plan.

The Fifth District follows these practices to ensure that all scheduled events are meaningful:

The Fifth District consists of several counties of varying size and population. As such, their calendaring resources vary widely. Consequently, the Fifth District Case Flow Management Plan adopts no standardized procedure for the scheduling of child protective cases. However, strong consideration for the time constraints on the families and the case workers are to be given in calendaring each of the hearings in child protective cases.

### **A. Importance of Timely Reporting**

The Department and the GAL are required to file reports and plans prior to statutorily mandated conferences and hearings. Failure to file reports timely causes unnecessary delay. The Department's report of investigation must be received by the court and parties prior to the pretrial conference for the adjudicatory hearing. I.C. §§16-1616 and 16-1619(2). The Department must file a case plan no later than 5 days prior to the case

planning hearing. I.C. §16-1621(1). The Department and the GAL must file reports for 6 month review and annual permanency hearings at least 5 days prior to the hearing to which they pertain. I.C. §§16-1629(4) and (9),16-1633(2), and IJR 45(c). Written reports for review hearings other than the 6-month review hearing are not required, but may be requested by the court. Judges are encouraged to convene stakeholders to explore barriers to timely reporting.

The Fifth District follows these practices to encourage timely reporting

- Check on the calendar setting for adjudicatory hearings
- The Court will point out that the report is late and directing supervisor to address it

#### **B. The Right of Children and Foster Parents to be Heard**

Children age eight (8) and over and the foster parents of, pre-adoptive parents of, and relative placements for the child shall be provided notice of and have a right to be heard at any post-adjudicatory hearing. (IJR 40) Judges are encouraged to schedule hearings in a manner that encourages and facilitates the participation of youth, foster/pre-adoptive parents, and relative caregivers. This includes providing set hearing times and sufficient hearing length to encourage meaningful interaction with children and foster parents.

The Fifth District follows these practices to encourage time-certain hearings and the meaningful participation of children and foster parents:

- The Court asks them how things are going and gives them time to address the court
- Address the scheduling so that the foster parents could attend
- Re-implement program-orientation for kids and foster parents so they know what to expect in court
- Attorneys remind Judge that foster parents are present

#### **C. Problem Solving Court Practices that May Facilitate More Meaningful Hearings**

Judges and stakeholders are encouraged to consider:

- Positive Judicial Qualities
- Three minutes of direct contact with parents at each hearing
- Policy and plan for assessing parent for a substance use disorder at the earliest point possible.
- Policy and plan for timely access to treatment, drug testing and increased monitoring for individuals with a substance use disorder who are not eligible for or decline to participate in a child protection drug court
- Increased frequency of hearings for parents with a substance use disorder who are not eligible for or decline to participate in a child protection drug court
- Formal training of court and IDHW staff on substance use disorders, dependency, and related topics.

### **3. Calendar Setting**

For judges presiding over an individual calendar, counsel contacts the clerk of the presiding judge to calendar a matter for a time certain. In jurisdictions using alternative calendar systems, matters are scheduled by the clerk's office or at the direction of the presiding judge, as necessary. All calendar settings are made within the applicable time standards. Settings outside of an applicable time standard or statutory timeframe are made only upon a showing of good cause and upon order of the presiding judge.

Child protection cases require individual attention. For all hearings other than shelter care hearings, districts are encouraged to use a calendaring system that allows for hearings that are time-certain and of a length proportional to need.

#### **Special Considerations for Districts:**

The Fifth District follows these practices to promote time-certain hearings and of a length proportional to need:

- The courts may create a calendar system that sets hearings out 1 year and giving notice to all parties at the Shelter Care hearing
- Look at adjusting the hearing times

### **Section 2.8: Appointment of counsel**

The fundamental Constitutional right of parents to parent their children, the interplay of state and federal laws, the complex legal issues, the upheaval in families, and the need for the case to move quickly through the system all necessitates specialized legal representation in child protection cases. Active steps should be taken to ensure that parties in child protection cases have early access to competent legal representation. Ideally, attorneys working with the child protective system should be committed, well trained, and experienced in the child protection process.

A parent, guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived. At the shelter care hearing, the judge must advise the parent, guardian, or custodian of their right to be represented by an attorney, and if financially unable to hire an attorney, of their right to be represented by a court-appointed attorney. (IJR 39(g)) In addition, Idaho law requires the appointment of a guardian ad litem or an attorney for the child. For children under the age of 12, a guardian ad litem and counsel for the guardian ad litem shall be appointed. For a child twelve (12) years of age or older, the court shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem. (§16-1614)

The Fifth District follows these procedures to prevent continuances of shelter care hearings due to a lack of counsel:

- Counsel automatically appointed when the petition is filed
- Public Defender will represent both parties for shelter care hearing, then may conflict one parent after that (if needed)

Parents, guardians, and children with conflicting positions or potential for conflicting positions may require the appointment of conflict counsel. Inefficient or ineffective appointment of conflict counsel may result in significant delays in processing child protection cases. Conflicts may also arise when the parents also have criminal charges requiring appointment of public defenders. Public defenders assigned to represent a parent in both criminal and child protection proceedings have an added responsibility of helping the parents succeed in the child protection proceedings while at the same time protecting the parents' rights in the criminal matter.

The Fifth District follows these procedures to reduce delays and ensure that conflict counsel is appointed at the earliest possible date in child protection cases:

- Conflict attorney, when feasible, will appear at the initial Shelter Care hearing and the Conflict Attorney shall appear at any continued Shelter Care hearing.

## **Section 2.9: Early case resolution processes**

### **1. Family Group Decision Making (FGDM)**

Family Group Decision Making (FGDM) recognizes the importance of involving families in decision making. FGDM meetings are held at the case opening and at other critical junctures throughout the case. FGDM may assist parents in making co-parenting plans, and aid in resolving conflict with children, other family members, between foster and birth parents, between kinship providers, birth parents, etc. Judges are encouraged to confirm that a FGDM meeting has occurred prior to the case plan hearing and that it is offered at critical junctures throughout the case.

### **2. Front-Loading Services**

To achieve better outcomes in cases, the services should be "front-loaded." This means that all stakeholders must move quickly to assess the facts of the case, identify the appropriate parties and participants, and provide the appropriate services for the family at the earliest possible stage. Effective practice includes early identification and involvement of fathers and other relatives, early engagement of parents in the court process, as well as early voluntary involvement of the family in remedial services. Important court practices include establishing firm court dates and times with tight control over continuances and rapid distribution of the court's orders to all parties. Judges should encourage parents, as early as possible in the case, to discuss any concerns or needs that may prevent the reunification of the family.

## **Section 2.10: Continuances**

A continuance, for the purposes of this section, is when a party requests the postponement of a scheduled hearing or adjudicatory date. Courts exercise discretion in determining whether to grant or deny a requested continuance. If a continuance is granted, courts also exercise discretion in determining the length of the continuance. Continuances should only be granted for good cause shown and for the shortest amount of time possible. Joint, or stipulated, motions to continue are not binding on the court. Courts should always be mindful to avoid and reduce unnecessary delays.



Some brief delays may be needed, from time to time, to effectuate justice or to facilitate effective resolution of cases.

Some factors to consider in determining whether to grant a motion to continue are:

1. The reason for the request and when the reason arose.
2. Whether the reason relates to a fundamental right (such as the right to counsel) or is simply related to an issue of convenience.
3. Whether the reason for the request was within the control of counsel or a party or was otherwise reasonably foreseeable and, possibly, preventable.
4. Whether granting or denying the motion would unfairly prejudice a party.
5. The number of continuances previously granted.
6. The age of the case.
7. Whether a child or children are in shelter care or foster care and the effect a delay would have on them.
8. The child's need for timely permanency.
9. The balance between benefits and burdens, i.e., does the benefit to be achieved by a continuance outweigh the burden caused by a delay.
10. Whether the hearing is a short-set hearing (shelter hearing, pretrial, adjudicatory) or a hearing set with longer time parameters (review hearing, permanency hearing).
11. Any applicable time standards or time frames in statutes or rules.
12. CP cases are civil cases. If a parent has been served and the court has jurisdiction, the voluntary absence of the parent from a hearing is not grounds for a continuance. (Unlike a criminal case where the presence of the defendant is generally necessary to proceed).

The judges of the Fifth District have adopted the following policy to implement the statewide policy on continuances in child protective cases:

- Continuances are the exception, not the rule and granted only when no alternative can be found
- Always stated why the continuance is needed
- Court makes a good record

## **Section 2.11: Effective and Consistent Monitoring of Case Management Reports**

Caseflow management necessitates the regular production of case management information from an automated system. Case management reports provide a means of identifying and preventing delay in the processing of individual cases and the buildup of a case backlog that can result in an overall delay in the processing of all cases. They also provide information about potential sources of delay.

The production of case management information is not sufficient in and of itself, however, to ensure effective caseflow management. Equally important is the utilization of this information:

1. Judges consistently and effectively monitor their case management reports and take appropriate action to ensure that meaningful events are set for all cases that case processing goals are being met, and that potential sources of unnecessary delay are identified so that they may be addressed through case management.

2. Administrative district judges and trial court administrators closely monitor reports for their districts to identify cases that are nearing or exceeding applicable time standards, areas where backlog may be developing, potential sources of systematic delay, and changes in overall caseloads and inequities that may be developing in caseload distributions that may require changes in judicial assignments.
3. Court clerks monitor case management reports regularly to ensure that all pending cases are scheduled for meaningful events through disposition.

It is the responsibility of individual courts to ensure that data entry practices are consistent with statewide uniform business practices thus resulting in accurate and reliable case management information.

The Fifth District uses these procedures to ensure effective use of data reports for monitoring the progress of child protection cases:

- Judges and TCA will use statistical data to rework standard schedule if needed

## **Section 2.12: Special Considerations for District Plans**

### Language Access Services

Federal and state laws require judges to ensure parties, witnesses, and other interested individuals have meaningful access to the courts. Language access services are provided in all civil and criminal cases pursuant to Idaho Code 9-205. Professional court interpreters are appointed pursuant to ICAR 52. Determining the need for services is done in a number of ways, including the following:

- For spoken languages, self-identification by the non-English speaker (or companion). For the deaf or hard of hearing, through an ADA request for accommodation.
- A judge finds there is a need for language access services.
- Court-personnel may receive notice directly from the public, attorneys, guardians, probation officers, law enforcement and other participants.
- Outside agencies, such as social workers, law enforcement or correctional facilities notify the court about a LEP individual's need for auxiliary services for an upcoming event.

The Fifth District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

- Mark files as soon as a need is identified
- Schedule cases together that have the same language needs
- Judge may eliminate interpreter if it becomes clear one is not needed

Cases involving the language line should be scheduled first

### Self-Represented Litigants

The Idaho Judiciary is committed to ensuring access to justice for self-represented litigants (SRLs). Consistency and predictability are vital to meeting this goal. Self-represented litigants may lack the expertise to manage their cases effectively. There are key points in a case where SRLs can unintentionally stall the progress of a case. The Judiciary's commitment to ensure fair and timely

case resolution requires that these and other SRL concerns be addressed. All solutions will look toward effective practices that will not become obstacles to SRLs but will instead facilitate proper notification and access to information for SRLs so that they can more effectively navigate the court system.

The Fifth District adheres to the following practices to ensure that child protection proceedings in which parties waive their right to counsel proceed in the most fair and efficient manner possible:

- Pro se litigants are strongly discouraged
- Since the focus is on the child(ren) who deserve smooth and speedy resolution, appoint counsel for all parties at the outset. If a party requests the attorney be eliminated, encourage representation by explaining why it is better for the children
- Warn the SRL their choice will not be allowed to delay or interrupt the process
- If a party has assets to hire private counsel encourage that but otherwise appoint and consider repayment later
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#### Media relations

The Idaho courts have a manual for judges on media relations and the handling of notorious cases. These issues are addressed in ICAR 45 and 46. In addition, ICAR 32 addresses public requests for court records, which includes media requests. Child protection proceedings are exempt from public disclosure pursuant to I.C. §9-340B (7), I.C. §16-1626, and ICAR 32 (g)(9)(A).

Administrative district judges establish effective relations between the court and the media, by scheduling forums or other opportunities for discussion with the media, and by providing general information to the media about the courts, the law, and court procedures and practices, to the extent permitted by the Idaho Code of Judicial Conduct.

#### Telephonic and other remote appearances

IRCP 7(b) (4) authorizes the use of telephone conferencing to conduct hearings. Allowing parties, witnesses, interpreters, probation officers and attorneys to make court appearances without appearing personally in court can result in significant efficiencies and are allowed when they do not compromise the rights of a party. Stipulating to remote appearances by forensic testing personnel can reduce backlog in forensic testing requests.

In the Fifth District, remote appearances are allowed as follows:

The procedures for arranging a remote appearance are:

- On the request of any party or on the court's own motion anytime progress in the case will be enhanced or a continuance can be avoided

#### Other circumstances unique to the Fifth District:

- When possible equipment will be provided to allow both audio and video participation when possible using inexpensive options such as Skype or FaceTime

### **Section 2.13: Maintaining the Fifth District case management plan**

Once the Statewide and District caseflow management plans are established, keeping the plans relevant will be a priority. Therefore, outreach and collaboration will be ongoing. Both at the state and at the individual judicial district levels, collaborative planning procedures will be maintained to promote regular and ongoing communication, problem solving and adaptation of caseflow management processes to the ever-changing needs of the justice system and the communities it serves.

Major sources of future changes will be the deliberations and conclusions of the Advancing Justice Committee's work group on uniform business processes and the Judges Associations' efforts to develop uniform forms for all Idaho case types.

- The Fifth District maintains the case management plan through the following process(es): The Fifth District will have regular meetings of the drafting committee to consider modifications based on experience and the advancing justice recommendations and encourage all stakeholders to suggest needed changes (esp. judges and court staff)