

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of June 3, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster	X	
Trent Palmer	X	
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Melanie Jordan for Zaven “Z” Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Special Guests: Judge Pax Moultrie; Clancy Johnson; Stephanie Wise		

Meeting Materials:

- (1) Draft Minutes of 4/1/2022 meeting**
- (2) Committee Reappointments Order**
- (3) Standing Committee Document Retention Policy**
- (4) Vision Subcommittee Survey**
- (5) HB22-1038 related materials**

(6) Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC

II. Chair's Report

- A. The 4/1/22 meeting minutes were approved without amendment.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan indicates that Z has found a rural magistrate to participate in the subcommittee and that they will be meeting soon.

- B. Drafting Subcommittee

Judge Welling explains that the subcommittee continues to plug away and make good progress.

- C. Proposed ICWA Rules

Justice Gabriel indicated that the subcommittee met yesterday and continues plowing through. At the meeting yesterday, it was decided that a form for providing ICWA notice could be helpful, particularly for pro se litigant. A member of the subcommittee has volunteered to undertake drafting a proposal for the subcommittee to consider.

- D. Records Policy

Justice Gabriel explained that, rather than having each committee draft its own record policy, he took on the role of crafting a uniform policy. The policy was adopted by the court and distributed to the committees. In short, the committee will be retaining all agendas, meeting minutes, rules (proposed and adopted), correspondence between the committee and the supreme court, correspondence between the public and the committee, and public comments received in response to proposed rules.

- E. Vision Subcommittee

Judge Welling explained that, in order to get a sense of the juvenile community's needs, the subcommittee drafted a survey to send out. The subcommittee identified sending the survey stakeholder groups including: GALs; RPCs; ADCs; PDs; DAs; City/County Attorneys; Juvenile law section of the Colorado Bar Association; and judicial officers in juvenile. Committee members also suggested reaching out to: (1) the family law section of the bar because they often work as private counsel in juvenile cases; (2) Tim Eirich, who, in the past, has facilitated feedback among adoption lawyers; and (3) CASAs, who already participate in wellbeing surveys quarterly through the state office.

On the survey itself, a committee member suggested breaking out the rural and urban counties in the 4th JD and the 18th JD, so that there's a better sense of where the feedback is coming from. It was also suggested that question #5 include a * or reference to the intro material where Judge Welling explains that we are already working on sweeping changes to the D&N rules.

The committee also briefly discussed whether competency should be raised as a specific issue or whether it will come up naturally in the responses. Members seemed to think it will likely come up in the responses.

Judge Welling stated that the subcommittee will meet next week to finalize the survey. He hopes to have some feedback by the August C.R.J.P. meeting.

IV. New Business

A. HB22-1038 Right to Counsel for Youth

Anna Ulrich from OCR provided a brief summary of the legislative action changing the role of GALs for children 12 and older. The legislation goes into effect on January 9, 2023. She believes that expedited measures need to be taken to, at a minimum, tag on "Client Directed Counsel" to references to GALs in the rules. As an example, she cited C.R.J.P. 4.3 on peremptory challenges. Judge Meinster agreed that the new legislation will have broad impacts and indicated that HB22-1038 is on the agenda for lengthy discussion at both the judicial conference and for the judicial institute. Terri Morrison added that she recently attended a meeting led by Sheri Danz from OCR outlining changes to the CJD on GALs, so that is also in progress.

The committee decided to take two actions. First, the drafting subcommittee will be asked to examine the current draft rules for references to GALs so that updates reflecting client directed counsel can be added. Second, the committee decided to form a subcommittee to examine the need for expedited amendments to the current rules, which Anna will lead. Other volunteers include: Judge Meinster; Josefina Raphael-Milliner; Abby Young; Clancy Johnson & Judge Ashby. The committee recommended finding one or two trial court GALs as well (particularly one from a rural jurisdiction).

Judge Welling inquired whether it made sense to work in tandem with the group examining the CJD. Anna indicated that it may be a good idea and anticipates the rules committee doing the heavy lifting on the issue. If the rules committee recommends any changes that impact the CJD, Terri Morrison will step in to assist with shepherding the recommended changes through the CJD process.

B. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC

Judge Moultrie explained the need for a rule change to address appointment of provisional counsel. Appointing provisional counsel can be useful for finding and engaging parents, but balanced against this, there is a need not to slow cases down or keep attorneys languishing on unfruitful appointments. Judge Moultrie believes that the rules could define a provisional appointment and clarify when such appointments end. Melanie Jordan from ORPC explained that they had fairly recently modified language in the CJD to account for provisional appointments.

The committee decided to form a subcommittee to explore amending the rule on attorneys to clarify provisional appointments. Judge Moultrie will chair the committee, and Traci Engdol-Fruhwith, Zaven Saroyan, and Abby Young volunteered to work on the subcommittee. Like with the subcommittee examining Client Directed Representation, if the group finds that changes need to be made to the CJD, Terri Morrison can provide a Word version of the CJD and walk any suggested changes through the CJD amendment process.

V. **Adjourn**

Next meeting, August 5, 2022 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

wallace, jennifer

From: moultrie, pax
Sent: Friday, July 22, 2022 11:43 AM
To: Zaven Saroyan; 'teflaw@yahoo.com'; young, abigail; wallace, jennifer
Subject: FW: Provisionally Appointed RPC Subcommittee
Attachments: CJD 16 amended language -standalone.docx; CJD 16-02 PROPOSED AMENDED LANGUAGE section IV.d.docx; Rule 2.1 Proposal.docx

Hello J.J.,

Here is what the subcommittee has come up with. The first document is the “stand alone” proposed amendment to CJD 16-02. The second document is the language incorporated into CJD 16-02. The third document is the proposed amendment to RJP 2.1.

I don't believe there are additions corrections since we last meet as a subgroup, but I will let other speak for themselves.

Thanks!

Pax Moultrie (she/her)

District Court Judge | Denver Juvenile Court | 2E520 West Colfax Ave | Denver, CO 80204

CJD 16-02: Proposed Amended Language Section VI.d

In the interest of justice, the court may provisionally appoint counsel for a respondent. The court shall review provisional appointments on a regular basis to determine whether the provisional appointment should continue. A provisional appointment of counsel lasts until the court makes a finding of indigency, the respondent elects to retain private counsel and an entry of appearance is filed, the respondent declines appointed counsel, the respondent elects to proceed pro se, or the provisional appointment is otherwise terminated by the court. Additionally, provisionally appointed counsel may request termination of the appointment upon written or oral motion to the court stating that the respondent is not indigent, the respondent does not wish to have court-appointed counsel, or the respondent cannot be located after diligent search and direction from the respondent is unknown. The court may immediately terminate a provisional appointment of counsel in any of the above circumstances.

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE
COURT APPOINTMENTS THROUGH
THE OFFICE OF RESPONDENT PARENTS' COUNSEL

The following policy is adopted to assist in the administration of justice with respect to the appointment, payment, and training of Respondent Parents' Counsel (RPC) appointed as counsel on behalf of indigent parents subject to dependency and neglect proceedings by the Office of Respondent Parents' Counsel (ORPC).

I. Mission

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

II. ORPC Authority and Responsibilities

- a. The United States Supreme Court recognized that the "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 U.S. 57, 66 (2000). In Colorado, an indigent respondent parent has a statutory right to appointed counsel to protect this fundamental right to parent. See § 19-3-202, C.R.S.
- b. Section 13-92-101 to 104, C.R.S. established the ORPC and vested it with statutory requirements regarding the oversight and administration of respondent parent representation in Colorado.
- c. The ORPC's enabling legislation charges and entrusts the ORPC with improving the quality of appointed legal representation for parents in dependency and neglect proceedings across Colorado through establishing equitable funding structures, creating a clear set of practice standards, and providing high quality and accessible training.

III. Authority and Requirement for Appointments through the ORPC

- a. The ORPC shall maintain and provide to the courts a list of qualified attorneys eligible for appointments as respondent parents' counsel (the "Appointment List"). In this capacity, the ORPC possesses:
 1. The exclusive authority and discretion to select and contract with attorneys to provide state-paid RPC services to parents subject to dependency and neglect proceedings;
 2. The authority to reject attorneys for any reason;
 3. The authority to terminate, at will, contracts with attorneys;
 4. The authority to select attorneys for specific cases upon notice to the court;
 5. The authority to seek termination of existing court appointments as provided by this Chief Justice Directive;
 6. The responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services and receipt of complaints regarding attorneys who contract with the ORPC.
- b. The ORPC may periodically seek input from Judges and Magistrates regarding the Appointment List.
- c. The trial courts shall select attorneys for appointment from the Appointment List provided by the ORPC. It is within the ORPC's sole discretion to determine which attorneys are placed on the Appointment List.
- d. Courts shall not appoint one RPC to represent more than one respondent parent in a case. Courts shall not appoint more than one RPC to represent one respondent parent in a case without approval from the ORPC.
- e. Upon appointment of counsel from the Appointment List, court staff shall enter the appointment into the case management system. The Judicial Department's case management reporting system shall generate a daily report to be sent to the appointed attorney with the following information:

Notification that [Attorney Name] is appointed for the purpose of serving as Respondent Parent Counsel in the dependency and neglect case, [Case Number][County], pursuant to section 19-3-202, C.R.S.; and

That Representation is for [Parent's Name][D.O.B](if available) [Race/Ethnicity] (if available), Respondent Parent, who has been found indigent by the court, pursuant to section 19-3-202, C.R.S.; and

Pursuant to section 13-92-101, C.R.S., the appointment is paid for by the Office of Respondent Parents' Counsel (ORPC). All questions concerning the appointment shall be referred to the ORPC.

- f. The Judicial Department's case management reporting system shall generate a weekly RPC Appointment Report to be sent to the ORPC that contains the case number, the name of the attorney appointed, county, case type, case division, respondent name, respondent race (if available), respondent date of birth (if available), and date of entry of appointment.
- g. The ORPC will not process payment for the services of attorneys with whom the ORPC does not have a contract and who are not on the Appointment List, unless the exception discussed in paragraph h. of this section applies. If after July 1, 2016, the Court appoints an RPC who is not on the Appointment List and without approval by the ORPC, the ORPC will not compensate that attorney under any circumstance. Off-list and non-approved appointments must be paid for out of that judicial district's budget.
- h. Attorneys who choose not to apply for or renew an ORPC contract but wish to continue to represent respondent parents on cases in which they were appointed may do so on the condition that the attorney comply with this CJD, ORPC governance, and sign the Respondent Parent Payment System (RPPS) User Agreement. More specifically, this may **only** occur when (1) attorneys were appointed prior to July 1, 2016 and continue to represent clients when those cases are transferred to the ORPC's operational structure on July 1, 2016, or (2) attorneys who choose not to apply to renew a contract with the ORPC during a subsequent application period after July 1, 2016. During the course of their representation these attorneys will be allowed to seek services and resources for their current indigent respondent parents from the ORPC, but they will not be allowed to accept additional appointments.

IV. Appointments on Appeal by ORPC

- a. The ORPC shall maintain a list of appellate counsel eligible for appointments on appeal and shall appoint appellate counsel. Trial Counsel is prohibited from filing an appeal of the case in which they were trial counsel without prior permission from the ORPC.

- b. Trial counsel **must** notify the ORPC that a respondent parent would like to appeal once the court has entered either:
 1. a final and appealable order at or after the dispositional hearing; or
 2. an order terminating parental rights;

- c. When the respondent parent does wish to appeal, trial counsel **shall complete** and submit the Appellate Transmittal Sheet to the ORPC **within seven calendar days** after an appealable order or order terminating parental rights. The Appellate Transmittal Sheet will be maintained by the ORPC. This procedure does not apply for judicial reviews of magistrate orders, which must be completed by trial counsel. The ORPC will appoint appellate counsel for judicial review, consultation with trial counsel, or interlocutory appeals on a case-by-case basis.

- d. If the respondent parent does not wish to appeal, trial counsel must have the respondent parent sign a written waiver of appeal **within seven calendar days** after an appealable order or termination order and submit it to the ORPC.

- e. If the attorney cannot locate a client after diligent efforts, the attorney should assess how to proceed based upon the client's last clearly articulated position. If the client previously expressed an interest in appealing, the attorney should submit the Appellate Transmittal Sheet to the ORPC **within seven calendar days** after an appealable order or termination order. If there was no discussion regarding an appeal and the client cannot be located, the attorney must submit an electronic affidavit of diligent efforts to locate the client to ORPC **within seven calendar days** of an appealable order or termination order.

- f. Upon receipt of the Appellate Transmittal Sheet, the ORPC will select and notify the appellate counsel. Appellate counsel will file a Notice of Appeal and Designation of Record. Appellate counsel must fill out the transcript request form and submit to the managing court reporter in the judicial district where the appeal originates. The transcript request form is available at www.coloradorpc.org.

- g. In circumstances where a trial attorney wishes to consult an appellate attorney prior to a termination hearing where an appeal will likely follow, trial counsel should contact the ORPC for consultation and potential early appointment of an appellate lawyer.

- h. Trial counsel and appellate counsel are obligated to consult about appellate issues upon receipt of the appointment notification from the ORPC.

V. Practice Guidelines, Requirements, and Continuing Education Requirements for Attorneys Eligible for Appointments

- a. Attorneys who are deemed eligible for court appointments by the ORPC are required to:
1. Possess the knowledge, expertise, and training necessary to perform the court appointment;
 2. Understand the Colorado Children’s Code, §§ 19-1-101, et seq., C.R.S., Volume 7 CDHS Rules and Regulations for Child Welfare Services, 12 Code Colo. Regs. 2509-1 – 2509-8, this Chief Justice Directive, the Indian Child Welfare Act, 25 U.S.C. §§ 1901 to 1963, The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at § 14-13-101, C.R.S., The Interstate Compact on Placement of Children (ICPC), and the ICPC regulations, The Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191, including the privacy requirements in 45 C.F.R. Parts 160, 162, and 164, and other relevant State and Federal law;
 3. Regularly review caselaw, legislative and social science research updates provided by the ORPC and maintain a working knowledge of the Colorado Rules of Civil, Juvenile, Appellate, and Criminal Procedure as well as any local rules and district plans.
 4. Understand and comply with the Colorado Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases as indicated in Attachment A);
 5. Comply with any other practice standards recommended by the ORPC;
 6. Comply with the training requirements mandated by the ORPC;
 7. Have and maintain malpractice insurance;
 8. Comply with the Colorado Rules of Professional Conduct.
- b. Failure to comply with this Directive may result in termination of any associated contract, and/or removal from existing appointments, and/or removal from the appointment list.

VI. Eligibility Requirements for Appointment of RPC

- a. The respondent parent requesting representation or appointment of counsel must be

- indigent to qualify for court-appointed representation at state expense pursuant to section 19-3-202, C.R.S. Such person(s) must also be indigent for the ORPC to authorize payment of certain costs and expenses. See Attachment B Procedures for the Determination of Eligibility for Appointment of Respondent Parent Counsel (RPC) in Dependency and Neglect Proceedings on the Basis of Indigence.
- b. Before an appointment may be considered, the respondent parent must complete application form JDF 208 (“Application for Public Defender, Court-Appointed Counsel, or Guardian ad litem”) and sign or testify to the form under oath.
 - c. The ORPC is precluded from paying for services and any costs associated with services for non-indigent parties. A court shall not order representation to be at state expense absent a finding of indigence unless the respondent parent automatically qualifies for appointed counsel due to being held in custody. Courts shall appoint counsel for respondent parents who are incarcerated, being held in federal custody, or involuntarily committed as these respondents shall be presumed indigent absent a specific judicial determination to the contrary.
 - d. ~~If, in the interest of justice, the court may provisionally appoint counsel for a respondent. The court shall review provisional appointments on a regular basis to determine whether the provisional appointment should continue. A provisional appointment of counsel lasts until the court makes a finding of indigency, the respondent elects to retain private counsel and an entry of appearance is filed, the respondent declines appointed counsel, the respondent elects to proceed pro se, or the provisional appointment is otherwise terminated by the court. Additionally, provisionally appointed counsel may request termination of the appointment upon written or oral motion to the court stating that the respondent is not indigent, the respondent does not wish to have court-appointed counsel, or the respondent cannot be located after diligent search and direction from the respondent is unknown. The court may immediately terminate a provisional appointment of counsel in any of the above circumstances. In the interest of justice, a provisional appointment of legal counsel for the respondent parent is necessary, such appointment may be made pending a final decision regarding indigency. The court shall review provisional appointments on a regular basis to determine whether the provisional appointment should continue. If a review of a respondent parent’s application shows that the parent is not indigent and is not qualified to have court-appointed counsel at state expense, the court may order the parent to reimburse the ORPC for the representation provided from a tentative appointment of counsel.~~
 - e. If the court determines, at any time after appointing RPC, that the respondent parent has the ability to pay all or part of the costs for representation or other costs, the court shall enter a written order that the respondent parent reimburse all or part of said costs to the ORPC. Costs for representation provided may be assessed against the respondent parent at the fixed hourly rate for state-funded private counsel or, at the state-funded counsel contract rate.
 - f. An attorney appointed by the court on the basis of a person’s inability to pay the costs of the appointment shall provide timely notice to the court in the event financially

related information is discovered that would reasonably call into question the person's inability to pay such costs. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the ORPC of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

VII. Guidelines for Payment by the ORPC

- a. As of July 1, 2016, the State, through the ORPC, shall bear the costs of services of an RPC appointed pursuant to section 13-92-103, C.R.S.
- b. No claim for payment shall be submitted prior to receipt of an appointment email. Upon receipt of an appointment email from the Court, the appointed attorney shall enter the appointment in the RPPS and upload the email to the same.
- c. Claims for payment for either hourly appointments or flat-fee-contract appointments **must be made within the time frame required in the ORPC billing policies.** The ORPC may review, verify, and revise, when appropriate, authorizations for payment.
- d. Claims for payment of RPC fees and expenses shall be submitted by the RPC directly to the ORPC in accordance with ORPC Billing Policies and this CJD. Claims for payment are **only** billable to the ORPC through the RPPS.
- e. Appointments may be paid on either a flat contract fee or an hourly fee basis at the discretion of the ORPC. As of July 1, 2017, all ORPC appointments, unless otherwise determined by the ORPC, will be paid on an hourly basis. Converting a case to an hourly fee after receipt of a flat fee payment is governed by the ORPC billing policies in effect as of July 1, 2017.
- f. Requests for court costs, expert witness fees, and related expenses must be made through the RPPS. Court costs include such items as: expert witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives/Orders, and ORPC policies. Costs incurred by RPC **must be preapproved** to be paid by the ORPC. Requests that are not preapproved will not be paid.
- g. The ORPC shall set the maximum total fees per appointment for all ORPC appointments and the procedures for approval of excess fees and expenses. Requests for excess fees must be made through the RPPS and must be approved prior to commencing work in excess of the max fee.
- h. Attorneys shall maintain separate records of time spent on their cases, regardless of whether the appointment is a contract appointment or an hourly appointment. These files must be made available upon request by the ORPC within seventy-two hours (three calendar days).

VIII. Duties of Judges and Magistrates

- a. Judges and Magistrates shall appoint RPC no later than the first temporary custody/shelter/initial hearing. Nothing shall preclude a court from appointing RPC prior to the filing of a petition for good cause pursuant to section 19-3-202, C.R.S.
- b. To the extent practicable, Judges and Magistrates shall have in-custody respondent parents transported to the first temporary custody/initial hearing or any contested hearing or have in-custody respondent parent(s) appear via video or telephone.
- c. Judges and Magistrates shall allow parents a meaningful opportunity to discuss their cases with RPCs prior to the temporary custody/shelter/initial hearing.
- d. Judges and Magistrates shall not order respondents to participate in mediation prior to termination proceedings if the parties agree, taking into account the parent's wishes, that resolution of the termination motion is unlikely to occur through mediation. Judges and magistrates may order mediation in termination proceedings, but indigent respondents will not be ordered to pay unless the mediation is requested by the respondent or RPC.
- e. Judges and Magistrates shall ensure all parties receive copies of court orders and other documentation filed with the court, including proposed court orders.
- f. Judges and Magistrates shall maintain the equitable division of cases among RPCs eligible for appointment in each district and are encouraged to have bi-annual meetings with RPCs eligible for appointment to discuss procedures for the equitable division of cases.
- g. Judges and Magistrates may appoint RPCs from an overflow list when no other RPC on the appointment list is available. Attorneys may be on an overflow list at the discretion of the ORPC and will be designated as overflow on the appointment list. RPCs placed on the ORPC appointment list are required to be placed into the jurisdiction's pick-up rotation.
- h. Judges and Magistrates shall otherwise implement procedures and practices that enable RPCs to comply with this Chief Justice Directive.
- i. **In instances where a respondent parent is pro se and informs the court she or he wishes to appeal, Judges and Magistrates shall have the ORPC notified within seven calendar days of learning that the respondent parent wishes to appeal, and will provide any available contact information for the respondent parent. The ORPC will appoint appellate counsel upon receipt of notification from the trial court and determination that the pro se parent is indigent.**

IX. Procedures for Complaints against RPC under contract with the ORPC in Dependency and Neglect Proceedings

- a. All written complaints and documentation of verbal complaints regarding the performance of any RPC shall be submitted to the ORPC via the online complaint

process at www.coloradoorpc.org.

- b. If the complaint involves an attorney and the ORPC determines that the attorney may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel (OARC). However, ORPC may advise the person making the complaint that the complainant may contact the OARC directly if they have a complaint about an attorney. The OARC shall advise the ORPC of the final outcome of any investigation involving an attorney on the ORPC approved list if authorized to do so under applicable rules.
- c. The ORPC may investigate a complaint and take the necessary action it believes is required to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, requiring additional training, placing the attorney on a corrective action plan, and terminating the contract with the attorney.

X. Sanctions

- a. All contracts with the ORPC for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with the Chief Justice Directive. Failure to comply with this Directive may result in termination of any associated contract, and/or removal from existing appointments, and/or removal from the appointment list.

This Amended directive is effective *nunc pro tunc* to October 1, 2021.

Done at Denver, Colorado this 23rd of November, 2021.

/s/

Brian D. Boatright, Chief Justice

**Office of Respondent Parents' Counsel Standards of Practice for Attorneys Representing
Parents in Dependency and Neglect Cases¹**

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Introduction

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¹ These standards promote quality representation and uniformity of practice throughout Colorado and are modeled after the American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and informed by practice standards for respondent parent attorneys in Washington, Wyoming, Massachusetts, North Carolina, Iowa, and Washington, D.C.

Introduction:

The Office of Respondent Parents' Counsel (ORPC) is tasked with improving parent representation across the State of Colorado through the development of tailored practice standards for attorneys representing indigent parents² in dependency and neglect proceedings. The paramount obligation of Respondent Parent Counsel (RPC) is to provide effective and high-quality representation to parents at all stages of the dependency and neglect process. Effective and quality representation embraces both collaboration and litigation to achieve the desired goals of the client. Where applicable, these standards shall apply to both trial and appellate RPC.

1. General Duties³:

- 1.1 **Collaboration:** RPC shall strive to collaborate to resolve matters consistent with the client's goals. RPC shall confer with counsel prior to filing any motions unless doing so is not required under local rules or not possible due to the emergency nature of the issue.
- 1.2 **Civility:** RPCs shall treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, and court personnel, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written. RPC shall refrain from acting upon or manifesting racial, gender, disability, or other bias or prejudice toward any participant in the legal process. RPC shall not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process. Except within the bounds of fair argument in pleadings or in formal proceedings, RPC shall abstain from disparaging personal remarks or acrimony toward such participants.
- 1.3 **Knowledge of the Law:** RPC shall know all relevant federal and state laws, chief justice directives, regulations, policies, ethics opinions, rules of professional conduct, the rules of juvenile and civil procedure, the rules of evidence, and other applicable rules. RPC have an ongoing duty to maintain current and up-to-date knowledge of the laws and principles referenced herein

² Parents may be legal guardians and are referred to as parents and clients where appropriate herein.

³ Where applicable, these practice standards shall apply to both trial and appellate RPC.

and the latest developments in child welfare law consistent with their duty of competence under Colo. R.P.C. 1.1.

- 1.4 **Knowledge of Community:** RPC shall be aware of child welfare and family preservation services available in the community and the issues the services are designed to address.
- 1.5 **Systems Knowledge:** RPC shall understand the role and authority of the Department of Human Services and both public and private organizations within the child welfare system.
- 1.6 **Ongoing Training:** RPC shall participate annually in trainings offered by the ORPC and other available child welfare-oriented agencies. RPC shall seek training in areas the RPC believes require additional development.
- 1.7 **Scope of Trial Representation:** Trial RPC shall represent the client from the initial court proceeding, unless the court appoints earlier for good cause, through all subsequent proceedings until resolution.
- 1.8 **Scope of Appellate Representation:** Appellate RPC shall represent the client from the date of initial appointment by the ORPC through issuance of mandate by the appellate court.
- 1.9 **Interdisciplinary Representation:** RPC shall consider assembling a family defense team of paralegals, investigators, social workers, and other professionals as necessary and appropriate and as approved by the ORPC.
- 1.10 **Cultural Competency:** RPC shall act in a culturally competent manner and consider the socioeconomic position of the client throughout all aspects of representation. RPC shall understand the impact of bias stemming from race, culture, disability, and socioeconomic status and develop tools to mitigate its negative impact. RPC shall identify and use to the client's advantage his or her individual, familial, cultural, and community strengths.
- 1.11 **Legal Research and Motions Practice:** RPC shall timely file all pleadings, motions, responses, and briefs. RPC shall research applicable legal issues and advance legal arguments as appropriate.
- 1.12 **Maintaining Client File:** RPC shall maintain client files in accordance with the Colorado Rules of Professional Conduct. All client case files must reflect the procedural history of the case and all other information necessary to render effective legal service, including copies of documents, all discovery, pleadings, settlement offers, notes and other communications to and from the client and other relevant parties in the case, the names and telephone numbers of other parties and counsel and service providers, and information on how to locate the

client. RPC shall maintain accurate billing records separate from RPPS or any online billing program used by the ORPC to allow RPCs to invoice the agency.

2 Specific Ethical Duties

- 2.1 **Adherence to the Colorado Rules of Professional Conduct:** RPC shall follow the Colorado Rules of Professional Conduct, to include avoiding potential conflicts of interest and adhering to all laws and ethical obligations concerning confidentiality and privilege.
- 2.2 **Zealous Advocacy:** RPC shall pursue the client's interests despite opposition, obstruction, or personal inconvenience to the attorney, and shall take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. RPC shall act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf.
- 2.3 **Awareness of Limitations:** RPCs shall only accept appointments that they have sufficient time, resources, legal knowledge, skills, and experience reasonably necessary to afford quality representation to the client. If it later becomes apparent that the attorney is unable to provide quality representation in the case, the attorney shall contact the ORPC to seek appropriate substitution of counsel.
- 2.4 **Manageable Caseload:** RPC shall not carry a workload that, by reason of its excessive size, interferes with the rendering of quality legal service, endangers the client's interest in the prompt resolution of the case, or may lead to the breach of professional obligations.
- 2.5 **Confidentiality:** RPC shall not reveal confidential communications with the client absent express or implied consent from the client to do so. RPC shall ensure confidential communications between counsel and client are conducted in private. RPC shall maintain the confidentiality of the client's records. In the event of an inadvertent disclosure of confidential information, the RPC shall take all steps required by the Colorado Rules of Professional Conduct, including informing the client and receiving party of the disclosure.

3 Relationship and Communication with the Client:

- 3.1 **Client-Directed Representation:** RPC shall advocate for the client's goals and empower the client to direct the representation and to make informed decisions based on candid and thorough legal counsel. RPC shall not substitute their own judgment when RPC may disagree with the client's goal. RPC shall not be obligated to execute any directive of the client that does not comport with law or the Colorado Rules of Professional Conduct.
- 3.2 **Ongoing Contact with Client:** RPC shall maintain contact with the client to establish an attorney-client relationship that will enable RPC to understand the

client's interests, needs, and the client's position on issues or questions in the case.

- 3.3 **Duty to Advise:** RPC shall advise the client about all legal matters of which they are aware or should reasonably be aware which are related to the case. RPC will seek guidance from or collaborate with other legal professionals to ensure the client is fully advised on collateral consequences. RPC will ensure the client is advised regarding specific allegations against the client, the service plan, the client's rights and potential consequences in the pending proceeding, any orders entered against the client, and the potential consequences of failing to obey court orders. RPC shall advise the client of and take action to preserve all applicable constitutional, statutory, and regulatory rights of the client. RPC shall provide candid advice regarding the probable success and consequences of adopting any posture in the proceedings and provide client with all information necessary to make informed decisions.
- 3.4 **Communication Procedures:** RPC shall provide the client with contact information that allows regular attorney-client contact, ensuring communication is accessible for indigent clients, clients with a disability, and for clients who do not speak English.
- 3.5 **Client Expectations:** RPC shall work with the client to develop a case timeline and calendar system that informs the client of significant statutory deadlines and court hearings, and sets a timeframe describing when specific case requirements (such as treatment plan action steps) should be completed.
- 3.6 **Notification of Court Dates:** RPC shall ensure clients, where possible, receive advance notification of court dates and are prepared for what to expect at all hearings.
- 3.7 **Regular Client Meetings:** RPC shall meet and communicate regularly with the client well before court proceedings. RPC shall consider the client's needs when scheduling meetings.
- 3.8 **Client Access to File:** RPC shall ensure the client has appropriate access to all petitions, court orders, service plans, briefs, and other relevant case documents including evaluations and reports regarding the child, except when expressly prohibited by law, rule, or court order.
- 3.9 **Advisement Regarding Confidentiality:** RPC shall advise the client regarding the existence of limits to, and rules regarding further disclosure of the client's communications with counsel, therapists, social workers, and other relevant individuals. As necessary, RPC shall advise the client regarding consent and

revocation of any waivers of rights or releases of information about the client or the client's child given by the client.

4 **Clients with Special Circumstances**

- 4.1 **Locating Missing Clients:** RPC shall take diligent steps to locate and communicate with a missing client, including requesting an ORPC investigator to locate the client. RPC shall consider requesting the assistance of an investigator as soon as practicable and shall avoid delay in seeking the assistance of an investigator. If RPC is unable to locate the client with the assistance of the investigator and is unable to ascertain the client's position, the RPC shall consider whether the client's interests would be better protected by withdrawal and comport with all applicable rules when choosing to withdraw.
- 4.2 **Clients with Disabilities:** RPC shall attempt to ensure that barriers to communication, such as disabilities or differences in language or literacy, are accommodated. RPC shall use a translator, interpreter, or assistive technology when necessary. RPC shall employ screening mechanisms to identify clients with disabilities as early as possible in the proceedings. Where supported by the client, RPC shall inform the court and all parties regarding the existence of the disability, request appropriate evaluations and reasonable accommodations.
- 4.3 **Out of State Parents:** When appointed to represent a parent who lives out of state, RPC shall consider objecting to an Interstate Compact on the Placement of the Children ("ICPC") home study occurring unless there is a strategic reason to consent to an ICPC or the client directs RPC not to object. RPC shall take all necessary steps to ensure that necessary services are obtained in the state where the parent resides and that reasonable efforts are made to reunify the parent with the child, including but not limited to advocating for funding for the client to travel to visits and video visits where appropriate. RPC shall take all steps to ensure the client can meaningfully participate in hearings.
- 4.4 **ICWA Considerations:** RPC shall regularly inquire of the client regarding any Native American heritage. Upon learning of any heritage or any changes to such information, RPC shall immediately inform the court and all parties. If a client may be eligible for membership in a tribe, RPC shall, if requested, assist the client in enrolling in the tribe or take steps to ensure the client is receiving such assistance. RPC shall conduct an ongoing file review for ICWA compliance and promptly notify the court and all parties if the court or county are not in compliance with the ICWA.
- 4.5 **Venue and UCCJEA Considerations:** RPC shall consider objecting to improper venue prior to adjudication unless there is a strategic reason not to object. RPC shall take steps as early as possible in cases to determine whether any other state may be the home state of the children and whether any custody orders exist in other states. Where appropriate, RPC shall inform the court of

any jurisdictional issues and request that the court follow the procedures of the UCCJEA and other applicable statutes.

- 4.6 **Incarcerated Clients:** RPC shall be aware of the unique issues an incarcerated client faces and ensure that they receive the same quality of representation as nonincarcerated clients.

4.6.1 Client meetings: RPC shall make arrangements for confidential in-person client meetings with incarcerated clients, or telephone meetings where distance makes in-person meetings impossible or impracticable.

4.6.2 Writs: Unless otherwise directed by the client, RPC shall take steps to ensure that a writ is issued to have an incarcerated client brought to court for all hearings. Because local practice surrounding issuance of a writ may vary, counsel shall become familiar with the local practice. In the event parents cannot be present in person, RPC shall request the parent appear by phone as well as request appropriate accommodations.

4.6.3 Treatment Planning: RPC shall explore what aspects of the treatment plan and parenting can be accomplished despite incarceration. RPC shall determine if the client is incarcerated in a facility that offers classes or services that may be required under the treatment plan or court order. If appropriate, RPC shall attempt to make arrangements with the facility for a contact visit between a service provider and the incarcerated client.

- 4.7 **Clients with Diminished Capacity:** When a client's capacity to make adequately considered decisions in connection with the representation is diminished, RPC shall act in accordance with Colo. R.P.C. 1.14 and any applicable statutory and case law. RPC shall consider consulting with the ORPC about appointment of a defense team social worker in lieu of, or in addition to, a guardian *ad litem* for the client. Before consenting to or requesting a GAL be appointed for a client, RPC shall confer with the client regarding their wishes and right to object and analyze whether the client lacks the capacity to communicate with counsel or is incapable of weighing the advice of counsel on the best course to pursue.

5 **Communication with Other Professionals and Out-of-Court Advocacy:**

- 5.1 **Regular Communication with other Professionals:** To learn about the client's progress and their views of the case, as appropriate, RPC shall communicate regularly with other professionals and persons involved in the case while complying with the Colorado Rules of Professional Conduct regarding contact with clients represented by counsel.

- 5.2 **Regular Communication with Counsel for Client in Other Matters:** RPC shall strive to have open lines of communication with counsel representing the client in related matters such as any criminal, civil protection orders, private

custody, or administrative proceedings to ensure these orders and determinations do not conflict with the client's goals in the dependency and neglect case.

- 5.3 **Attendance at out-of-court meetings:** RPC or their agent shall strive to attend out-of-court staffings and family engagement meetings or designate an ORPC social worker where appropriate to support the client and advocate for the client's stated goals. RPC shall understand protocols for these meetings and participate appropriately.
- 5.4 **Mediation:** RPC shall meaningfully consult with the client prior to mediation and shall understand the client's goals. RPC shall not pursue a resolution in mediation that conflicts with the client's goals. RPC shall attend mediation.
- 5.5 **Ancillary Legal Issues:** Where a client has an ancillary legal issue which is outside the scope of the RPC's representation of the client but presents a barrier to the client achieving their goals in the dependency and neglect case, RPC shall consult with the ORPC regarding available resources to address the ancillary legal issue.
- 5.6 **Case Consultations:** RPCs shall consider consulting with a staff attorney at the ORPC to develop a trial strategy, discuss legal theories and caselaw, and explore available resources. RPC shall consider consulting with an appellate attorney to preserve potential issues for appellate review. The ORPC staff attorneys, when acting in this capacity, will be considered a part of the legal team with the RPC, and the consultations will be kept confidential.

6 **Discovery and Court Preparation:**

- 6.1 **Duty to Investigate:** RPC shall conduct a thorough and independent investigation at every stage of the proceeding and, when appropriate, utilize ORPC resources including ORPC social workers, investigators, experts, and other professionals.
- 6.2 **Informal Discovery:** RPC shall review the child welfare agency case file and obtain all necessary documents.
- 6.3 **Formal Discovery:** When needed, RPC shall use formal discovery methods to obtain information such as subpoenas *duces tecum*, depositions, interrogatories, requests for production, and requests for admissions. RPC shall respond to all discovery requests received from other parties in a timely manner.
- 6.4 **Obtaining Information from Third Parties:** RPC shall take all necessary steps to obtain information in the possession of third parties such as law enforcement and the GAL that may benefit the client or help inform the client's decisions.
- 6.5 **Late or Incomplete Discovery:** If RPC has requested and not received complete discovery prior to a hearing, RPC shall make a tactical decision that

includes assessing whether to ask that evidence be excluded or to ask for a continuance.

- 6.6 **Admissions:** After appropriate investigation and case review, RPC shall explore with the client, county attorney, and GAL the terms of an admission, continued adjudication, or informal adjustment. RPCs shall explain to the client all possible consequences of stipulating to one or more of the statutory bases and factual bases for adjudication. RPC shall keep the client fully informed of all offers made by the county attorney and should discuss with the client the advantages, disadvantages, and consequences of accepting any offers. RPC shall discuss with the client the goals the client seeks to achieve and should thoroughly inform the client of his or her alternatives and the chances of prevailing at a hearing. If the client also faces criminal charges, RPC shall advise the client regarding potential conflicts, protections, and risks. RPC shall advise the client of the consequences of adjudication, including the effect of adjudication on any future allegations regarding the children subject to the petition or other children, and the possibility of termination of parental rights.
- 6.7 **Right to Jury Trial:** RPC shall advise the client of his or her right to a jury trial. RPC shall not waive a client's right to a jury trial unless the client consents to waiver after a thorough advisement. RPC shall ensure that the client is advised sufficiently about whether to request a jury trial prior to the client entering a denial.
- 6.8 **Hearing Preparation:** RPC shall effectively prepare for court.
- 6.8.1 Client Interview: Where possible, RPC shall interview the client to obtain information well before each hearing.
- 6.8.2 Witness Interviews: RPC shall interview or obtain the assistance of an investigator to interview potential witnesses.
- 6.8.3 Witness Preparation: RPC shall thoroughly prepare the client and all witnesses to testify, including informing the client of the questions that may come up in cross examination. RPC shall ensure the client has an opportunity to testify if the client so desires after being thoroughly advised about any risks or benefits associated with testifying. RPC shall inform the client of the possibility that another party may call the client to testify and the possibility that the client may incriminate himself or herself. RPC shall advise the client, where appropriate, about their Fifth Amendment privilege when testifying as well as the possibility that the

juvenile court may make an adverse inference if the client invokes their Fifth Amendment Privilege.

- 6.8.4 **Subpoenas:** RPC shall subpoena necessary witnesses or obtain waivers of service in sufficient time to ensure the appearance of necessary witnesses.
 - 6.8.5 **Releases of Information:** RPC shall obtain authorizations for release of information as appropriate.
 - 6.8.6 **Theory and Strategy:** RPC shall develop case theories and strategies to follow at hearings and negotiations.
 - 6.8.7 **Interviewing Family Members:** RPC shall, as appropriate, contact and interview all potential family members who may be considered for placement as possible less drastic alternatives to termination.
 - 6.8.8 **Expert Witnesses for Opposing Counsel:** When RPC learns that another party intends to call an expert witness to testify, RPC shall take steps to determine whether the witness is qualified as an expert in the relevant field. If the witness is not qualified or the testimony will address subject matter outside of the witness's expertise, unless there are sound tactical reasons for not doing so, RPC shall challenge the witness's qualifications and conduct a voir dire of the witness on the record or file an appropriate motion to preserve the issue for possible appellate review.
- 6.9 **Expert Witnesses:** RPC shall identify, secure, prepare, and qualify expert witnesses when needed to properly protect the client's rights and pursue the client's stated goals.
- 6.9.1 **Consultation with ORPC:** RPC shall determine what type of expertise is needed to further the client's stated goals and take steps to secure appointment of an appropriate expert through consultation with the ORPC, and timely request the expert in RPPS.
 - 6.9.2 **Locating Appropriate Expert Witness:** RPC shall seek expert witnesses who are not yet approved by ORPC if the available witnesses lack the capacity or expertise necessary. RPC shall provide the contact information for the proposed witness to the ORPC in a timely fashion to secure funding for the witness to testify.
 - 6.9.3 **Expert Preparation:** RPC shall ensure the expert is sufficiently prepared for all hearings, which includes meaningful pre-hearing communication and appropriate provision of documents. When using an expert in a court hearing, RPC shall request the court endorse the expert based on the expert's qualifications and area(s) of expertise.
 - 6.9.4 **Confidentiality and Work Product:** RPC shall protect attorney-client privilege and attorney work product privilege with experts whenever

possible. RPC shall utilize expert retainer agreements when necessary and appropriate.

- 6.10 **Review of Reports:** RPC shall make diligent efforts to review the court file and any reports with the client before each court date. RPC shall seek enforcement of any local and state rules and laws requiring court reports be distributed to parties in advance of the court date.

7 **Hearings:**

- 7.1 **Trial Skills:** RPC shall demonstrate trial skills, to include courtroom presentation, voir dire, opening and closing arguments, direct and cross examination, and an understanding and ability to utilize the rules of evidence.
- 7.2 **Use of Witnesses:** RPC shall present and cross-examine witnesses, as well as prepare and present exhibits. RPC shall consider whether cross-examination is likely to generate helpful information and avoid asking questions that are unnecessary or might elicit responses harmful to the client's case.
- 7.3 **Appearance at Hearings:** RPC shall attend and prepare for all hearings, including pretrial conferences. Absent an emergency, RPC shall represent the client directly at any preliminary protective hearing, adjudicatory trial, dispositional hearing, permanency planning hearing, termination of parental rights hearing, and substantive motions hearing.
- 7.4 **Coverage:** RPC shall ensure that any covering attorneys are approved by ORPC to appear in dependency and neglect hearings. RPC shall inform the client prior to the hearing that there will be a coverage attorney. RPC shall brief the coverage attorney on the status of the case as well as follow up with coverage attorney as soon as possible after the proceeding.
- 7.5 **Duties of Covering Attorney:** If RPC is acting as a coverage attorney, RPC shall prepare for the hearing and inform the attorney of record about all information regarding the proceeding, any obligations or actions that appointed counsel or the client must take a result of the hearing, and the future court dates set in the matter.
- 7.6 **Awareness of Timelines:** RPC shall be aware of the time requirements imposed by the Colorado Children's Code. Counsel shall track whether required hearings take place within the mandated timeframes to make appropriate objections to untimely hearings to preserve possible appellate review.
- 7.7 **Client Privacy:** RPC shall request orders to seal reports and records of mental health or substance abuse treatment in the court file. RPC shall request orders to

seal addresses and other sensitive information when necessary. RPC shall request closed proceedings or a cleared courtroom in appropriate cases.

- 7.8 **Argument:** RPC shall request the opportunity to make opening statements and closing arguments unless there is a strategic reason not to do so.
- 7.9 **Duty of Diligence:** RPC shall avoid continuances and work to reduce delays unless continuing with the scheduled hearing would result in manifest injustice to the client and/or would be in best interests of child.
- 7.10 **Advocacy for Statutory and Constitutional Rights:** RPC shall advocate for compliance with state and federal statutes such as the ICWA, the ADA, and the Children's Code and shall strive to protect the state and federal due process rights of clients.
- 7.11 **Objections and Issue Preservation:** Unless sound tactical reasons exist for not doing so, counsel shall make timely and appropriate objections and motions and shall assert all appropriate grounds for exclusion of evidence. RPC shall make offers of proof regarding excluded evidence.

8 Duties at Specific Hearings

- 8.1 **Preliminary Protective or Shelter Hearings:** At preliminary protective or shelter hearings, RPC shall preserve the right to have a hearing within 72 hours of removal, the right to present evidence and examine witnesses, the right of the client to testify, and the right to have discovery prior to the hearing. RPC should work strategically to achieve the best possible outcome for the client at preliminary protective hearings, and consider such issues as placement with the client, a relative placement, visitation, protective orders, and early engagement of client into voluntary services. RPC should prepare the client for the preliminary protective hearing and call witnesses where appropriate.
- 8.2 **Adjudicatory Trials:** RPCs shall be prepared to address legal and evidentiary issues that reasonably can be anticipated based on the pleadings, investigation, and discovery. If material allegations arise at the adjudicatory hearing that were not contained in the Petition, RPC shall consider seeking a continuance or objecting to preserve the issue for appellate review. RPC shall consider seeking advance rulings on issues likely to arise at the adjudicatory hearing by requesting a pretrial conference or motions hearing. RPC shall consider whether there are tactical reasons to stipulate to damaging facts that are readily provable and uncontroverted.
- 8.3 **Jury Selection and Instruction:** RPC shall actively participate in jury selection and drafting jury instructions.
- 8.4 **Default Adjudications:** RPC shall object to entry of default adjudication unless otherwise directed by the client. If the court enters a default adjudication when RPC was present to defend, RPC shall take steps to promptly advise the client of their right to appeal and shall promptly transmit an appellate transmittal form,

waiver, or affidavit within seven days of the entry of the default adjudication. If RPC is appointed after a default adjudication enters, RPC shall advise the client of the existence of the default adjudication and any right to appeal.

8.5 **Dispositional Hearings:** RPC shall recognize the importance of an appropriate, individualized treatment plan being adopted at the dispositional hearing.

8.5.1 RPC shall ensure the client has sufficient time to review and discuss the treatment plan in advance of dispositional hearing. RPC shall verify that the services and service providers are appropriate and tailored to the needs of the client, and that the treatment plan could be completed within the time allocated by the plan.

8.5.2 When appropriate, RPC shall collaborate outside of court, prior to the hearing, with other parties to craft an individualized treatment plan that meets the client's needs and/or the needs of the children.

8.5.3 If an appropriate treatment plan cannot be accomplished collaboratively, RPC shall raise necessary objections at dispositional hearing and shall litigate as appropriate, including through the use of scientific literature and expert testimony.

8.6 **Permanency Planning and Permanent Home Hearings:** RPC shall be prepared to present an alternative long-term plan for the child and to present evidence in support of the alternative permanency plan. RPC shall make appropriate objections to proposed permanency plans and permanent home findings.

8.7 **Termination Proceedings:** RPC shall confer with client as soon as possible after a Motion to Terminate Parental Rights is filed. The decision to file pre-trial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. RPC should consider utilizing all available informal and formal discovery methods and should seek discovery to the broadest extent permitted by the law.

8.8 **Relinquishment and Other Alternatives to Termination:** RPC shall be familiar with the statutory and case law governing relinquishment of parental rights as well as local policies regarding relinquishment. RPC shall fully explain to the client the advantages, disadvantages, and consequences of relinquishment and other dispositional alternatives.

9 **Advocacy for Parenting Time and Appropriate Services:**

9.1 **Early Engagement:** Consistent with the client's goals, RPC shall thoroughly discuss the advantages of early engagement in services and advocate for timely provision of services appropriate to meet the individual client's needs.

9.2 **Ensuring Clear Objectives and Orders:** RPC shall advocate for services at every stage of the proceeding, both in and out of court. RPC shall identify and

address barriers that may prevent or limit the client's ability to successfully engage in services. RPC shall ensure that court orders specify each party's duties and responsibilities regarding service referrals, payment for services, and transportation issues and include a realistic timeline for commencing and completing services.

- 9.3 **Amending Treatment Plans:** RPC shall regularly discuss the client's progress in their treatment plan as well as mitigation of any safety concerns or risks. Where appropriate, after consultation with the client, RPC shall consider requesting amendments to treatment plans when it becomes clear that the existing treatment plan is not addressing the concerns that caused the case to open or that are preventing reunification. RPC shall consider requesting updated risk and safety assessments and reviewing the assessments with the client.
- 9.4 **Reasonable Efforts:** RPC shall monitor and take steps to compel the agency's compliance with the reasonable efforts requirement consistent with the client's interests and goals throughout the course of the case and shall file appropriate motions to preserve this issue.
- 9.5 **Parenting Time:** Unless contrary to client direction, RPC shall advocate for frequent, consistent visits in the least restrictive setting possible where appropriate. RPC shall advocate for non-professional supervision of visitation where possible and for a plan that allows for make-up visits when the child is not available for a visit or when the parent, for good cause, cannot attend a scheduled visit. RPC shall object to parenting time being restricted as a sanction for the parent's failure to comply with court orders or services if the restriction is not related to child safety. If parenting time is limited or suspended, RPC must continue to assess and advocate for options to regain parenting time.
- 9.6 **Client Decision-Making:** RPC shall understand and protect the client's rights to information and decision-making while the child is in foster care or in out-of-home placement.

10 Post Hearings:

- 10.1 **Preparation of Orders:** RPC shall prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client or are otherwise required by procedural rules. RPC shall review court orders to ensure accuracy and clarity. RPC shall timely file objections or motions to correct orders as necessary. RPC shall review written court orders with the client. RPC shall take necessary actions to ensure a written order is entered and provided to the client following verbal issuance of any orders that may be appealed.
- 10.2 **Advisement to client of duty to comply with court orders:** RPC shall advise the client regarding compliance with court orders and the consequences of not complying with court orders. If a court order has become impracticable or

unworkable, RPC shall consider filing a motion or requesting a hearing to amend the order.

- 10.3 **Advisement regarding appellate rights:** RPC shall consider and discuss the possibility of appeal with the client after adjudication and disposition, after termination, and at any other appropriate point. RPC shall be familiar with appellate timelines. RPC shall ensure contact information is correct to ensure appellate RPC can reach the client.
- 10.4 **Duty to Seek Review of Magistrate Orders:** RPC shall consider and seek district court review of magistrate rulings as appropriate and/or where necessary to preserve the client's right to appeal.
- 10.5 **Appellate Transmittal Form and Appellate Waiver:** When the client wishes to appeal, trial counsel shall complete and submit the Appellate Transmittal Sheet to the ORPC within seven calendar days after an appealable order or order terminating parental rights. If the client does not wish to appeal, trial counsel shall submit a written and signed waiver of appeal within seven calendar days of an appealable order or termination order to the ORPC. If RPC cannot locate the client after diligent efforts, RPC shall assess how to proceed based on the client's last clearly articulated position. If there was no discussion regarding an appeal and the client cannot be located, RPC shall provide the ORPC with an affidavit regarding efforts to locate the client within seven days of the appealable order or termination order.

11 Appellate Advocacy

- 11.1 **Communication with Trial Counsel:** RPC shall confer with trial RPC to assess appellate issues and other case information. RPC shall share briefs with trial RPC. Appellate RPC shall inform the client's trial RPC of all significant developments in the case.
- 11.2 **Duty of Diligence on Appeal:** RPC shall timely file the Notice of Appeal and Designation of Record with the Court of Appeals. RPC shall designate and request transcripts using ORPC transcript request form for all trial court hearings and shall provide the ORPC transcript request form to the Managing Court Reporter as soon as practicable but no later than the date of the filing of the Notice of Appeal.
- 11.3 **Duty to Investigate:** RPC shall review the record as soon as it is received, and request supplementation if necessary. RPC shall also request an investigator as

appropriate, to locate the client, or as required to investigate a claim of ineffective assistance of counsel.

- 11.4 **Briefs:** RPC shall prepare and timely file an Opening Brief, or any other principal brief. RPC shall strategically determine if a Reply Brief is necessary and, if so, prepare and timely file a Reply Brief.
- 11.5 **Oral Argument:** RPC shall request oral argument whenever oral argument could assist the appellate court in ruling for the client or the client requests oral argument. RPC shall prepare for oral argument and demonstrate appropriate persuasive skills and knowledge of the law. RPC shall consult with the ORPC regarding resources available for preparation, including moot court opportunities.
- 11.6 **Request for Rehearing:** RPC shall timely file a Petition for Rehearing if one is strategically necessary.
- 11.7 **Communication with Client:** RPC shall initially counsel the client about the appellate process and possible outcomes and remedies of appeal. RPC shall give the client regular updates at every phase of the appeal. RPC shall communicate the results of appeal and its implications to the client. RPC shall advise on any further appellate remedies and the risks or possible outcomes of those remedies. RPC shall share briefs with the client.
- 11.8 **Duties Post-Opinion:** Appellate RPC shall notify trial RPC when the opinion is received and shall advise trial RPC on the next steps to take if the trial court order is reversed. In the event that the appellate court determines an attorney has provided ineffective assistance of counsel, appellate RPC shall contact the ORPC to request appointment of new trial RPC. Appellate RPC shall share a copy of the petition with the client and communicate the court's ruling on the petition and its implications to the client.
- 11.9 **Petition for Certiorari:** RPC shall prepare and timely file a Petition for Writ of Certiorari, if requested by the client after advisement. RPC shall advise the client about the risks and possible strategic benefits of filing a petition before filing.

12 **Withdrawal and Termination of Representation:**

- 12.1 **When Withdrawal Should be Considered:** RPC shall understand the obligation to protect the constitutional and statutory rights of the client at all times. RPC shall make every effort to resolve conflicts with the client prior to filing a motion to withdraw. RPC shall pursue withdrawal where: (1) there is such a breakdown in communication that the client is denied a substantial right by counsel's continued representation; (2) a conflict of interest exists such that withdrawal is advisable or required under Colo. RPC 1.16; (3) the client cannot

be located after diligent search **and** direction from the client is unknown; (4) the client wishes to proceed *pro se* and has received an advisement by the court.

- 12.2 **Withdrawal When Client Terminates Representation:** If, at any time during the course of representation, the client seeks to terminate RPC's representation, RPC shall ensure the client is fully advised of the potential consequences of withdrawal, including the possibility that the client may have to proceed *pro se*. Unless the client chooses to proceed *pro se*, RPC shall request appointment of substitute counsel by the court or the ORPC.
- 12.3 **Motions to Withdraw:** If circumstances necessitate withdrawal prior to resolution of the case, RPC shall comply with all relevant Colorado Rules of Professional Conduct, including 1.6 and 1.16, comply with C.R.C.P. 121 § 1-1, file a motion to withdraw, and request an *ex parte in camera* hearing only if the motion to withdraw is not granted. RPC should obtain a court order allowing withdrawal and substitution of counsel, if necessary.
- 12.4 **Duty to Client Post-Withdrawal:** If the motion to withdraw is granted, RPC shall take reasonable steps to protect the client's interests and arrange for the orderly transfer of the client's file and discovery to substituting counsel or to *pro se* client. RPC shall take reasonable steps to notify the client of the withdrawal, the next scheduled court date, and the client's right to reapply for court appointed counsel or hire an attorney.
- 12.5 **Conflicts of Interest:** RPC shall avoid conflicts of interest involving the client, any additional respondent parents, and prior clients. RPC shall not represent more than one parent, guardian, or legal custodian in any matter, including for coverage purposes.

13 Supervising Associate RPCs

- 13.1 **Caseloads:** Supervising RPC shall determine and set reasonable caseloads based upon experience and abilities of associate RPC.
- 13.2 **Supervision:** Supervising RPC shall engage in active supervision of associate RPC cases, including supervising associate RPC in court and reviewing associates' written work. Supervising RPC shall provide training and mentoring to associate RPC.
- 13.3 **Ensure Adherence to Practice Standards:** Supervising RPC shall ensure associate RPC comply with ORPC Standards of Practice for Attorneys Representing Parents in Dependency and Neglect and the Requirements of Chief Justice Directive 16-02.

PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN *AD LITEM* REPRESENTATION ON THE BASIS OF INDIGENCE

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigence must complete, or have completed on their behalf, application form JDF208 (“Application for Court-Appointed Counsel or Guardian *ad Litem*”) signed under oath, before such an appointment may be considered by the court. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and where the court appoints a GAL for a judicial bypass proceeding pursuant to §12-37.5-107(2)(b).

Procedures for the Determination of Indigency

The following procedures are used for applicants in cases addressed in CJD 04-06.

- **Completion of Form JDF208 by Applicant**

Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF208, and submit it to the court.

- **Review of Financial Information by Court Personnel**

Court personnel shall review the applicant’s information on form JDF208 to determine whether or not the applicant is indigent on the basis of three factors:

- Income¹
- Liquid assets²
- Expenses³

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian *ad litem* on the basis of indigence if his or her financial circumstances meet either set of criteria described below.

1) Income is at or below guidelines / Liquid assets equal \$0 to \$1,500

- If the applicant’s income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500 or less, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation at state expense.

¹*Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers’ Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant’s income in a fashion which would allow the applicant proprietary rights to the roommate’s income.*

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veterans benefits earned from a disability, child support payments or other assistance programs.

²*Liquid assets include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant’s ability to maintain home and employment.*

³*Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF 208.*

2) Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income

- If the applicant’s income is up to 25% above the income eligibility guidelines; the applicant has assets of \$1,500 or less; and the applicant’s monthly expenses equal or exceed monthly income, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation.

In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.

INCOME ELIGIBILITY GUIDELINES (amended February 2022)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 13,590	\$ 1,133	\$ 1,416	\$ 1,770	\$ 16,988	\$ 21,234
2	\$ 18,310	\$ 1,526	\$ 1,907	\$ 2,384	\$ 22,888	\$ 28,609
3	\$ 23,030	\$ 1,919	\$ 2,399	\$ 2,999	\$ 28,788	\$ 35,984
4	\$ 27,750	\$ 2,313	\$ 2,891	\$ 3,613	\$ 34,688	\$ 43,359
5	\$ 32,470	\$ 2,706	\$ 3,382	\$ 4,228	\$ 40,588	\$ 50,734
6	\$ 37,190	\$ 3,099	\$ 3,874	\$ 4,842	\$ 46,488	\$ 58,109
7	\$ 41,910	\$ 3,493	\$ 4,366	\$ 5,457	\$ 52,388	\$ 65,484
8	\$ 46,630	\$ 3,886	\$ 4,857	\$ 6,072	\$ 58,288	\$ 72,859

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 to "monthly income" or \$5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

Rule 2.1. Attorney of Record

(a) An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court.

(b) The clerk shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

(c) Withdrawal of court-appointed counsel: Appointments of court-appointed respondent ~~parent~~ counsel shall continue until terminated by the court. Court-appointed counsel may withdraw from the case upon the filing of a substitution of counsel that complies with C.R.C.P. 121sec.1-1(2)(a) or upon motion to the court. A motion to withdraw shall comply with C.R.C.P. 121 sec. 1-1(2)(b) unless the appointment is a provisional appointment. Provisionally appointed counsel may request ~~termination of the appointment~~ ~~o withdraw~~ upon written or oral motion to the court stating that the ~~client-respondent~~ is not indigent, the ~~client~~respondent does not wish to have court-appointed counsel, or the ~~client-respondent~~ cannot be located after diligent search and direction from the ~~respondent-client~~ is unknown. The court may immediately terminate a provisional appointment of counsel.

wallace, jennifer

From: Sheri Danz <sheridanz@coloradochildrep.org>
Sent: Friday, July 29, 2022 9:58 AM
To: wallace, jennifer; morrison, terri; welling, craig
Cc: Anna Ulrich
Subject: [External] CJD 04-06 drafts and revision summary for 8/5 juvenile rules meeting
Attachments: CJD 04-06 tracking chart.pdf; CJD 04-06 revisions track changes stakeholder feedback version s.pdf; CJD 04-06 revisions clean copy stakeholder feedback version.pdf

Hi Judge Welling, JJ, and Terri,

It is my understanding that you would like to OCR to present on its proposed CJD revisions at next Friday's Juvenile Rules meeting. We appreciate this opportunity, as we think it is a great way to get feedback from several key juvenile court stakeholders.

I have attached three documents to help facilitate this discussion: 1) a chart summarizing the proposed revisions and providing explanations; 2) a draft CJD with all changes tracked; 3) a draft CJD with changes accepted, as the track changes is quite busy and therefore a bit hard to read.

I am not sure what your agenda is for next Friday. I would very much like to attend if possible, as I have been the primary staff member working on these changes and will be the staff member working to incorporate stakeholder feedback into the draft we ultimately submit to Justice Boatright. I am wondering if it would be possible to put this first on the agenda.

Terri, I'm preparing another email for distribution to all juvenile judges, as we're also scheduling a Zoom feedback meeting for them. I will send that to you later this morning.

JJ and Judge Welling, please let me know what else you need from me. If you think it would be helpful, I am happy to provide a brief overview of the changes and help facilitate the feedback discussion. I am also fine if someone else would rather take the lead. Thank you for using some of this upcoming meeting's time for this, I look forward to the discussion.

Sheri Danz

she/her/hers

Deputy Director | Office of the Child's Representative

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Colorado Office of the
Child's Representative

Summary of Proposed Changes to CJD 04-06 to Implement HB 22-1038 and HB 21-1094

The following table summarizes the changes OCR plans to propose to CJD 04-06 to support implementation of HB 21-1094 and HB 22-1098. CJD 04-06 contains practice standards for attorneys serving as GALs and CLR, and the new legislation requires OCR to recommend practice standards for Counsel for Youth (CFY). OCR's recommended changes are informed by OCR's review of the relevant legislation, discussions with stakeholders during the legislative session, and a review of other state practice standards and national practice standards. OCR has also prepared a draft revised CJD that is available for stakeholder review.

OCR welcomes written and verbal feedback on these proposed changes. Please submit all written feedback to OCR's Deputy Director at sheridanz@coloradochildrep.org. Please feel free to call your OCR district liaison (<https://coloradochildrep.org/wp-content/uploads/2022/02/OCR-Judicial-District-Liaison-Map.pdf>) or Sheri Danz at 303-860-1517, ext. 1020 if you would like to provide verbal feedback or discuss these revisions.

OCR will accept feedback on these proposed revisions until August 12, 2022.

Section	Change	Explanation/additional Information
Intro	Clarification that the terms "child," "children" and "youth" are used interchangeably to refer to individuals represented by attorneys contracting with or employed by the OCR. Insertion of language from OCR's enabling legislation and mission statement.	Better reflects terminology to be used in CJD to reflect youth-driven changes. OCR reviewed ORPC's CJD 16-02 and believed that having language regarding the agency's mission and purpose was helpful.
Section I	Update to appointment authorities to reflect new appointment types. New Section I.B.15 relates to OCR's federal IV-E draw down and anticipated use of funds to provide legal representation on matters related to OCR's appointment.	Consistent with relevant statutory provisions. Section 1.B.15 refers to changes in legislation resulting from SB 19-258 and changed guidance re IV-E administrative costs.
Section II	Update to reflect appointment and assignment of CFY.	Consistent with relevant statutory provisions.

Section III	Update to reflect changes to GAL and CFY appointment authorities, changes and/or edits to other appointment authorities.	Consistent with relevant statutory provisions.
Section V.A.	Language amended to reflect that training applies to CFY and include OCR’s DEI training requirements. Change CLE period to reflect “credit” rather than “hour” to avoid confusion with reporting requirements.	
Section V.B.	<p>New subsections added to reflect the various roles and ethical considerations raised by the transition to client-directed:</p> <ul style="list-style-type: none"> • V.B.1: Substantially similar to previous GAL section, guidance about examining bias and mitigating against bias added. • V.B.2: Role of CFY and responsibility to strive to maintain a normal-attorney client relationship added. Developmentally appropriate communication defined. • V.B.4 Guidance around conflict of interest assessment provided. 	<p>V.B.1—bias language adapted from NACC Recommendation VIII.</p> <p>V.B.2—standard and associated commentary adapted from ABA practice standards A-3 and B-4. Language about reflecting actual position comes from MA Practice Standard 1.6.</p> <p>V.B.4—Introductory statement about loyalty comes from NACC recommendation VI. Standard and commentary comes from an analysis and adaptation of Colorado Rules of Professional Conduct, NACC Recommendations, ABA practice standards, and NM Court Rule. Sibling conflict provisions in commentary are an adaptation of NM Court Rule 10-313.1. Language in commentary regarding transition to CFY role, new file, etc, based on previous trainings by and discussions with OARC.</p>
Section V.C.	New language added regarding CFY responsibilities. Language regarding expansion of responsibilities amended to apply to both CFY and GAL/CLR, and additional language added to accommodate eventual IV-E programming to fund representation on related matters.	

<p>Section V.D.</p>	<p>Revised to incorporate CFY investigative and advocacy duties in D&N proceedings.</p> <ul style="list-style-type: none"> • V.D.1.a. broken down into CFY and GAL advocacy roles. First part of commentary to 1.a. is not new but is instead moved from a different section. Commentary that is deleted is included later in the section. • V.D.1. b.-e. additional advocacy steps outlined to effectuate enhanced statutory provisions regarding right to attend and meaningfully participate in court and attorney responsibilities to provide developmentally appropriate notice (by 1038) and to address discovery and staffing/meeting concerns raised by OCR attorney stakeholders for both GAL and CFY role and concerns about coordination of representation for crossover youth. • New Section V.D.2 contains all child/youth contact requirements throughout the proceeding to better emphasize contact with children and eliminate confusion that previously existed by putting 30-day requirement in 45-day investigation section. V.D.2 initial and change of placement contact requirements are the same/consistent with what currently exists in CJD; additional language to explain contact requirement when transitioning from GAL role to CFY role added. • Former practice standard regarding taking action within scope of statutory authority and ethical responsibilities seems adequately covered by Section V.B. and is redundant and confusing so was eliminated. Associated commentary moved to 1.a., not deleted from the directive. 	<p>With regard to V.D.1 revisions, OCR’s review of NACC recommendations, ABA practice standards, NM Practice Standards and several other states pointed to the need for a more robust legal advocacy section to better reflect the legal advocacy role of the GAL/CFY. With regard to language in specific subsections:</p> <ul style="list-style-type: none"> • V.D.1.b—court notification/explanation provisions similar to what already existed for GALs, but additional language added based on 1038 requirements. • V.D.1.c.—MA practice standard 3.2 outlines responsibility of lawyer to seek and protect against discovery. <p>V.D.2.c.ii language regarding CFY ongoing contact/communication requirements adapted from NACC Recommendation III. Commentary to maintaining contact requirements adapted from NACC Recommendations and contains some additional language based on feedback from OCR’s Lived Experts Action Panel.</p>
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	<ul style="list-style-type: none"> • New Section 3 has same investigative steps outlined in previous section 4, with slightly modified language to indicate requirements also apply to CFY role. Additionally, language was added to parent contact requirement to respond to feedback shared with OCR and issues identified during OCR’s complaint investigation. Overall commentary to Section 3 explains the purpose of the investigation to both GAL and CFY role as well as contains new language regarding culture, bias. • New Section 4, ongoing investigation, no longer has youth contact provisions as they are moved to new Section 2. • Appeals section (5) accounts for fact that some youth may direct the attorney not to participate in appeals under a client-directed model. 	CFY investigative language in commentary to Section 3 came from NACC Recommendation III.
Section V.E.	“Juvenile” changed to “youth” throughout section and coordination of representation with CFY/GAL on related cases added as a requirement to Section E.3.a.i.	
Section V.F.	New standards added for CFY in Foster Youth in Transition Program	Standards required by HB 21-1094 and modeled after legislative requirements and applicable Section V.D. CFY advocacy, youth contact, and investigation decisions.

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

COURT APPOINTMENTS THROUGH THE OFFICE OF THE CHILD'S REPRESENTATIVE

The following policy is adopted to assist the administration of justice through the appointment and training of Guardians ad Litem (GALs) and Child's Legal Representatives (CLRs) appointed on behalf of minors/children, as well as attorneys appointed as Counsel for children Youth (CFY) subject to dependency and neglect proceedings and participating in Colorado's Foster Youth in Transition Program and proceedings. As used in this CJD, the term "child," ~~or "children"~~ also refers to and "youth," as that term is used in relevant statutes are used interchangeably to refer to individuals represented by attorneys contracting with or employed by the OCR. Child and Family Investigators, adult GAL appointments, and any other juvenile attorney client appointments fall under the provisions of Chief Justice Directive 04-05.

The Office of the Child's Representative (OCR)'s enabling legislation states that the legal representation of children "is a critical element of giving children a voice in the Colorado Court system" and that "the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources." The Office of the Child's Representative's mission is to give children and youth a voice in Colorado legal proceedings through high-quality legal representation that protects and promotes their safety, interests, and rights. This Chief Justice Directive supports the administration of justice for children and youth represented by OCR attorneys.

I. Authorities

- A. Article 91 of Title 13 established the ~~Office of the Child's Representative~~ OCR and the various statutory requirements of the OCR.
- B. The OCR shall be responsible for the following:
 1. Provision of ~~(GAL)~~ services for children and youth in dependency and neglect proceedings under Title 19.
 2. Provision of GAL services for a respondent parent in dependency and neglect proceedings under Title 19 when that parent is a minor.
 3. Provision of CFY ~~counsel~~ services for children subject to youth 12 and older in dependency and neglect proceedings, as well as counsel appointed to children under 12 in such proceedings at the discretion of the court.

4. Provision of GAL services in delinquency matters under Title 19.
5. Provision of GAL services in adoption and relinquishment proceedings under Title 19 when one or more parties qualify as indigent. Provision of CFY services for youth 12 and older in adoption and relinquishment proceedings when the CFY is also appointed to represent the youth in a dependency and neglect proceeding.
6. Provision of GAL services for a child or youth charged or prosecuted as an adult pursuant to Section 19-2.5-801, C.R.S. or Section 19-2.5-802, C.R.S.
7. Provision of GAL services in paternity and support matters brought under Title 19 when one or more parties qualify as indigent.
8. Provision of GAL services to minors in alcohol or drug abuse proceedings under Title 27.
9. Provision of GAL services to minors in mental health proceedings under Title 27.
10. Provision of GAL services to minors in probate proceedings under Title 15 when the parties are indigent.
11. Provision of GAL services to minors involved in truancy proceedings under Titles 19 and 22.
12. Provision of CLR services in domestic relations cases under Title 14 when one or more parties qualify as indigent.
- ~~13. Provision of services in any other GAL or CLR appointments where authorized, by statute or inherent authority, to act in or in representation of the best interests of a minor.~~
- ~~14. Provision of Counsel for Youth and GAL services in Colorado's Foster Youth in Transition Program and proceedings under Title 19.~~
- ~~13.~~
- ~~16.~~ Provision of GAL services for a minor seeking judicial approval for a marriage license under Title 14.
- ~~14.~~
15. Provision of attorney services for children and youth on matters related to other OCR appointments and determined by OCR to be acceptable use of OCR's reimbursed Title IV-E administrative costs pursuant to § 26-2-102.5.

16. Provision of services in any other GAL or CLR appointments where authorized, by statute or inherent authority, to act in or in representation of the best interests of a minor.

- C. State funds are appropriated to the OCR to provide legal representation in all statutorily authorized appointments, costs associated therewith and the various responsibilities that fall under the purview of the office pursuant to Section 13-91-101 *et seq.*, C.R.S.

II. OCR Authority and Responsibilities

- A. The OCR's enabling legislation charges the OCR with enhancing the provision of attorney services and improving the quality of representation and advocacy provided to children and youth in the Colorado court system. The OCR's authority and responsibilities include but are not limited to: the provision of high-quality, accessible training; the exclusive authority and discretion to select and contract with attorneys to provide state-paid GAL, CLR and ~~counsel~~-CFY services for children ~~and youth subject to dependency and neglect proceedings~~, including the authority to reject attorneys for any reason; the authority to terminate, at will, contracts; the authority to seek termination of existing court appointments as provided by this CJD; and the responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services, investigation and resolution of complaints regarding attorneys who contract with the OCR and other means as determined by the OCR.
- B. The OCR shall maintain and provide to the courts a list of qualified attorneys eligible for appointments. The courts shall appoint from this list, and the OCR shall assign attorneys from this list to provide CFY services for youth voluntarily participating in or seeking to participate in Colorado's Foster Youth in Transition Program. It is within the OCR's sole discretion to determine which attorneys are placed on the appointment list. The OCR will not process payment for services of attorneys with whom the OCR does not have a contract and who are not on the OCR list. Should any unusual, exceptional or emergency circumstances present the need for the appointment of an attorney not listed as an OCR-qualified attorney, the court shall contact the OCR for approval prior to the appointment of that attorney. The OCR shall provide a prompt response to the court's request.

III. Authority and Requirement for Appointments through the OCR

- A. A GAL shall be appointed for a child under age 12 in a dependency and neglect action pursuant to Title 19. The GAL's appointment shall continue until the entry of a final decree of adoption, until the child is 12, or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order.

A court may continue the GAL's appointment for a youth age 12 or older in a dependency and neglect action when the court determines that a GAL is necessary due to the youth's diminished capacity, and the court may also appoint a GAL for a youth age 12 and older if the court determines the appointment is necessary due to the youth's diminished capacity. A court shall not consider age or developmental maturity as the sole basis for a determination of diminished capacity. The court shall not deem a GAL appointed for a youth 12 or older to be a substitute for the appointment of a CFY.

~~A.~~ Pursuant to Title 19, a GAL may be appointed for a minor parent throughout any phase of a dependency and neglect proceeding ~~and must be appointed for a minor parent facing termination of parental rights.~~

B. Pursuant to Title 19, an attorney ~~shall~~ be appointed as ~~counsel for~~CFY for a youth age 12 and older in a D&N proceeding. The CFY's appointment shall continue until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order. A child or youth's right to counsel in a dependency and neglect proceeding may not be waived.

~~B.~~ ~~child subject to a dependency and neglect proceeding in addition to the GAL if the court finds that the appointment is in the best interests and welfare of the child. Additionally, a~~ An appointed GAL in a dependency and neglect proceeding shall begin acting as counsel for the youth immediately upon the youth's 18th birthday ~~and shall act as counsel until either the case is dismissed or a new counsel is appointed, unless the youth is deemed incapable~~ court finds it necessary to appoint a GAL because the child or youth has diminished capacity, in which case the GAL shall remain in the role of GAL and a separate counsel CFY for the youth shall be appointed. New counsel shall may be appointed as CFY if the youth elects to have a new attorney appointed as counsel or the attorney has asserts there is a conflict of interest. Pursuant to Title 19, the court may appoint CFY for a child under age 12 in addition to a GAL if the court deems representation by CFY necessary to protect the interests of the child.

C. Pursuant to Title 19, a GAL may be appointed in a delinquency proceeding if: no parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S., appears at the first or subsequent hearing; the Court finds a conflict of interest exists between the child and the parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S.; or the court finds that a GAL appointment is necessary to serve the best interests of the child. Such appointment shall continue if a case is transferred to adult criminal court under Title 19.

D. Pursuant to Title 19, the court, in its discretion, may appoint a GAL in any direct file of charges against a ~~juvenile~~youth in adult criminal court.

- E. Pursuant to Title 19, a GAL may be appointed for a child in a truancy proceeding under Title 22 ~~upon a finding of exceptional and extraordinary circumstances~~, unless the child is already represented by defense counsel. Pursuant to Title 19, a court may appoint both counsel and a GAL for the child if the court finds that such appointment is in the best interests and welfare of the child.
- F. A CLR may be appointed in a domestic relations case pursuant to Title 14.
- G. A GAL may be appointed for a minor in formal proceedings involving guardianship or conservatorship of a minor; trusts or estates of decedents, minors and protected persons; and in judicially supervised settlements pursuant to Title 15 if the court determines that a need for such representation exists.
- H. A GAL shall be appointed in a mental health proceeding pursuant to Title 27 for any child under age 15 who is a ward of the Department of Human Services or for any minor under 15 who objects to his or her hospitalization.
- I. If necessary to serve a child's best interests, a GAL may be appointed for an infant or other minor who does not have a representative and who is a party to a civil suit.
- J. A GAL may be appointed for a child in a paternity action pursuant to Title 19.
- K. A GAL may be appointed for a minor upon the filing of a petition for involuntary commitment of alcoholics or drug abusers if the court deems the minor's presence in court may be injurious to him or her pursuant to Title 27~~5~~.
- L. Pursuant to Title 19, a GAL for a minor may be appointed in a proceeding concerning the relinquishment of the minor if the court finds that that a conflict of interest exists between the child and the parents, guardian or legal custodian; the court finds that such appointment is necessary to serve the best interests of the child; or the court determines that the child is twelve years of age or older and that the welfare of the child mandates the appointment. If a CFY is appointed in a dependency and neglect action, the court shall also appoint that attorney as CFY in the relinquishment proceeding.
- M. Pursuant to Title 13~~2~~, a GAL may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act ~~pursuant to Section 12-37.5-107(2)(b), C.R.S.~~ and Chapter 23.5 of the Colorado Rules of Civil Procedure ("Rules of Procedure for Judicial Bypass of Parental Notification Requirements").
- ~~O.N.~~ Pursuant to Title 19, a Counsel for YouthCFY shall be appointed by the court for a youth in a Foster Youth in Transition proceeding and may be assigned by the

OCR prior to the filing of the petition. A GAL may also be appointed for a youth participating in the Foster Youth in Transition Program if the Court finds that the youth is incapacitated or has diminished capacity.

P.O. Pursuant to Title 14, a GAL shall be appointed for a minor seeking judicial approval for a marriage license.

IV. Allocation of Cost and Guidelines for Payment by the OCR

A. Allocation of Costs—Requirement of Indigency Finding

1. An indigency determination is not required for state payment of GAL, CLR, or CFY services in matters other than these specific cases:

a. The State, through the OCR, shall bear the costs for the services of a CLR appointed pursuant to Section 14-10-116, C.R.S., only if the court finds one or more of the parties responsible for the costs indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 14-10-116, C.R.S., which specifies that the parties are responsible for all costs absent a specific finding of indigency. Pursuant to Section 14-10-116, C.R.S., prior to the entry of a decree of dissolution of marriage or legal separation, the court shall not enter an order requiring the state to bear the costs of the appointment unless both parties are determined to be indigent after considering the combined income and assets of the parties. In cases involving unmarried parties, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees and disbursements that shall be borne by the state. When a responsible party is indigent, the state will pay the CLR the portion of the hourly rate and authorized expenses for which the indigent party is responsible.

b. The State, through the OCR, shall bear the costs for GAL services in paternity and support matters under Article 4 of Title 19 only if a court finds one or more of the parties responsible for the costs indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 19-4-117, C.R.S., which specifies that the court shall order reasonable fees of the GAL to be paid by the parties.

c. The State, through the OCR, shall bear the costs for GAL services in adoption and relinquishment proceedings only when the court finds the party(ies) responsible for the costs indigent. The State is precluded from paying for services and any costs associated with

GAL services for non-indigent parties under Section 19-5-103, C.R.S., which specifies that the Court shall order the relinquishing parent to pay reasonable fees.

- d. The State, through the OCR, shall bear the costs for GAL services provided to a minor under Title 15 (probate, guardianship and conservatorship) and other civil cases only when the court makes indigency findings regarding the party(ies) ordered to be responsible for the costs or the minor's estate.
2. The following procedures shall apply to a court's determination of indigency:
 - a. The responsible party(ies) must complete, or have completed on their behalf, application form JDF 208 ("Application for Public Defender, Court-Appointed Counsel, or Guardian ad Litem") signed under oath, before an appointment may be considered.
 - b. An indigent person is one whose financial circumstances fall within the fiscal standards set forth by the Supreme Court through Chief Justice Directive (See Attachment A). A court shall not order representation to be at state expense absent the completion of form JDF 208, a finding of indigency and an order of the court.
 - c. If one party is indigent, the State, through the OCR, will pay the portion of the state-set hourly rate allocated to the State.

B. Guidelines for Payment by the OCR

1. Claims for payment of ~~appointee~~ fees and expenses shall be submitted ~~by the appointee~~ directly to the OCR, not the appointing court, in accordance with the OCR's policies and procedures. The appointment order containing the required indigency findings shall be submitted prior to payment, and the OCR shall not pay for any activities performed prior to the ~~appointment order and~~ indigency findings.
2. The maximum total fees per appointment for all OCR appointments and the procedures for approval of excess fees and expenses shall be as set forth by the OCR.
3. Attorneys shall maintain records of all work performed relating to court appointments and shall make all such records available to the OCR and/or to the court for inspection, audit and evaluation in such form and manner as the OCR or court may require, subject to the attorney work product doctrine and any other applicable privileges.

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V. **Duties of Attorneys Appointed as GALs, CLRs, and ~~Counsel for Children Subject to Dependency and Neglect Proceedings~~CFY.**

A. Training

1. Attorneys appointed as GALs, CLRs or ~~counsel for children subject to dependency and neglect proceedings~~CFY shall possess the knowledge, expertise and training necessary to perform the court appointment.
2. In addition, GALs, CLRs and ~~counsel for children subject to dependency and neglect proceedings~~CFY shall obtain 10 ~~hours~~ credits of OCR-sponsored or approved continuing legal education courses. This requirement shall be met prior to the attorney's first appointment and on an annual basis while under contract with the OCR. At a minimum, two of the ten credits required on an annual basis must be OCR-sponsored or approved Diversity, Equity and Inclusion trainings. - The attorney shall provide proof of compliance with these training requirements in accordance with the OCR's policies and procedures~~his/her application to provide attorney services or contract renewal for the OCR.~~

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B. All attorneys appointed as GALs, ~~or~~ CLRs, or CFY shall be subject to all of the rules and standards of the legal profession.

1. The unique statutory responsibilities of a GAL and a CLR do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the "client" of a GAL or a CLR is the best interests of the child or youth. The ethical obligations of the GAL or CLR, under the Colorado Rules of Professional Conduct, flow from this unique definition of "client." Because of this unique relationship, an attorney's obligation not to reveal confidential information provided by the child or youth does not apply if the information must be revealed to ensure the child or youth's best interests. A GAL or CLR must explain to the child or youth their role and these limitations on confidentiality and should check periodically on the child/youth's understanding of the role and limitations.

A determination by the GAL or the CLR of a child or youth's best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child or youth's position regarding the disposition of the matter before the court. The GAL or CLR should explain their determination of the child or youth's best interests and the basis for that determination to the child or youth in a developmentally appropriate manner.

In determining best interests, GALs and CLRs should engage in an ongoing inquiry to avoid inserting personal desires, values, and beliefs into

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their assessment and to continually reflect on and work to mitigate their own biases. The GAL or CLR should endeavor to uncover what triggers their biases, employ investigative processes that use objective criteria to guide their advocacy recommendations and decision-making, and consider the legal rights and protections available to the child or youth. A GAL or a CLR must also explain to the child the limitations on confidentiality.

- 2. A CFY must strive throughout every phase of the proceeding to maintain a normal attorney-client relationship, engage in developmentally appropriate communication with the youth, and continue to advise the youth client of their rights, the subject matter of the litigation, the attorney's role, what to expect in the legal process, and options available to the youth. Developmentally appropriate communication means structuring all communications to account for the individual youth's age, level of education, cultural context, and degree of language acquisition to ensure the youth's ability to provide client-based directions regarding the objectives of the representation.

Commentary: A CFY has a duty to explain to the youth in a developmentally appropriate manner the information that will assist the youth in having maximum input in determination of the particular position at issue. A CFY should inform the youth of the relevant facts and applicable laws and the ramifications of taking various positions. A CFY may express an opinion concerning the likelihood of the court or other parties accepting particular positions and, may inform the youth of an expert's recommendations germane to the issue. As in any other attorney-client relationship, a CFY may express their assessment of the case, the best position for the youth to take, and the reasons underlying such recommendation. A CFY must remain aware of the power dynamics inherent in adult-child relationships, strive to understand what the youth knows and what factors are influencing the youth's decisions, and strive to ensure that the youth's expressed preferences reflect the youth's actual position. A CFY should attempt to determine from the youth's opinion and reasoning what factors have been most influential or have been confusing or glided over by the youth. The CFY's duty to engage in a robust initial and ongoing investigation set forth in Sections D.3 and D.4 of this directive supports the CFY in carrying out these responsibilities, as other professionals, family members, and significant persons in the child's life may educate a CFY about the child's needs, priorities, and previous experiences.

While the youth is entitled to determine the overall objectives to be pursued, the CFY, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. This CJD does not require the CFY to

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consult with the youth on matters which would not require consultation with an adult client.

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While Title 19 allows a court to appoint a GAL in addition to the CFY if the court finds that the appointment is necessary due to the youth's diminished capacity, it provides that age or developmental maturity cannot be the sole basis for a finding of diminished capacity. An attorney serving as CFY may only take the protective action of seeking appointment of GAL in a dependency or foster youth in transition proceeding when the Rules of Professional Conduct (1.14) allow the CFY to take protective action on behalf of a client with diminished capacity.

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An attorney transitioning from the role of GAL to CFY should discuss the attorney's new role with the youth and take actions necessary to protect the rights and interests of the youth and, if the youth is part of a sibling group represented by the attorney, other children and youth in that sibling group. Examples of such actions include notifying the court of the change in appointment, analyzing for conflicts of interest as outlined in Section V.B.4, and creating a separate client file when necessary to protect confidentiality.

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3. GALs and CLR's, and CFY must maintain reasonable caseloads that support full compliance with their ethical obligations and the practice standards set forth in this Directive. At no point should an attorney performing work under the Directive carry a caseload greater than a full-time caseload of 100 children.

4. GALs, CLR's, and CFY should guarantee loyalty and independence throughout their representation.

a. The possibility or actuality that an attorney who has transitioned from the role of GAL to CFY for a youth in a dependency and neglect proceeding will take positions as CFY contrary to previous positions the attorney took as GAL for the child or shared information about the child while representing the child as GAL does not create a conflict of interest under Colorado Rule of Professional Conduct 1.9.

b. GALs, CLR's, and CFY may be appointed to represent multiple siblings in a sibling group if the attorney does not assert that a conflict of interest exists. An attorney's assessment of conflicts must be case-specific, as joint representation of a sibling group alone does not create a conflict of interest.

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If, at the outset of the proceedings, a conflict of interest exists among children in a sibling group the attorney shall decline the appointment for one or more siblings and request the appointment of a separate attorney to represent those siblings. The attorney shall continue to assess for conflicts of interest throughout the representation and, if a conflict of interest develops during the representation, take action to ensure siblings' interests are not prejudiced.

An attorney transitioning from the role of GAL to CFY for a youth in a sibling group in a dependency proceeding should assess whether the attorney's professional responsibilities to the youth client conflict with the attorney's professional responsibilities to the best interests of the other sibling(s) in the sibling group, using the framework set forth by Colorado Rules of Professional Conduct 1.7 and 1.9.

In implementing the informed consent provisions of Colorado Rules of Professional Conduct 1.7 and 1.9, a CFY may rely on the informed consent, confirmed in writing, of a youth age 12 or older. The GAL may rely on their determination that the representation does not adversely impact the best interests of the child and must document this determination in writing.— All other requirements of Rules 1.7 and 1.9 must be met in order for the attorney to continue to represent one or any members of the sibling group.

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Commentary: In dependency and neglect proceedings and other proceedings involving multiple children, one attorney is often appointed to represent the interests of multiple children in a sibling group. The value of preserving connections for children in foster care, together with the importance of the sibling relationship, support the appointment of a single attorney to represent siblings to the greatest extent possible. C.R.S. 19-3-203(2) makes clear that the court in a dependency and neglect proceeding may appoint the same attorney to represent the best interests of siblings under 12 as GAL and youth over 12 as CFY as long as the attorney does not assert a conflict of interest as defined under the applicable Rules of Professional Conduct.

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At the same time that attorneys must abide by their professional duty of loyalty to their client, attorneys for children and youth should also seek to preserve continuity of legal representation and avoid unnecessary case transfers whenever possible. An early and thorough assessment for conflicts of interest helps the attorney prevent the need to conflict off at a time that continuity of representation would be negatively impacted by the

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attorney's withdrawal from representation of one or all children in the sibling group. Attorneys appointed as GAL, CLR and CFY should continue to assess for conflicts throughout the representation but need not withdraw if there is a mere possibility that a conflict of interest will develop.

The Colorado Rules of Professional Conduct provide the framework and requirements for GALs, CLRs, and CFY in assessing and addressing conflicts of interest. Colorado Rule of Professional Conduct 1.7 defines the considerations for determining whether a concurrent conflict of interest exists, and attorneys should assess for direct adversity or a significant risk of material limitation on the attorney's representation according to that rule. In analyzing conflicts of interest under Colorado's Rules of Professional Conduct, the attorney may consider that the following circumstances alone will not create a conflict of interest among siblings:

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- the siblings are of different ages;
- the siblings have different parents;
- there is a purely theoretical or abstract conflict of interest among the siblings;
- the attorney previously represented one or more of the siblings in another proceeding;
- some of the siblings are more likely to be adopted than others;
- the siblings have different permanency plans;
- the siblings express conflicting desires or objectives, but the issues involved are not material to the case; or,
- the siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

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In assessing whether the Colorado Rules of Professional Conduct requires an attorney to withdraw from representing one or all children/youth in a sibling group if a conflict of interest develops during the representation, the attorney should consider whether the attorney has exchanged confidential information relevant to the conflicting issue with any sibling whose interests conflict with those of the sibling or siblings the attorney continues to represent and whether continued representation of one or more siblings would otherwise prejudice the other sibling or siblings formerly represented by the attorney.

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B. —

C. — The attorney appointed as a GAL or a CLR shall diligently take steps that ~~s/he/they~~

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deems necessary to represent and protect the best interests of the child or youth, under the terms and conditions of the order of appointment, including any specific duties set forth in the appointment order or in any subsequent order. The attorney appointed as CFY shall provide competent and diligent representation to the youth client within the scope of the order of appointment and in accordance with the attorney’s professional responsibilities under the Colorado Rules of Professional Conduct.

~~D.~~ If the appointee finds it necessary and in the ~~best~~-interests of the child or youth, the appointee may request that the court expand the terms of the appointment and scope of the duties. ~~The attorney appointed as counsel for a child subject to a dependency and neglect proceeding shall provide representation to the child client within the scope of the order of appointment and in accordance with the attorney’s professional responsibilities under the Colorado Rules of Professional Conduct. CFY and GALs may provide representation on related matters consistent with their ethical duties and obligations and may be compensated by OCR for this work, subject to available federal funding and OCR policies and approval.~~

E.D. Subject to the requirements of Section 5.B. above, a GAL or CFY for a child or youth in a dependency and neglect case shall at a minimum perform the following specific tasks:

1. Provide effective legal advocacy throughout the proceeding.

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a. Attend all court hearings.

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i. As GAL, ~~and~~ advocate for the child’s best interests. Present independent information relevant to the child’s best interests at each hearing through oral or written recommendations, motions, examination of witnesses and other acceptable means consistent with the court’s appointment orders and the GAL’s statutory authority and ethical obligations. State the child’s position, when ascertainable. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.

ii. As CFY, advocate for the youth’s expressed interests at each hearing, through oral or written motions, examination of witnesses, legal and factual arguments, monitoring and advocating for compliance with court orders.

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Commentary: The GAL and CFY have the right to and should actively participate and be included in all aspects of litigation including but not limited to discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals, except as

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~~limited by applicable law. In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court. When ascertaining the child's position regarding issues before the court, the GAL shall endeavor to maximize the child's involvement in the court proceedings, when consistent with the child's best interests, by discussing the court process, ascertaining whether the child wishes to appear in court and identifying and advocating for the elimination of barriers to the child's attendance at court. The GAL should conduct a post hearing follow up with the child regarding the outcome of the hearing and, if applicable, the child's experience at the hearing.~~

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- b. Provide developmentally appropriate notice to the child/youth of all court hearings and advance the child/youth's right to attend and meaningfully participate in court hearings by discussing the court process with the child/youth, explaining the child/youth's right to go to court and the benefits of attending court hearings, identifying barriers to court appearances/participation, advocating for the elimination of barriers to the child/youth's attendance at court, and conducting a post-hearing follow up with the child/youth regarding the outcome of the hearing and, if applicable, the child/youth's experience at the hearing.

- c. ~~At the court's direction and in compliance with Section 19-3-606(1), C.R.S., file written or oral report(s) with the court and all other parties. Exercise discovery necessary to provide effective representation and advocate against discovery requests that are unduly burdensome, unreasonable, outside the legal scope of discovery, or made for improper purposes.~~

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- d. Attend meetings and staffings concerning the child or youth as needed.

~~Commentary: Attending staffings and meetings may be performed by a qualified professional acting as a member of the attorney's legal team. The GAL/CFY should also promote developmentally appropriate and meaningful child/youth participation at meetings and staffings.~~

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- e. As necessary, coordinate the attorney's legal representation on the dependency and neglect case with the legal representation provided by other GALs on other pending cases involving the child/youth.

2. Engage in timely, regular, and meaningful communication with the child/youth.

- a. Conduct an in-person placement visit as soon as is reasonable but in no

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event later than 30 days following the appointment.

- i. As GAL, personally conduct an in-person meeting with the child and interview the child if appropriate to the child's developmental level, explain the role of GAL and the child's rights in a developmentally appropriate manner, observe the child with his or her caregiver in his or her placement and conduct an ~~in~~ ~~person~~ in-person assessment of the child's placement;
- ii. As CFY, personally conduct an in-person meeting with the youth, explain the role of CFY and the youth's rights, interview the youth, observe the youth with their caregiver in their placement, and conduct an in-person assessment of the youth's placement.

Commentary: The initial in-person visit requirement neither mandates nor is fulfilled by a GAL's or CFY's meeting with the care providers and observing the child/youth in a temporary intake placement, respite care, medical setting or juvenile detention holding facility, unless that is the only opportunity to observe the child.

An attorney whose appointment is changing from a GAL appointment to a CFY appointment does not need to do an in-placement initial visit within 30 days solely due to the change in role. However, the attorney should meet with the youth in person either within the 30 days prior to the change in appointment or no later than 30 days after the change in appointment to explain the attorney's new client-directed role and the attorney's duty of confidentiality, answer any questions the youth has about this change in role, and consult with the youth about the youth's objectives.

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- b. If the child's or youth's placement is changed, the GAL or CFY shall personally meet with the child or youth in person, observe the child or youth with their caregiver in their placement and assess the child's/youth's placement as soon as is reasonable but in no event later than 30 days following the change of placement;

Commentary: Because each disruption in the child's or youth's placement presents new risks of harm and is potentially detrimental to the child's or youth's emotional and psychological well-being, it is critical that their GAL or CFY meet with and observe the child/youth in each new placement to assess the appropriateness, risks and potential permanency of that placement.

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The change of placement visit requirement also applies to a change of physical address when the child's placement provider remains the

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same; however, the attorney may use a qualified professional acting as a member of the attorney's legal team to conduct the visit. Similarly, in rural areas where significant attorney shortages and geographic challenges present obstacles to compliance with this personal within 30-day change of placement visit, the attorney may seek pre-approval from the OCR to use a qualified professional assigned to the attorney's legal team to perform the initial change of placement visit. In both circumstances, the attorney must follow up with an in-placement visit within a reasonable time thereafter.

Courts, counsel for other parties and county departments play an instrumental role in ensuring compliance with this practice standard. Section 19-3-213(1)(a), C.R.S., requires the county department, to the extent possible, to notify the GAL and CFY prior to the change of placement of a child. Compliance and enforcement of this provision is essential to the attorney's ability to visit the child in a timely manner following a change of placement. In circumstances in which the attorney has not received timely notice of a change of placement despite diligent efforts to remain apprised of the status of the child, the attorney must conduct the change of placement visit within 30 days of the date of notice of the change in placement.

- c. Maintain contact and ongoing communication with the child/youth.
- i. As GAL, maintain contact and ongoing communication with the child in order to continue to assess the child's best interests, consider the child's position as required by Section V.B. and state the child's position to the court as required by Section V.D.1.
 - ii. As CFY, maintain contact and ongoing communication with the youth client in order to be able to continue to advise the youth client of their legal rights, educate them about the legal process, inform them of case developments and information the CFY has gathered through their independent investigation, provide legal counsel and advice regarding the youth's objectives, likelihood of success and alternative options, and continue to advocate for the youth's objectives throughout the proceeding.

Commentary: Attorneys for children and youth should maintain frequent contact and intentional communication, tailored to the child's individual circumstances and preferences. In determining the frequency of contact that is necessary to fulfill the requirements of this directive, attorneys should consider the following:

Consistent contact and trauma-informed, culturally responsive communication are necessary predicates to a sound relationship with the child/youth. Attorneys should remain flexible and open to communicating in a manner that reflects each child/youth's unique preferences. This may include face-to-face meetings, phone calls, video chats, or text messages. Attorneys should ask children and youth how and when they prefer to communicate. They should be prepared to modify the plan for contact to adapt to changing circumstances (level of privacy in the home, case activity, etc.). An attorney should not construe a child/youth's lack of communication as a reason to decrease or halt communication, nor should they assume that the child/youth is not interested in their case.

OCR's Engaging and Empowering Youth efforts have demonstrated the benefits of frequent attorney contact with youth. Surveyed youth who reported more frequent GAL contact were more likely to report that they trusted their GAL, believed their GAL knew what was best for them and wanted to attend court. OCR's youth engagement efforts have also demonstrated the importance of quality attorney contact with children/youth. Members of OCR's Lived Experts Action Panel (LEAP) have commented about the importance of listening to children/youth, caring about them, treating them as a person/with respect, speaking with them in a developmentally appropriate manner, periodically revisiting important topics such as youth rights and court participation, and preparing them before court and debriefing with them after court.

The National Association of Counsel for Children recommends contact at least prior to and after each court hearing and monthly contact which may consist of a phone call, video visit, in-person visit, or other meaningful correspondence. The NACC recommends that the decision to visit a youth at their school or elsewhere in the community should be made only after consultation with the youth about their comfort level, a discussion of the pros and cons of a visit in this setting, and consideration of confidentiality.

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- ~~4. Take actions within the scope of his or her statutory authority and follow the ethical obligations necessary to represent the best interests of the child. Commentary: The GAL has the right to and should actively participate and be included in all aspects of litigation including but not limited to discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals, except as limited by applicable law.~~

~~6.3.~~ Conduct an initial independent investigation in a timely manner. This investigation must take place within the first 45 days of the appointment unless sooner as required below and must include at a minimum:

~~a.~~ ~~Personally conducting an in-person meeting with the child and interviewing the child if appropriate to the child's developmental level, observing the child with his or her caregiver in his or her placement and conducting an in-person assessment of the child's placement as soon as is reasonable but in no event later than 30 days following the GAL's appointment;~~

~~*Commentary: This requirement neither mandates nor is fulfilled by a GAL's meeting with the care providers and observing the child in a temporary intake placement, respite care, medical setting or juvenile detention holding facility, unless that is the only opportunity to observe the child.*~~

~~b.a.~~ Personally meeting with placement providers. When possible, meeting with proposed placement providers and observing the child/youth's interaction with proposed placement providers, either personally or through the use of qualified staff;

~~b.~~ Personally interviewing the respondent parents, with the consent of counsel. Making diligent efforts to observe, either personally or through the use of qualified staff, the child/youth's interaction with respondent parents;

~~*Commentary: While this CJD does not require an in-person meeting with the parent as part of the attorney's initial investigative responsibilities, the attorney should strive to interview parents in a setting that promotes meaningful and open communication about the attorney's role and the child's and family's strengths and needs. The attorney should make efforts to conduct these interviews outside of the courthouse whenever possible and should take care to convey to parents that the attorney values the information they have to share about their child(ren) and their families. Participating in staffings and meetings that parents attend does not fulfill the requirement to interview parents. When an attorney is unable to make contact with the parent despite diligent efforts or to obtain the consent of counsel to interview a parent, the attorney should document the efforts made to contact the parent and/or obtain consent.*~~

~~e.~~

~~c.~~ Reviewing court files and relevant records, reports and documents;

- e.d. Obtaining first-hand information from other persons or professionals necessary to assess ~~and serve~~ the child's best interests (for the GAL) and to advise and counsel the youth (for the CFY). Such persons or professionals shall include caseworkers, CASA volunteers, relatives, school personnel, therapists, treatment providers and any other persons or professionals necessary to assess and serve the child's best interests (for the GAL) and the options available to the youth (for the CFY).
- f.e. Confirm that the county department's investigation has included a diligent search for any prospective kinship placement and/or adoption or potential tribal affiliation, or independently conduct such investigation, in the event these attempts to reunify fail.
- g.f. When appropriate, visiting the home from which the child was removed.

Additional Commentary: The ~~GAL's attorney's~~ initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to ~~servicing~~ assessing and advocating for the child/youth's ~~best~~ interests.

For the GAL, this initial investigation supports the GAL in determining the child's best interests -and advancing permanency for the child. An effective initial investigation allows the GAL to make recommendations early on in a case which will: implement services that will advance the goals of the case and the best interests of the child with the least delay possible; reduce the risk of harm that involvement in the dependency and neglect system may present to the well-being of the child; reduce the risk of disruption in the child's placement and potential harm to the child from such disruption; and preserve relationships significant to the child, such as sibling relationships.

Similarly, the CFY's initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to providing competent legal advice and counsel to the youth to support the youth in taking well-informed positions at the outset and throughout the proceeding. An effective initial investigation allows the CFY to make early assessments of the case which will support the CFY in advising the youth client about their right to safety, help the youth client formulate safety plans, discuss permanency goals and family connections, inform the client about options and possible outcomes, offer the attorney's best judgment as to how the judge is likely to rule on certain matters and the attorney's opinion, if any, of the best course of action, and elicit the client's preferred option and alternative preferences if the court does not accept the client's first choice.

Regardless of role, in conducting this initial investigation, the attorney should explore the child's/youth's cultural and other identities, religious practices,

family traditions, holidays, and extracurricular interests and activities. The attorney should continually strive to practice cultural humility, reflect on and work to mitigate the attorney's own biases, and restrain from inserting personal desires, values, and beliefs into their assessment, advice and advocacy.

The duties described in Sections V.D.4.b through V.D.4.fg not personally assigned to the GAL/attorney may be performed by a qualified professional acting as an agent of the appointed GAL under the GAL's supervision assigned to the attorney's legal team.

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9.4. Continue to perform an ongoing investigation as necessary to represent the ~~best~~ interests of the child/youth for the duration of the ~~case unless relieved of such duty by the court~~ appointment. The GAL/CFY's ongoing investigation shall include, but shall not be limited to:

~~a. If the child's placement is changed, the GAL shall personally meet with the child in person, observe the child with his or her caregiver in his or her placement and assess the child's placement as soon as is reasonable but in no event later than 30 days following the change of placement;~~

~~Commentary: Continuing contact and ongoing investigation constitute important components of the GAL's role. Additionally, because each disruption in the child's placement presents new risks of harm and is potentially detrimental to the child's emotional and psychological well being, it is critical that the GAL meet with and observe the child in each new placement to assess the appropriateness, risks and potential permanency of that placement, as part of the GAL's ongoing investigation.~~

~~The change of placement visit requirement also applies to a change of physical address when the child's placement provider remains the same; however, the GAL may use another qualified professional acting as an agent of the GAL and under the supervision of the GAL to conduct the visit. Similarly, in rural areas where significant attorney shortages and geographic challenges present obstacles to compliance with this personal within 30 day change of placement visit, the GAL may seek pre-approval from the OCR to use a qualified professional acting as an agent of the GAL to perform the initial change of placement visit. In both circumstances, the GAL must follow up with an in placement visit within a reasonable time thereafter.~~

~~Courts, counsel for other parties and county departments play an~~

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~~instrumental role in ensuring compliance with this practice standard. For example, Section 19-3-213(1)(a), C.R.S., requires the county department, to the extent possible, to notify the GAL prior to the change of placement of a child. Compliance and enforcement of this provision is essential to the GAL's ability to visit the child in a timely manner following a change of placement. In circumstances in which the GAL has not received timely notice of a change of placement despite diligent efforts to remain apprised of the status of the child, the GAL must conduct the change of placement visit within 30 days of the date of notice of the change in placement.~~

~~b. Maintaining contact and ongoing communication with the child in order to continue to assess the child's best interests, consider the child's position as required by Section V.B. and state the child's position to the court as required by Section V.D.1;~~

~~a. Maintaining contact and communication with placement providers, the caseworker, the CASA, and any other parties, and any other persons or professionals necessary to ensure ongoing and timely assessment and representation of the child/youth's best interests;~~

~~b. Other applicable duties listed above in Section V.D.3.~~

~~Commentary: Ongoing and thorough investigation is essential to both the GAL's role of representing the best interests of the child/youth and the CFY's role of representing the position of the youth and providing legal advice and consultation. As the ongoing investigative activities outlined in this section are not personally assigned to the GAL/CFY, the GAL/CFY may use a qualified professional assigned as a member of the attorney's legal team to perform these ongoing investigative responsibilities.~~

~~e.~~

~~5. Ensure the best interests of the cMinor Child(ren)/youth are represented on appeal by either personally filing a pleading or formally joining another party's pleading in a manner that represents the cMinor Child(ren)/youth's best interests.~~

~~10.~~

~~Commentary: As allowed by Colorado Appellate Rules, a GAL or CFY of record at the trial level may arrange for appellate representation by another OCR-qualified attorney. While GALs should participate in all dependency and neglect appeals, a CFY's determination of whether to participate in an appeal and what position to take will be determined by the youth client. A CFY should~~

advise the youth of their right to appeal and take necessary actions to preserve and perfect the youth's appellate rights. If the youth directs the attorney not to file an appeal or not take a position in response to another party's appeal, the CFY should advise the youth about the importance of participation in the appellate process. If the youth continues to direct CFY not to pursue an appeal or not to participate in an appeal after that consultation, CFY shall document the youth's decision not to file and the consultation that occurred.

F.E. An attorney appointed as a GAL for a juvenileyouth in a delinquency proceeding or a minor defendant in a direct file proceeding shall represent the juvenileyouth's best interests throughout the appointment in a manner that promotes and protects the juvenileyouth's rights. Subject to the requirements of Section V.B. above, the GAL shall at a minimum perform the following specific tasks:

1. Upon appointment, personally conduct a timely in-person meeting with the juvenileyouth in a setting that promotes meaningful communication. Ensure the juvenileyouth understands the unique role of the GAL, the distinction between the GAL's role and the role of defense counsel and the limitations on the GAL's duty of confidentiality set forth in section V.B. Interview the juvenileyouth to obtain information relevant to the juvenileyouth's best interests.

Commentary: The interview of the juvenileyouth serves as a critical component of the GAL's investigation and advocacy and should take place in a location that promotes open communication between the juvenileyouth and GAL. Often, the initial meeting between the GAL and juvenileyouth occurs at a court appearance; a follow up interview in a more calm and neutral environment will be necessary to elicit all information relevant to the juvenileyouth's best interests. This initial interview should occur as soon as possible, given the tight time frames for hearings in delinquency and direct file proceedings, and prior to important case events. A timely in-person meeting with a juvenileyouth in detention is particularly important, and the GAL shall make diligent efforts to meet with the child at the detention facility as soon as possible but no later than seven days after the GAL's appointment or, for existing appointments, the date the detention commenced.

The GAL's interview of the juvenileyouth differs in important ways from the interview by defense counsel. The GAL's responsibilities do not include litigating the facts related to the charges or providing legal advice to the juvenileyouth, and the GAL's interview and ongoing contact with the juvenileyouth should not involve communication that is the responsibility of defense counsel, such as discussion about the facts of the case, advice

about case objectives or information about legal strategy. The GAL's initial interview and ongoing communication with the juvenileyouth should elicit information relevant to the juvenileyouth's best interests, including information on topics enumerated in section IV.E.3 below.

When the GAL has already established a meaningful relationship with the juvenileyouth in an existing appointment, the in-person aspect of this communication requirement is waived. The GAL shall exercise professional judgment in determining the necessity of an in-person meeting to achieve the purpose of this interview.

2. Attend all court hearings and advocate for the juvenileyouth's best interests in a manner consistent with the juvenileyouth's due process and statutory rights. Present independent information relevant to the juvenileyouth's best interests through oral or written recommendations, motions or other acceptable means consistent with the court's appointment orders and the GAL's statutory authority and ethical obligations in a manner that does not jeopardize the legal interests or due process rights of the juvenileyouth.

Commentary: In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court. Additionally, the GAL may in exceptional circumstances determine that the GAL's presence throughout some hearings or trials may not be necessary to represent the best interests of the juvenileyouth. In such circumstances, the GAL should seek advance approval of the court to not attend the hearing.

3. Conduct an independent investigation in a timely manner which shall include at a minimum out-of-court contact with the juvenileyouth as set forth in Section IV.E.1; interviews with parents, kin and current and potential placement providers if applicable; interviews with other professionals or individuals necessary to assess and advocate for the juvenileyouth's best interests, such as school personnel, pretrial service staff, probation officers and treatment providers. This investigation shall assess at a minimum:

- a. ~~3.~~ The youth's functioning, needs and circumstances as they relate to the juvenileyouth's courtroom experience and any potential orders or outcomes of the proceeding;

Commentary: Each juvenileyouth has unique needs, life experiences and circumstances that inform which, if any, services and court orders serve the best interests of the juvenileyouth and community, constitute reasonable efforts to prevent or eliminate the

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need for out-of-home placement and assist the juvenileyouth in becoming a productive member of society. The juvenileyouth's unique needs and circumstances will impact the juvenileyouth's ability to comply with certain terms and conditions of court orders as well as the potential benefit and harm of any services and interventions. These unique needs and circumstances may include but may not be limited to: education, health, mental health, developmental disabilities, trauma history, family issues, immigration needs and prior court involvement or other pending cases. The GAL's investigation of these needs will inform the GAL's initial and ongoing advocacy for the juvenileyouth's best interests throughout the appointment.

b. Appointment and availability of defense counsel consistent with the juvenileyouth's constitutional and statutory rights;

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c. Whether the current or proposed placement of the juvenileyouth serves the juvenileyouth's best interests and is consistent with the juvenileyouth's due process rights and applicable statutory considerations; whether reasonable efforts have been provided to prevent out-of-home placement and whether less restrictive placement options exist;

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Commentary: If the juvenileyouth is in an out-of-home placement, the GAL's assessment of the placement shall include an examination of the conditions of the juvenileyouth's confinement or placement and the impact of those conditions on the unique needs of the juvenileyouth.

d. Whether the services and treatment provided through the case address the unique issues faced by the juvenileyouth and support the juvenileyouth in becoming a productive member of society; whether more appropriate and effective service and treatment options exist;

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e. Whether there is reason to believe that a juvenileyouth is incompetent to proceed;

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f. The juvenileyouth's understanding of the proceeding and the immediate and long-term consequences of decisions he or she makes throughout the proceeding, including but not limited to any waivers or plea agreements;

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g. Whether the immediate and long-term consequences of any

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proposed orders and resolution of the charges are consistent with the juvenileyouth's best interests;

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h. The need to seek court orders addressing family issues and parental accountability, including orders requiring the investigation or filing of a dependency and neglect proceeding;

i. The existence of other pending cases involving the juvenileyouth, the status of those cases, and the potential impact of the resolution of those cases on each other. As appropriate, the GAL should coordinate their representation on the delinquency case with the representation of any GALs or CFY on related cases.

Commentary: Due to the tight time frames of hearings in delinquency proceedings and the restrictions often placed on a juvenileyouth's liberty, this focused investigation must occur as soon as possible. While the unique circumstances of the case and the juvenileyouth will often require the initial investigation to take place sooner than the 45-day time frame required for dependency and neglect appointments, in no circumstances should it take longer than 45 days for the GAL to complete the initial investigation.

The investigative activities required by this Section V.E.3 that are not personally assigned to the GAL may be performed ~~by a qualified professional acting as an agent of the appointed GAL under the GAL's supervision~~ by a qualified professional acting as a member of the attorney's legal team. When the GAL has already obtained the relevant information outlined in this Section V.E.3 through an existing appointment, the GAL's investigation may be tailored to ensuring that the information remains current.

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4. Continue to perform an ongoing investigation as necessary to represent the best interests of the juvenileyouth for the duration of the appointment. The GAL's ongoing investigation shall include, but shall not be limited to:

a. Maintaining contact and ongoing communication with the juvenileyouth.

Commentary: The GAL's contact with the juvenileyouth should not be limited to contact at court appearances. Ongoing communication and contact between court appearances promotes up-to-date assessment of the juvenileyouth's best interests. It allows the GAL to ensure the juvenileyouth understands the proceedings and to promptly address any questions, confusion or competency issues. It also maximizes the GAL's ability to address factors impacting the juvenileyouth's best

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interests in a timely manner and serves to strengthen the ~~juvenile~~youth's confidence in the role of the GAL as an advocate for his or her best interests.

- b. Other applicable duties listed above in Section V.E.3.

authorized

F. Subject to the requirements of Section 5.B. above, an attorney appointed or assigned as CFY to represent a youth participating in Colorado's Foster Youth in Transition Program shall:

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1. Advocate for the youth's rights to developmentally appropriate, voluntary, and youth-driven services and supports.

a. Attend all court hearings and provide competent legal representation at each hearing throughout the proceeding through oral or written motions, examination of witnesses, legal arguments, monitoring compliance with court orders and seeking compliance orders and actions.

Commentary: In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court.

b. Provide developmentally appropriate notice to the youth of all court hearings and advance the youth's right to attend and meaningfully participate in court hearings by discussing the court process with the youth, explaining the youth's right to go to court and the benefits of attending court hearings, identifying barriers to court appearances/participation, advocating for the elimination of barriers to the youth's attendance at court, and conducting a post-hearing follow up with the youth regarding the outcome of the hearing and, if applicable, the youth's experience at the hearing.

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c. Exercise discovery necessary to provide effective representation and advocate against detrimental or inappropriate discovery requests.

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d. Attend meetings and staffings concerning the youth as needed.

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e. As appropriate, coordinate their representation on the foster youth in transition case with the representation of any other attorneys on related cases concerning the youth.

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f. Engage in both informal and formal advocacy at both the county and state level to ensure the youth has full access to all services and

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supports provided by Colorado's Foster Youth in Transition Program.

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2. Engage in timely, regular, and meaningful communication with the youth.

a. Personally conduct an in-person meeting with the youth, explain the role of CFY and the youth's rights, and interview the youth as soon as is reasonable but in no event later than 30 days following the CFY's appointment or assignment. This initial meeting must be in a location that promotes meaningful and confidential communication but need not be at the youth's placement if the youth requests to have a meeting elsewhere.

b. Maintain contact and ongoing communication with the youth client in order to be able to continue to advise the youth client of their legal rights, educate them about the legal process, inform them of case developments and information the CFY has gathered through their independent investigation, and provide legal counsel and advice regarding the youth's objectives, likelihood of success, and alternative options.

Commentary: The commentary applicable to the maintaining contact requirement for GALs and CFY in dependency and neglect proceedings set forth in Section V.D.2.c also applies to the maintaining contact requirements for CFY representing youth in Colorado's Foster Youth in Transition Program.

3. Conduct a timely initial investigation during the first 45 days of appointment or assignment by reviewing relevant records, communicating with the youth as required by Section V.F.2, and contacting the professionals, providers, and resources necessary to assess the youth's service and support needs, advise the youth about their legal rights to all available services and supports under the program, and provide effective legal advocacy. Given the voluntary and youth-driven nature of this program, this investigation should be done with youth's consent and input. This investigation should include an assessment at a minimum of the youth's rights to the following:

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i. Medicaid and other public benefits enrollment assistance;

ii. Safe, affordable, and stable housing;

iii. Employment or financial support;

iv. Access to health and education records, driver's license, other government-issued identification card;

- v. Support in pursuing their educational goals and applying for financial assistance;
 - vi. Criminal record expungement;
 - vii. Support in applying for Special Immigrant Juvenile Status or other applicable immigration relief;
 - viii. Support in accessing information about relatives, siblings, kin, and other individuals important to the youth and maintaining and building relationships with those relatives and individuals.
4. Continue to perform an ongoing investigation as necessary to represent, advise and counsel the ~~the~~ youth. The CFY should consult with the youth client about the scope of this investigation and obtain necessary authority for the release of information.
5. Ensure the youth's interests are represented in any appellate matters by advising youth of their rights to appeal, taking necessary actions to preserve and perfect the youth's appellate rights, and providing competent representation during any appellate proceedings or arranging for substitute appellate counsel from OCR's approved list of appellate attorneys.

H.G. An attorney appointed as GAL, ~~CLR~~ or counsel for ~~youth~~child in all other proceedings governed by this Directive shall perform all duties as directed by the court, as set forth by statute and as required by the Rules of Professional Conduct as described in Section V.B. These duties may include all or some of the duties described below:

1. Attend all court hearings relevant to the child and advocate for the child's best interests and legal rights as applicable. Present information relevant to the child's interests through oral or written recommendations, motions or other acceptable means consistent with the court's appointment orders and the attorney's statutory authority and ethical obligations.
2. Conduct an independent investigation in a timely manner that includes:
 - a. Personally meeting with and observing the child;
 - b. Meeting with current and proposed placements, guardians or custodians, when appropriate;
 - c. Reviewing court files and relevant records, reports and documents.

Commentary: *The investigative activities required by Sections V.F.2.b and*

V.F.2.c may be performed by a qualified professional acting as an agent of the appointed GAL under the GAL's supervision.

~~J.H.~~ In cases in which the parents, child or proposed custodians are living or placed more than 100 miles outside of the jurisdiction of the court, as defined by the geographic boundaries of the judicial district, the requirements to conduct in-person observations and meetings are waived. However, the GAL and CFY continues to have an obligation to personally interview the child or youth as developmentally appropriate, interview caregivers, parents and proposed caregivers, observe the child's or youth's interactions with such individuals and assess the ~~appropriateness of the child's~~ placements or potential placements. This obligation may be accomplished through electronic or other means of communication. To the extent possible, the appointee shall endeavor to see the child or youth in his or her/their placement. The OCR will pay reasonable costs associated with meeting these obligations submitted in compliance with OCR billing policies and procedures.

~~J.I.~~ All attorneys with appointments governed by this CJD shall participate in OCR's processes for verifying compliance with this CJD.

VI. Duties of Judges and Magistrates

- A. Judges and magistrates shall ensure that GALs, and CLR, and CFYs involved with cases under their jurisdiction are representing the ~~best~~-interests of children ~~minors and~~ youth.
- B. In providing this oversight, judges and magistrates shall:
 1. Routinely monitor compliance with this directive and promptly notify the OCR of failures of GALs, CLRs and ~~counsel for children~~ CFY subject to dependency and neglect proceedings to comply with this Chief Justice Directive and other Chief Justice Directives in existence or subsequently adopted;

Commentary: The complaint and notice procedure is set forth in Section VII.B, footnote 1. A child whose best interests are being represented by counsel in dependency and neglect and other proceedings is in a particularly vulnerable position. It is unlikely the child will routinely appear in court and it may be difficult for a child to express concerns or problems with the attorney appointed to represent his or her best interests. For these reasons, judges should take an active role in monitoring attorneys who represent the best interests of children. Often the judge is the only individual in the position to become aware of less than adequate representation or non-compliance with this Chief Justice Directive. Judges should consider practices such as inquiring at each court date the attorney's last contact with the child, as well as asking other questions to ensure quality representation of the child's best interests. Similarly, ~~children~~ youth represented by counsel in dependency and neglect proceedings may lack

the resources ~~and knowledge~~ to raise concerns about counsel's representation, and the court should promptly notify the OCR of any inadequacies it has observed with regard to an attorney's performance as CFY counsel for a child in a dependency and neglect proceeding.

2. Provide guidance and clarify the expectations of the court concerning GALs, CLR's and counsel for children subject to dependency and neglect proceedings upon their appointment, throughout the proceedings and through other appropriate mechanisms;
 3. Hold periodic meetings with all practicing GALs ~~and~~ CLR's ~~and~~ CFY the court deems necessary to ensure adequate representation of the best interests of children or minor wards; and
 4. As explained in Section V.B, hold GALs ~~and~~ CLR's ~~and~~ CFY to the same standards and expectations imposed by the Colorado Rules of Professional Conduct on every attorney who is licensed to practice law in Colorado and report any violations. Any report should also include notice to the OCR of such report or concern so that the OCR may use this information to protect children on present or future appointments from inadequate representation.
- C. Implement procedures and practices that enable GALs, CLR's and counsel for children to comply with this Chief Justice Directive.
Commentary: Examples of such procedures and practices include entering orders authorizing GALs, ~~and~~ CLR's ~~and~~ CFY to access to all relevant case information, checking their availability when scheduling hearings, promptly notifying them of scheduled court dates and requiring timely service of pleadings and reports.

VII. Procedures for Complaints against GALs, CLR's, and ~~Counsel for Children Subject to Dependency and Neglect Proceedings~~ CFY through Contracts with the Office of the Child's Representative.

- A. For all court-appointed GALs, CLR's, and ~~attorneys appointed as counsel for children subject to dependency and neglect proceedings~~ CFY, complaints concerning alleged violations of the Colorado Rules of Professional Conduct shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel and reported, if possible, to the OCR so that the OCR may be able to consider this information when deciding whether to continue to contract with the attorney, either at the time of the complaint or in the future.
- B. All complaints regarding the performance of any state-paid GAL, CLR's or ~~counsel for a child~~ CFY subject to a dependency and neglect proceeding who contracts with the OCR shall be submitted to the OCR in writing, unless the complaint is made

by a judicial officer or court staff.¹ The OCR shall investigate the matter and take action necessary to resolve any concerns or issues ~~raised by the complaint~~ identified by the OCR. Such action may include but is not limited to: placing the attorney on probationary status with regard to his or her contract with the OCR; suspending or terminating the attorney's contract with the OCR; seeking a court order terminating the attorney's appointment on an active case;² and/or taking remedial action to improve the quality of the attorney's work. At the conclusion of the investigation, the OCR shall issue a written report of its action to the attorney, the complainant and other parties determined by the OCR to be in need of the complaint information. The OCR may redact the written report to protect the confidentiality of persons when the OCR deems such redaction advisable. This paragraph does not preclude the OCR's authority to terminate a contract at will.

- C. The OCR is required to report any violations of the Colorado Rules of Professional Conduct that it becomes aware of during its investigation of a complaint to the Colorado Supreme Court Office of Attorney Regulation Counsel.

VIII. Sanctions

- A. All contracts with the OCR for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Chief Justice Directive may result in OCR terminating the contract, removing the attorney from the OCR appointment list, and seeking court orders terminating the attorney's appointments.
- B. Judges and magistrates shall notify appointees that acceptance of the appointment requires compliance with this Chief Justice Directive, and that failure to comply will result in timely notification to the OCR and may result in the OCR terminating the contract, removing the attorney from the OCR appointment list, and termination of appointments as set forth section VIII.A.

¹ If an issue arises concerning an attorney's ability to competently or adequately represent a child's best interest in any particular case, the court shall immediately contact the OCR. The OCR must respond forthwith, giving immediate consideration and resolution regarding the complaint, which may include termination of contract, removal from the case at issue and/or removal from the OCR approved list. In addressing the complaint, the OCR will give serious consideration to the judicial officer's recommendations as to how the termination of an appointment or any other action taken by the OCR may impact the best interests of the child in the course of a particular case. This complaint process in no way interferes with the court's inherent powers to impose sanctions, exercise its powers of contempt and/or report any violations of the Rules of Professional Conduct to the Supreme Court Attorney Regulation Office.

² The OCR fully understands and appreciates the serious consequences that may result from removing an attorney from an existing case. It can disrupt the continuity of the case, interrupt and delay the court process, extend the length of the case and ultimately may not be in the best interests of the child. As such, only under the most exceptional circumstances after serious consideration and consultation with the court will the OCR seek court removal of an attorney from a case.

CHIEF JUSTICE DIRECTIVE 04-06

Revised May 2019

Amended Effective October 1, 2021

OCR DRAFT FOR STAKEHOLDER FEEDBACK AUGUST 2022

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This Chief Justice Directive is amended effective *nunc pro tunc* to October 1, 2021.

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Done at Denver, Colorado this 23rd day of November, 2021.

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/s/

Brian D. Boatright, Chief Justice

I. PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN AD LITEM REPRESENTATION ON THE BASIS OF INDIGENCY

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF 208 (“Application for Court-Appointed Counsel or Guardian ad Litem”) signed under oath, before such an appointment may be considered by the court. Form JDF 208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and where the court appoints a GAL for a judicial bypass proceeding pursuant to §12-37.5-107(2)(b).

Procedures for the Determination of Indigency

The following procedures are used for applicants in cases addressed in CJD 04-06.

- **Completion of Form JDF 208 by Applicant**
Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF 208, and submit it to the court.
- **Review of Financial Information by Court Personnel**
Court personnel shall review the applicant’s information on form JDF 208 to determine whether or not the applicant is indigent on the basis of three factors:
 - Income³
 - Liquid assets⁴
 - Expenses⁵

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian ad litem on the basis of indigency if his or her financial circumstances meet either set of criteria described below.

- 1) **Income is at or below guidelines / Liquid assets equal \$0 to \$1,500**
 - If the applicant’s income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500 or less, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation at state expense.

³ *Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers’ Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant’s income in a fashion which would allow the applicant proprietary rights to the roommate’s income.*

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran’ benefits earned from a disability, child support payments or other assistance programs.

⁴ *Liquid assets include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant’s ability to maintain home and employment.*

⁵ *Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF 208.*

2) Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income

- If the applicant's income is up to 25% above the income eligibility guidelines; the applicant has assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation.

In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.

INCOME ELIGIBILITY GUIDELINES (amended February 1, 2022)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 13,590	\$ 1,133	\$ 1,416	\$ 1,770	\$ 16,988	\$ 21,234
2	\$ 18,310	\$ 1,526	\$ 1,907	\$ 2,384	\$ 22,888	\$ 28,609
3	\$ 23,030	\$ 1,919	\$ 2,399	\$ 2,999	\$ 28,788	\$ 35,984
4	\$ 27,750	\$ 2,313	\$ 2,891	\$ 3,613	\$ 34,688	\$ 43,359
5	\$ 32,470	\$ 2,706	\$ 3,382	\$ 4,228	\$ 40,588	\$ 50,734
6	\$ 37,190	\$ 3,099	\$ 3,874	\$ 4,842	\$ 46,488	\$ 58,109
7	\$ 41,910	\$ 3,493	\$ 4,366	\$ 5,457	\$ 52,388	\$ 65,484
8	\$ 46,630	\$ 3,886	\$ 4,857	\$ 6,072	\$ 58,288	\$ 72,859

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 per month to "monthly income" or \$5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

COURT APPOINTMENTS THROUGH THE OFFICE OF THE CHILD'S REPRESENTATIVE

The following policy is adopted to assist the administration of justice through the appointment and training of Guardians ad Litem (GALs) and Child's Legal Representatives (CLRs) appointed on behalf of minors/children, as well as attorneys appointed as Counsel for Youth (CFY) subject to dependency and neglect proceedings and participating in Colorado's Foster Youth in Transition Program and proceedings. As used in this CJD, the term "child," "children" and "youth," are used interchangeably to refer to individuals represented by attorneys contracting with or employed by the OCR. Child and Family Investigators, adult GAL appointments, and any other juvenile attorney client appointments fall under the provisions of Chief Justice Directive 04-05.

The Office of the Child's Representative (OCR)'s enabling legislation states that the legal representation of children "is a critical element of giving children a voice in the Colorado Court system" and that "the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources." The Office of the Child's Representative's mission is to give children and youth a voice in Colorado legal proceedings through high-quality legal representation that protects and promotes their safety, interests, and rights. This Chief Justice Directive supports the administration of justice for children and youth represented by OCR attorneys.

I. Authorities

- A. Article 91 of Title 13 established the OCR and the various statutory requirements of the OCR.
- B. The OCR shall be responsible for the following:
 1. Provision of GAL services for children and youth in dependency and neglect proceedings under Title 19.
 2. Provision of GAL services for a respondent parent in dependency and neglect proceedings under Title 19 when that parent is a minor.
 3. Provision of CFY services for youth 12 and older in dependency and neglect proceedings, as well as counsel appointed to children under 12 in such proceedings at the discretion of the court.

4. Provision of GAL services in delinquency matters under Title 19.
 5. Provision of GAL services in adoption and relinquishment proceedings under Title 19 when one or more parties qualify as indigent. Provision of CFY services for youth 12 and older in adoption and relinquishment proceedings when the CFY is also appointed to represent the youth in a dependency and neglect proceeding.
 6. Provision of GAL services for a child or youth charged or prosecuted as an adult pursuant to Section 19-2.5-801, C.R.S. or Section 19-2.5-802, C.R.S.
 7. Provision of GAL services in paternity and support matters brought under Title 19 when one or more parties qualify as indigent.
 8. Provision of GAL services to minors in alcohol or drug abuse proceedings under Title 27.
 9. Provision of GAL services to minors in mental health proceedings under Title 27.
 10. Provision of GAL services to minors in probate proceedings under Title 15 when the parties are indigent.
 11. Provision of GAL services to minors involved in truancy proceedings under Titles 19 and 22.
 12. Provision of CLR services in domestic relations cases under Title 14 when one or more parties qualify as indigent.
 13. Provision of Counsel for Youth and GAL services in Colorado's Foster Youth in Transition Program and proceedings under Title 19.
 14. Provision of GAL services for a minor seeking judicial approval for a marriage license under Title 14.
 15. Provision of attorney services for children and youth on matters related to other OCR appointments and determined by OCR to be acceptable use of OCR's reimbursed Title IV-E administrative costs pursuant to § 26-2-102.5.
 16. Provision of services in any other GAL or CLR appointments where authorized, by statute or inherent authority, to act in or in representation of the best interests of a minor.
- C. State funds are appropriated to the OCR to provide legal representation in all

statutorily authorized appointments, costs associated therewith and the various responsibilities that fall under the purview of the office pursuant to Section 13-91-101 *et seq.*, C.R.S.

II. OCR Authority and Responsibilities

- A. The OCR's enabling legislation charges the OCR with enhancing the provision of attorney services and improving the quality of representation and advocacy provided to children and youth in the Colorado court system. The OCR's authority and responsibilities include but are not limited to: the provision of high-quality, accessible training; the exclusive authority and discretion to select and contract with attorneys to provide state-paid GAL, CLR and CFY services for children and youth, including the authority to reject attorneys for any reason; the authority to terminate, at will, contracts; the authority to seek termination of existing court appointments as provided by this CJD; and the responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services, investigation and resolution of complaints regarding attorneys who contract with the OCR and other means as determined by the OCR.
- B. The OCR shall maintain and provide to the courts a list of qualified attorneys eligible for appointments. The courts shall appoint from this list, and the OCR shall assign attorneys from this list to provide CFY services for youth voluntarily participating in or seeking to participate in Colorado's Foster Youth in Transition Program. It is within the OCR's sole discretion to determine which attorneys are placed on the appointment list. The OCR will not process payment for services of attorneys with whom the OCR does not have a contract and who are not on the OCR list. Should any unusual, exceptional or emergency circumstances present the need for the appointment of an attorney not listed as an OCR-qualified attorney, the court shall contact the OCR for approval prior to the appointment of that attorney. The OCR shall provide a prompt response to the court's request.

III. Authority and Requirement for Appointments through the OCR

- A. A GAL shall be appointed for a child under age 12 in a dependency and neglect action pursuant to Title 19. The GAL's appointment shall continue until the entry of a final decree of adoption, until the child is 12, or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order.

A court may continue the GAL's appointment for a youth age 12 or older in a dependency and neglect action when the court determines that a GAL is necessary due to the youth's diminished capacity, and the court may also appoint a GAL for a youth age 12 and older if the court determines the appointment is necessary due to the youth's diminished capacity. A court shall not consider age or developmental maturity as the sole basis for a determination of diminished capacity. The court shall not deem a GAL appointed for a youth 12 or older to be a substitute for the

appointment of a CFY.

Pursuant to Title 19, a GAL may be appointed for a minor parent throughout any phase of a dependency and neglect proceeding.

- B. Pursuant to Title 19, an attorney shall be appointed as CFY for a youth age 12 and older in a D&N proceeding. The CFY's appointment shall continue until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order. A child or youth's right to counsel in a dependency and neglect proceeding may not be waived.

An appointed GAL in a dependency and neglect proceeding shall begin acting as counsel for the youth immediately upon the youth's 12th birthday, unless the court finds it necessary to appoint a GAL because the child or youth has diminished capacity, in which case the GAL shall remain in the role of GAL and a separate CFY shall be appointed. New counsel may be appointed as CFY if the attorney asserts there is a conflict of interest. Pursuant to Title 19, the court may appoint CFY for a child under age 12 in addition to a GAL if the court deems representation by CFY necessary to protect the interests of the child.

- C. Pursuant to Title 19, a GAL may be appointed in a delinquency proceeding if: no parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S., appears at the first or subsequent hearing; the Court finds a conflict of interest exists between the child and the parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S.; or the court finds that a GAL appointment is necessary to serve the best interests of the child. Such appointment shall continue if a case is transferred to adult criminal court under Title 19.
- D. Pursuant to Title 19, the court, in its discretion, may appoint a GAL in any direct file of charges against a youth in adult criminal court.
- E. Pursuant to Title 19, a GAL may be appointed for a child in a truancy proceeding under Title 22, unless the child is already represented by defense counsel. Pursuant to Title 19, a court may appoint both counsel and a GAL for the child if the court finds that such appointment is in the best interests and welfare of the child.
- F. A CLR may be appointed in a domestic relations case pursuant to Title 14.
- G. A GAL may be appointed for a minor in formal proceedings involving guardianship or conservatorship of a minor; trusts or estates of decedents, minors and protected persons; and in judicially supervised settlements pursuant to Title 15 if the court determines that a need for such representation exists.
- H. A GAL shall be appointed in a mental health proceeding pursuant to Title 27 for any child under age 15 who is a ward of the Department of Human Services or for

any minor under 15 who objects to his or her hospitalization.

- I. If necessary to serve a child’s best interests, a GAL may be appointed for an infant or other minor who does not have a representative and who is a party to a civil suit.
- J. A GAL may be appointed for a child in a paternity action pursuant to Title 19.
- K. A GAL may be appointed for a minor upon the filing of a petition for involuntary commitment of alcoholics or drug abusers if the court deems the minor’s presence in court may be injurious to him or her pursuant to Title 27.
- L. Pursuant to Title 19, a GAL for a minor may be appointed in a proceeding concerning the relinquishment of the minor if the court finds that that a conflict of interest exists between the child and the parents, guardian or legal custodian; the court finds that such appointment is necessary to serve the best interests of the child; or the court determines that the child is twelve years of age or older and that the welfare of the child mandates the appointment. If a CFY is appointed in a dependency and neglect action, the court shall also appoint that attorney as CFY in the relinquishment proceeding,
- M. Pursuant to Title 13, a GAL may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act and Chapter 23.5 of the Colorado Rules of Civil Procedure (“Rules of Procedure for Judicial Bypass of Parental Notification Requirements”).
- N. Pursuant to Title 19, a CFY shall be appointed by the court for a youth in a Foster Youth in Transition proceeding and may be assigned by the OCR prior to the filing of the petition. A GAL may also be appointed for a youth participating in the Foster Youth in Transition Program if the Court finds that the youth is incapacitated or has diminished capacity.
- O. Pursuant to Title 14, a GAL shall be appointed for a minor seeking judicial approval for a marriage license.

IV. Allocation of Cost and Guidelines for Payment by the OCR

- A. Allocation of Costs—Requirement of Indigency Finding
 - 1. An indigency determination is not required for state payment of GAL, CLR, or CFY services in matters other than these specific cases:
 - a. The State, through the OCR, shall bear the costs for the services of a CLR appointed pursuant to Section 14-10-116, C.R.S., only if the court finds one or more of the parties responsible for the costs indigent. The State is precluded from paying for services and

any costs associated with services for non-indigent parties under Section 14-10-116, C.R.S., which specifies that the parties are responsible for all costs absent a specific finding of indigency. Pursuant to Section 14-10-116, C.R.S., prior to the entry of a decree of dissolution of marriage or legal separation, the court shall not enter an order requiring the state to bear the costs of the appointment unless both parties are determined to be indigent after considering the combined income and assets of the parties. In cases involving unmarried parties, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees and disbursements that shall be borne by the state. When a responsible party is indigent, the state will pay the CLR the portion of the hourly rate and authorized expenses for which the indigent party is responsible.

- b. The State, through the OCR, shall bear the costs for GAL services in paternity and support matters under Article 4 of Title 19 only if a court finds one or more of the parties responsible for the costs indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 19-4-117, C.R.S., which specifies that the court shall order reasonable fees of the GAL to be paid by the parties.
 - c. The State, through the OCR, shall bear the costs for GAL services in adoption and relinquishment proceedings only when the court finds the party(ies) responsible for the costs indigent. The State is precluded from paying for services and any costs associated with GAL services for non-indigent parties under Section 19-5-103, C.R.S., which specifies that the Court shall order the relinquishing parent to pay reasonable fees.
 - d. The State, through the OCR, shall bear the costs for GAL services provided to a minor under Title 15 (probate, guardianship and conservatorship) and other civil cases only when the court makes indigency findings regarding the party(ies) ordered to be responsible for the costs or the minor's estate.
2. The following procedures shall apply to a court's determination of indigency:
- a. The responsible party(ies) must complete, or have completed on their behalf, application form JDF 208 ("Application for Public Defender, Court-Appointed Counsel, or Guardian ad Litem") signed under oath, before an appointment may be considered.

- b. An indigent person is one whose financial circumstances fall within the fiscal standards set forth by the Supreme Court through Chief Justice Directive (See Attachment A). A court shall not order representation to be at state expense absent the completion of form JDF 208, a finding of indigency and an order of the court.
- c. If one party is indigent, the State, through the OCR, will pay the portion of the state-set hourly rate allocated to the State.

B. Guidelines for Payment by the OCR

1. Claims for payment of fees and expenses shall be submitted directly to the OCR, not the appointing court, in accordance with the OCR's policies and procedures. The appointment order containing the required indigency findings shall be submitted prior to payment, and the OCR shall not pay for any activities performed prior to the indigency findings.
2. The maximum total fees per appointment for all OCR appointments and the procedures for approval of excess fees and expenses shall be as set forth by the OCR.
3. Attorneys shall maintain records of all work performed relating to court appointments and shall make all such records available to the OCR and/or to the court for inspection, audit and evaluation in such form and manner as the OCR or court may require, subject to the attorney work product doctrine and any other applicable privileges.

V. Duties of Attorneys Appointed as GALs, CLRs, and CFY.

A. Training

1. Attorneys appointed as GALs, CLRs or CFY shall possess the knowledge, expertise and training necessary to perform the court appointment.
2. In addition, GALs, CLRs and CFY shall obtain 10 credits of OCR-sponsored or approved continuing legal education courses. This requirement shall be met prior to the attorney's first appointment and on an annual basis while under contract with the OCR. At a minimum, two of the ten credits required on an annual basis must be OCR-sponsored or approved Diversity, Equity and Inclusion trainings. The attorney shall provide proof of compliance with these training requirements in accordance with the OCR's policies and procedures.

- B. All attorneys appointed as GALs, CLRs, or CFY shall be subject to all of the rules and standards of the legal profession.**

1. The unique statutory responsibilities of a GAL and a CLR do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the “client” of a GAL or a CLR is the best interests of the child or youth. The ethical obligations of the GAL or CLR, under the Colorado Rules of Professional Conduct, flow from this unique definition of “client.” Because of this unique relationship, an attorney’s obligation not to reveal confidential information provided by the child or youth does not apply if the information must be revealed to ensure the child or youth’s best interests. A GAL or CLR must explain to the child or youth their role and these limitations on confidentiality and should check periodically on the child/youth’s understanding of the role and limitations.

A determination by the GAL or the CLR of a child or youth’s best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child or youth’s position regarding the disposition of the matter before the court. The GAL or CLR should explain their determination of the child or youth’s best interests and the basis for that determination to the child or youth in a developmentally appropriate manner.

In determining best interests, GALs and CLRAs should engage in an ongoing inquiry to avoid inserting personal desires, values, and beliefs into their assessment and to continually reflect on and work to mitigate their own biases. The GAL or CLR should endeavor to uncover what triggers their biases, employ investigative processes that use objective criteria to guide their advocacy recommendations and decision-making, and consider the legal rights and protections available to the child or youth.

2. A CFY must strive throughout every phase of the proceeding to maintain a normal attorney-client relationship, engage in developmentally appropriate communication with the youth, and continue to advise the youth client of their rights, the subject matter of the litigation, the attorney’s role, what to expect in the legal process, and options available to the youth. Developmentally appropriate communication means structuring all communications to account for the individual youth's age, level of education, cultural context, and degree of language acquisition to ensure the youth’s ability to provide client-based directions regarding the objectives of the representation.

Commentary: A CFY has a duty to explain to the youth in a developmentally appropriate manner the information that will assist the youth in having maximum input in determination of the particular position at issue. A CFY should inform the youth of the relevant facts and applicable laws and the ramifications of taking various positions. A CFY may express an opinion concerning the likelihood of the court or other

parties accepting particular positions and may inform the youth of an expert's recommendations germane to the issue. As in any other attorney-client relationship, a CFY may express their assessment of the case, the best position for the youth to take, and the reasons underlying such recommendation. A CFY must remain aware of the power dynamics inherent in adult-child relationships, strive to understand what the youth knows and what factors are influencing the youth's decisions, and strive to ensure that the youth's expressed preferences reflect the youth's actual position. A CFY should attempt to determine from the youth's opinion and reasoning what factors have been most influential or have been confusing or glided over by the youth. The CFY's duty to engage in a robust initial and ongoing investigation set forth in Sections D.3 and D.4 of this directive supports the CFY in carrying out these responsibilities, as other professionals, family members, and significant persons in the child's life may educate a CFY about the child's needs, priorities, and previous experiences.

While the youth is entitled to determine the overall objectives to be pursued, the CFY, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. This CJD does not require the CFY to consult with the youth on matters which would not require consultation with an adult client.

While Title 19 allows a court to appoint a GAL in addition to the CFY if the court finds that the appointment is necessary due to the youth's diminished capacity, it provides that age or developmental maturity cannot be the sole basis for a finding of diminished capacity. An attorney serving as CFY may only take the protective action of seeking appointment of GAL in a dependency or foster youth in transition proceeding when the Rules of Professional Conduct (1.14) allow the CFY to take protective action on behalf of a client with diminished capacity.

An attorney transitioning from the role of GAL to CFY should discuss the attorney's new role with the youth and take actions necessary to protect the rights and interests of the youth and, if the youth is part of a sibling group represented by the attorney, other children and youth in that sibling group. Examples of such actions include notifying the court of the change in appointment, analyzing for conflicts of interest as outlined in Section V.B.4, and creating a separate client file when necessary to protect confidentiality.

3. GALs and CLRs, and CFY must maintain reasonable caseloads that support full compliance with their ethical obligations and the practice

standards set forth in this Directive. At no point should an attorney performing work under the Directive carry a caseload greater than a full-time caseload of 100 children.

4. GALs, CLRAs, and CFY should guarantee loyalty and independence throughout their representation.
 - a. The possibility or actuality that an attorney who has transitioned from the role of GAL to CFY for a youth in a dependency and neglect proceeding will take positions as CFY contrary to previous positions the attorney took as GAL for the child or shared information about the child while representing the child as GAL does not create a conflict of interest under Colorado Rule of Professional Conduct 1.9.
 - b. GALs, CLRAs, and CFY may be appointed to represent multiple siblings in a sibling group if the attorney does not assert that a conflict of interest exists. An attorney's assessment of conflicts must be case-specific, as joint representation of a sibling group alone does not create a conflict of interest.

If, at the outset of the proceedings, a conflict of interest exists among children in a sibling group the attorney shall decline the appointment for one or more siblings and request the appointment of a separate attorney to represent those siblings. The attorney shall continue to assess for conflicts of interest throughout the representation and, if a conflict of interest develops during the representation, take action to ensure siblings' interests are not prejudiced.

An attorney transitioning from the role of GAL to CFY for a youth in a sibling group in a dependency proceeding should assess whether the attorney's professional responsibilities to the youth client conflict with the attorney's professional responsibilities to the best interests of the other sibling(s) in the sibling group, using the framework set forth by Colorado Rules of Professional Conduct 1.7 and 1.9.

In implementing the informed consent provisions of Colorado Rules of Professional Conduct 1.7 and 1.9, a CFY may rely on the informed consent, confirmed in writing, of a youth age 12 or older. The GAL may rely on their determination that the representation does not adversely impact the best interests of the child and must document this determination in writing. All other requirements of Rules 1.7 and 1.9 must be met in order for the attorney to continue

to represent one or any members of the sibling group.

Commentary: In dependency and neglect proceedings and other proceedings involving multiple children, one attorney is often appointed to represent the interests of multiple children in a sibling group. The value of preserving connections for children in foster care, together with the importance of the sibling relationship, support the appointment of a single attorney to represent siblings to the greatest extent possible. C.R.S. 19-3-203(2) makes clear that the court in a dependency and neglect proceeding may appoint the same attorney to represent the best interests of siblings under 12 as GAL and youth over 12 as CFY as long as the attorney does not assert a conflict of interest as defined under the applicable Rules of Professional Conduct.

At the same time that attorneys must abide by their professional duty of loyalty to their client, attorneys for children and youth should also seek to preserve continuity of legal representation and avoid unnecessary case transfers whenever possible. An early and thorough assessment for conflicts of interest helps the attorney prevent the need to conflict off at a time that continuity of representation would be negatively impacted by the attorney's withdrawal from representation of one or all children in the sibling group. Attorneys appointed as GAL, CLR and CFY should continue to assess for conflicts throughout the representation but need not withdraw if there is a mere possibility that a conflict of interest will develop.

The Colorado Rules of Professional Conduct provide the framework and requirements for GALs, CLRs, and CFY in assessing and addressing conflicts of interest. Colorado Rule of Professional Conduct 1.7 defines the considerations for determining whether a concurrent conflict of interest exists, and attorneys should assess for direct adversity or a significant risk of material limitation on the attorney's representation according to that rule. In analyzing conflicts of interest under Colorado's Rules of Professional Conduct, the attorney may consider that the following circumstances alone will not create a conflict of interest among siblings:

- *the siblings are of different ages;*
- *the siblings have different parents;*
- *there is a purely theoretical or abstract conflict of interest among the siblings;*
- *the attorney previously represented one or more of the siblings in another proceeding;*

- *some of the siblings are more likely to be adopted than others;*
- *the siblings have different permanency plans;*
- *the siblings express conflicting desires or objectives, but the issues involved are not material to the case; or*
- *the siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.*

In assessing whether the Colorado Rules of Professional Conduct requires an attorney to withdraw from representing one or all children/youth in a sibling group if a conflict of interest develops during the representation, the attorney should consider whether the attorney has exchanged confidential information relevant to the conflicting issue with any sibling whose interests conflict with those of the sibling or siblings the attorney continues to represent and whether continued representation of one or more siblings would otherwise prejudice the other sibling or siblings formerly represented by the attorney.

- C. The attorney appointed as a GAL or a CLR shall diligently take steps that they deem necessary to represent and protect the best interests of the child or youth, under the terms and conditions of the order of appointment, including any specific duties set forth in the appointment order or in any subsequent order. The attorney appointed as CFY shall provide competent and diligent representation to the youth client within the scope of the order of appointment and in accordance with the attorney's professional responsibilities under the Colorado Rules of Professional Conduct.

If the appointee finds it necessary and in the interests of the child or youth, the appointee may request that the court expand the terms of the appointment and scope of the duties. CFY and GALs may provide representation on related matters consistent with their ethical duties and obligations and may be compensated by OCR for this work, subject to available federal funding and OCR policies and approval.

- D. Subject to the requirements of Section 5.B. above, a GAL or CFY for a child or youth in a dependency and neglect case shall at a minimum perform the following specific tasks:
1. Provide effective legal advocacy throughout the proceeding.
 - a. Attend all court hearings.
 - i. As GAL, advocate for the child's best interests. Present independent information relevant to the child's best interests at each hearing through oral or written recommendations, motions, examination of witnesses and other acceptable means consistent

with the court's appointment orders and the GAL's statutory authority and ethical obligations. State the child's position, when ascertainable. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.

- ii. As CFY, advocate for the youth's expressed interests at each hearing, through oral or written motions, examination of witnesses, legal and factual arguments, monitoring and advocating for compliance with court orders.

Commentary: The GAL and CFY have the right to and should actively participate and be included in all aspects of litigation including but not limited to discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals, except as limited by applicable law. In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court.

- b. Provide developmentally appropriate notice to the child/youth of all court hearings and advance the child/youth's right to attend and meaningfully participate in court hearings by discussing the court process with the child/youth, explaining the child/youth's right to go to court and the benefits of attending court hearings, identifying barriers to court appearances/participation, advocating for the elimination of barriers to the child/youth's attendance at court, and conducting a post-hearing follow up with the child/youth regarding the outcome of the hearing and, if applicable, the child/youth's experience at the hearing.
- c. Exercise discovery necessary to provide effective representation and advocate against discovery requests that are unduly burdensome, unreasonable, outside the legal scope of discovery, or made for improper purposes.
- d. Attend meetings and staffings concerning the child or youth as needed.

Commentary: Attending staffings and meetings may be performed by a qualified professional acting as a member of the attorney's legal team. The GAL/CFY should also promote developmentally appropriate and meaningful child/youth participation at meetings and staffings.

- e. As necessary, coordinate the attorney's legal representation on the dependency and neglect case with the legal representation provided by other GALs on other pending cases involving the child/youth.

2. Engage in timely, regular, and meaningful communication with the child/youth.
 - a. Conduct an in-person placement visit as soon as is reasonable but in no event later than 30 days following the appointment.
 - i. As GAL, personally conduct an in-person meeting with the child and interview the child if appropriate to the child's developmental level, explain the role of GAL and the child's rights in a developmentally appropriate manner, observe the child with his or her caregiver in his or her placement and conduct an in-person assessment of the child's placement;
 - ii. As CFY, personally conduct an in-person meeting with the youth, explain the role of CFY and the youth's rights, interview the youth, observe the youth with their caregiver in their placement, and conduct an in-person assessment of the youth's placement.

Commentary: The initial in-person visit requirement neither mandates nor is fulfilled by a GAL's or CFY's meeting with the care providers and observing the child/youth in a temporary intake placement, respite care, medical setting or juvenile detention holding facility, unless that is the only opportunity to observe the child.

An attorney whose appointment is changing from a GAL appointment to a CFY appointment does not need to do an in-placement initial visit within 30 days solely due to the change in role. However, the attorney should meet with the youth in person either within the 30 days prior to the change in appointment or no later than 30 days after the change in appointment to explain the attorney's new client-directed role and the attorney's duty of confidentiality, answer any questions the youth has about this change in role, and consult with the youth about the youth's objectives.

- b. If the child's or youth's placement is changed, the GAL or CFY shall personally meet with the child or youth in person, observe the child or youth with their caregiver in their placement and assess the child's/youth's placement as soon as is reasonable but in no event later than 30 days following the change of placement;

Commentary: Because each disruption in the child's or youth's placement presents new risks of harm and is potentially detrimental to the child's or youth's emotional and psychological well-being, it is critical that their GAL or CFY meet with and observe the child/youth

in each new placement to assess the appropriateness, risks and potential permanency of that placement.

The change of placement visit requirement also applies to a change of physical address when the child's placement provider remains the same; however, the attorney may use a qualified professional acting as a member of the attorney's legal team to conduct the visit. Similarly, in rural areas where significant attorney shortages and geographic challenges present obstacles to compliance with this personal within 30-day change of placement visit, the attorney may seek pre-approval from the OCR to use a qualified professional assigned to the attorney's legal team to perform the initial change of placement visit. In both circumstances, the attorney must follow up with an in-placement visit within a reasonable time thereafter.

Courts, counsel for other parties and county departments play an instrumental role in ensuring compliance with this practice standard. Section 19-3-213(1)(a), C.R.S., requires the county department, to the extent possible, to notify the GAL and CFY prior to the change of placement of a child. Compliance and enforcement of this provision is essential to the attorney's ability to visit the child in a timely manner following a change of placement. In circumstances in which the attorney has not received timely notice of a change of placement despite diligent efforts to remain apprised of the status of the child, the attorney must conduct the change of placement visit within 30 days of the date of notice of the change in placement.

- c. Maintain contact and ongoing communication with the child/youth.
 - i. As GAL, maintain contact and ongoing communication with the child in order to continue to assess the child's best interests, consider the child's position as required by Section V.B. and state the child's position to the court as required by Section V.D.1.
 - ii. As CFY, maintain contact and ongoing communication with the youth client in order to be able to continue to advise the youth client of their legal rights, educate them about the legal process, inform them of case developments and information the CFY has gathered through their independent investigation, provide legal counsel and advice regarding the youth's objectives, likelihood of success and alternative options, and continue to advocate for the youth's objectives throughout the proceeding.

Commentary: *Attorneys for children and youth should maintain*

frequent contact and intentional communication, tailored to the child's individual circumstances and preferences. In determining the frequency of contact that is necessary to fulfill the requirements of this directive, attorneys should consider the following:

Consistent contact and trauma-informed, culturally responsive communication are necessary predicates to a sound relationship with the child/youth. Attorneys should remain flexible and open to communicating in a manner that reflects each child/youth's unique preferences. This may include face-to-face meetings, phone calls, video chats, or text messages. Attorneys should ask children and youth how and when they prefer to communicate. They should be prepared to modify the plan for contact to adapt to changing circumstances (level of privacy in the home, case activity, etc.). An attorney should not construe a child/youth's lack of communication as a reason to decrease or halt communication, nor should they assume that the child/youth is not interested in their case.

OCR's Engaging and Empowering Youth efforts have demonstrated the benefits of frequent attorney contact with youth. Surveyed youth who reported more frequent GAL contact were more likely to report that they trusted their GAL, believed their GAL knew what was best for them and wanted to attend court. OCR's youth engagement efforts have also demonstrated the importance of quality attorney contact with children/youth. Members of OCR's Lived Experts Action Panel (LEAP) have commented about the importance of listening to children/youth, caring about them, treating them as a person/with respect, speaking with them in a developmentally appropriate manner, periodically revisiting important topics such as youth rights and court participation, and preparing them before court and debriefing with them after court.

The National Association of Counsel for Children recommends contact at least prior to and after each court hearing and monthly contact which may consist of a phone call, video visit, in-person visit, or other meaningful correspondence. The NACC recommends that the decision to visit a youth at their school or elsewhere in the community should be made only after consultation with the youth about their comfort level, a discussion of the pros and cons of a visit in this setting, and consideration of confidentiality.

3. Conduct an initial independent investigation in a timely manner. This investigation must take place within the first 45 days of the appointment unless sooner as required below and must include at a minimum:

- a. Personally meeting with placement providers. When possible, meeting with proposed placement providers and observing the child/youth's interaction with proposed placement providers, either personally or through the use of qualified staff;
- b. Personally interviewing the respondent parents, with the consent of counsel. Making diligent efforts to observe, either personally or through the use of qualified staff, the child/youth's interaction with respondent parents;

Commentary: While this CJD does not require an in-person meeting with the parent as part of the attorney's initial investigative responsibilities, the attorney should strive to interview parents in a setting that promotes meaningful and open communication about the attorney's role and the child's and family's strengths and needs. The attorney should make efforts to conduct these interviews outside of the courthouse whenever possible and should take care to convey to parents that the attorney values the information they have to share about their child(ren) and their families. Participating in staffings and meetings that parents attend does not fulfill the requirement to interview parents. When an attorney is unable to make contact with the parent despite diligent efforts or to obtain the consent of counsel to interview a parent, the attorney should document the efforts made to contact the parent and/or obtain consent.

- c. Reviewing court files and relevant records, reports and documents;
- d. Obtaining first-hand information from other persons or professionals necessary to assess the child's best interests (for the GAL) and to advise and counsel the youth (for the CFY). Such persons or professionals shall include caseworkers, CASA volunteers, relatives, school personnel, therapists, treatment providers and any other persons or professionals necessary to assess and serve the child's best interests (for the GAL) and the options available to the youth (for the CFY).
- e. Confirm that the county department's investigation has included a diligent search for any prospective kinship placement and/or adoption or potential tribal affiliation, or independently conduct such investigation, in the event these attempts to reunify fail.
- f. When appropriate, visiting the home from which the child was removed.

Additional Commentary: The attorney's initial investigation sets the

groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to assessing and advocating for the child/youth's interests.

For the GAL, this initial investigation supports the GAL in determining the child's best interests and advancing permanency for the child. An effective initial investigation allows the GAL to make recommendations early on in a case which will: implement services that will advance the goals of the case and the best interests of the child with the least delay possible; reduce the risk of harm that involvement in the dependency and neglect system may present to the well-being of the child; reduce the risk of disruption in the child's placement and potential harm to the child from such disruption; and preserve relationships significant to the child, such as sibling relationships.

Similarly, the CFY's initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to providing competent legal advice and counsel to the youth to support the youth in taking well-informed positions at the outset and throughout the proceeding. An effective initial investigation allows the CFY to make early assessments of the case which will support the CFY in advising the youth client about their right to safety, help the youth client formulate safety plans, discuss permanency goals and family connections, inform the client about options and possible outcomes, offer the attorney's best judgment as to how the judge is likely to rule on certain matters and the attorney's opinion, if any, of the best course of action, and elicit the client's preferred option and alternative preferences if the court does not accept the client's first choice.

Regardless of role, in conducting this initial investigation, the attorney should explore the child's/youth's cultural and other identities, religious practices, family traditions, holidays, and extracurricular interests and activities. The attorney should continually strive to practice cultural humility, reflect on and work to mitigate the attorney's own biases, and restrain from inserting personal desires, values, and beliefs into their assessment, advice and advocacy.

The duties described in Sections V.D.4.b through V.D.4.f not personally assigned to the attorney may be performed by a qualified professional assigned to the attorney's legal team.

4. Continue to perform an ongoing investigation as necessary to represent the interests of the child/youth for the duration of the appointment. The GAL/CFY's ongoing investigation shall include, but shall not be limited to:
 - a. Maintaining contact and communication with placement providers, the caseworker, the CASA, other parties, and any other persons or

professionals necessary to ensure ongoing and timely assessment and representation of the child/youth's interests;

- b. Other applicable duties listed above in Section V.D.3.

Commentary: Ongoing and thorough investigation is essential to both the GAL's role of representing the best interests of the child/youth and the CFY's role of representing the position of the youth and providing legal advice and consultation. As the ongoing investigative activities outlined in this section are not personally assigned to the GAL/CFY, the GAL/CFY may use a qualified professional assigned as a member of the attorney's legal team to perform these ongoing investigative responsibilities.

5. Ensure the interests of the child(ren)/youth are represented on appeal by either personally filing a pleading or formally joining another party's pleading in a manner that represents the child(ren)/youth's interests.

Commentary: As allowed by Colorado Appellate Rules, a GAL or CFY of record at the trial level may arrange for appellate representation by another OCR-qualified attorney. While GALs should participate in all dependency and neglect appeals, a CFY's determination of whether to participate in an appeal and what position to take will be determined by the youth client. A CFY should advise the youth of their right to appeal and take necessary actions to preserve and perfect the youth's appellate rights. If the youth directs the attorney not to file an appeal or not take a position in response to another party's appeal, the CFY should advise the youth about the importance of participation in the appellate process. If the youth continues to direct CFY not to pursue an appeal or not to participate in an appeal after that consultation, CFY shall document the youth's decision not to file and the consultation that occurred.

- E. An attorney appointed as a GAL for a youth in a delinquency proceeding or a minor defendant in a direct file proceeding shall represent the youth's best interests throughout the appointment in a manner that promotes and protects the youth's rights. Subject to the requirements of Section V.B. above, the GAL shall at a minimum perform the following specific tasks:

1. Upon appointment, personally conduct a timely in-person meeting with the youth in a setting that promotes meaningful communication. Ensure the youth understands the unique role of the GAL, the distinction between the GAL's role and the role of defense counsel and the limitations on the GAL's duty of confidentiality set forth in section V.B. Interview the youth

to obtain information relevant to the youth's best interests.

Commentary: The interview of the youth serves as a critical component of the GAL's investigation and advocacy and should take place in a location that promotes open communication between the youth and GAL. Often, the initial meeting between the GAL and youth occurs at a court appearance; a follow up interview in a more calm and neutral environment will be necessary to elicit all information relevant to the youth's best interests. This initial interview should occur as soon as possible, given the tight time frames for hearings in delinquency and direct file proceedings, and prior to important case events. A timely in-person meeting with a youth in detention is particularly important, and the GAL shall make diligent efforts to meet with the child at the detention facility as soon as possible but no later than seven days after the GAL's appointment or, for existing appointments, the date the detention commenced.

The GAL's interview of the youth differs in important ways from the interview by defense counsel. The GAL's responsibilities do not include litigating the facts related to the charges or providing legal advice to the youth, and the GAL's interview and ongoing contact with the youth should not involve communication that is the responsibility of defense counsel, such as discussion about the facts of the case, advice about case objectives or information about legal strategy. The GAL's initial interview and ongoing communication with the youth should elicit information relevant to the youth's best interests, including information on topics enumerated in section IV.E.3 below.

When the GAL has already established a meaningful relationship with the youth in an existing appointment, the in-person aspect of this communication requirement is waived. The GAL shall exercise professional judgment in determining the necessity of an in-person meeting to achieve the purpose of this interview.

2. Attend all court hearings and advocate for the youth's best interests in a manner consistent with the youth's due process and statutory rights. Present independent information relevant to the youth's best interests through oral or written recommendations, motions or other acceptable means consistent with the court's appointment orders and the GAL's statutory authority and ethical obligations in a manner that does not jeopardize the legal interests or due process rights of the youth.

Commentary: In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court. Additionally, the GAL may in exceptional circumstances determine that the

GAL's presence throughout some hearings or trials may not be necessary to represent the best interests of the youth. In such circumstances, the GAL should seek advance approval of the court to not attend the hearing.

3. Conduct an independent investigation in a timely manner which shall include at a minimum out-of-court contact with the youth as set forth in Section IV.E.1; interviews with parents, kin and current and potential placement providers if applicable; interviews with other professionals or individuals necessary to assess and advocate for the youth's best interests, such as school personnel, pretrial service staff, probation officers and treatment providers. This investigation shall assess at a minimum:

- a. The youth's functioning, needs and circumstances as they relate to the youth's courtroom experience and any potential orders or outcomes of the proceeding;

Commentary: Each youth has unique needs, life experiences and circumstances that inform which, if any, services and court orders serve the best interests of the youth and community, constitute reasonable efforts to prevent or eliminate the need for out-of-home placement and assist the youth in becoming a productive member of society. The youth's unique needs and circumstances will impact the youth's ability to comply with certain terms and conditions of court orders as well as the potential benefit and harm of any services and interventions. These unique needs and circumstances may include but may not be limited to: education, health, mental health, developmental disabilities, trauma history, family issues, immigration needs and prior court involvement or other pending cases. The GAL's investigation of these needs will inform the GAL's initial and ongoing advocacy for the youth's best interests throughout the appointment.

- b. Appointment and availability of defense counsel consistent with the youth's constitutional and statutory rights;
- c. Whether the current or proposed placement of the youth serves the youth's best interests and is consistent with the youth's due process rights and applicable statutory considerations; whether reasonable efforts have been provided to prevent out-of-home placement and whether less restrictive placement options exist;

Commentary: If the youth is in an out-of-home placement, the GAL's assessment of the placement shall include an examination of the conditions of the youth's confinement or placement and the impact of those conditions on the unique needs of the youth.

- d. Whether the services and treatment provided through the case address the unique issues faced by the youth and support the youth in becoming a productive member of society; whether more appropriate and effective service and treatment options exist;
- e. Whether there is reason to believe that a youth is incompetent to proceed;
- f. The youth's understanding of the proceeding and the immediate and long-term consequences of decisions he or she makes throughout the proceeding, including but not limited to any waivers or plea agreements;
- g. Whether the immediate and long-term consequences of any proposed orders and resolution of the charges are consistent with the youth's best interests;
- h. The need to seek court orders addressing family issues and parental accountability, including orders requiring the investigation or filing of a dependency and neglect proceeding;
- i. The existence of other pending cases involving the youth, the status of those cases, and the potential impact of the resolution of those cases on each other. As appropriate, the GAL should coordinate their representation on the delinquency case with the representation of any GALs or CFY on related cases.

Commentary: Due to the tight time frames of hearings in delinquency proceedings and the restrictions often placed on a youth's liberty, this focused investigation must occur as soon as possible. While the unique circumstances of the case and the youth will often require the initial investigation to take place sooner than the 45-day time frame required for dependency and neglect appointments, in no circumstances should it take longer than 45 days for the GAL to complete the initial investigation.

The investigative activities required by this Section V.E.3 that are not personally assigned to the GAL may be performed by a qualified professional acting as a member of the attorney's legal team. When the GAL has already obtained the relevant information outlined in this Section V.E.3 through an existing appointment, the GAL's investigation may be tailored to ensuring that the information remains current.

4. Continue to perform an ongoing investigation as necessary to represent the best interests of the youth for the duration of the appointment. The GAL's ongoing investigation shall include, but shall not be limited to:
 - a. Maintaining contact and ongoing communication with the youth.

Commentary: The GAL's contact with the youth should not be limited to contact at court appearances. Ongoing communication and contact between court appearances promotes up-to-date assessment of the youth's best interests. It allows the GAL to ensure the youth understands the proceedings and to promptly address any questions, confusion or competency issues. It also maximizes the GAL's ability to address factors impacting the youth's best interests in a timely manner and serves to strengthen the youth's confidence in the role of the GAL as an advocate for his or her best interests.
 - b. Other applicable duties listed above in Section V.E.3.
- F. Subject to the requirements of Section 5.B. above, an attorney appointed or assigned as CFY to represent a youth participating in Colorado's Foster Youth in Transition Program shall:
1. Advocate for the youth's rights to developmentally appropriate, voluntary, and youth-driven services and supports.
 - a. Attend all court hearings and provide competent legal representation at each hearing throughout the proceeding through oral or written motions, examination of witnesses, legal arguments, monitoring compliance with court orders and seeking compliance orders and actions.

Commentary: In exceptional circumstances, another OCR-qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court.
 - b. Provide developmentally appropriate notice to the youth of all court hearings and advance the youth's right to attend and meaningfully participate in court hearings by discussing the court process with the youth, explaining the youth's right to go to court and the benefits of attending court hearings, identifying barriers to court appearances/participation, advocating for the elimination of barriers to the youth's attendance at court, and conducting a post-hearing follow up with the youth regarding the outcome of the hearing and, if applicable, the youth's experience at the hearing.

- c. Exercise discovery necessary to provide effective representation and advocate against detrimental or inappropriate discovery requests.
 - d. Attend meetings and staffings concerning the youth as needed.
 - e. As appropriate, coordinate their representation on the foster youth in transition case with the representation of any other attorneys on related cases concerning the youth.
 - f. Engage in both informal and formal advocacy at both the county and state level to ensure the youth has full access to all services and supports provided by Colorado's Foster Youth in Transition Program.
2. Engage in timely, regular, and meaningful communication with the youth.
- a. Personally conduct an in-person meeting with the youth, explain the role of CFY and the youth's rights, and interview the youth as soon as is reasonable but in no event later than 30 days following the CFY's appointment or assignment. This initial meeting must be in a location that promotes meaningful and confidential communication but need not be at the youth's placement if the youth requests to have a meeting elsewhere.
 - b. Maintain contact and ongoing communication with the youth client in order to be able to continue to advise the youth client of their legal rights, educate them about the legal process, inform them of case developments and information the CFY has gathered through their independent investigation, and provide legal counsel and advice regarding the youth's objectives, likelihood of success, and alternative options.
- Commentary: The commentary applicable to the maintaining contact requirement for GALs and CFY in dependency and neglect proceedings set forth in Section V.D.2.c also applies to the maintaining contact requirements for CFY representing youth in Colorado's Foster Youth in Transition Program.*
3. Conduct a timely initial investigation during the first 45 days of appointment or assignment by reviewing relevant records, communicating with the youth as required by Section V.F.2, and contacting the professionals, providers, and resources necessary to assess the youth's service and support needs, advise the youth about their legal rights to all available services and supports under the program, and provide effective legal advocacy. Given the voluntary and youth-driven nature of this program, this investigation should be done with youth's consent and input. This investigation should include an assessment at

a minimum of the youth's rights to the following:

- i. Medicaid and other public benefits enrollment assistance;
 - ii. Safe, affordable, and stable housing;
 - iii. Employment or financial support;
 - iv. Access to health and education records, driver's license, other government-issued identification card;
 - v. Support in pursuing their educational goals and applying for financial assistance;
 - vi. Criminal record expungement;
 - vii. Support in applying for Special Immigrant Juvenile Status or other applicable immigration relief;
 - viii. Support in accessing information about relatives, siblings, kin, and other individuals important to the youth and maintaining and building relationships with those relatives and individuals.
4. Continue to perform an ongoing investigation as necessary to represent, advise and counsel the youth. The CFY should consult with the youth client about the scope of this investigation and obtain necessary authority for the release of information.
 5. Ensure the youth's interests are represented in any appellate matters by advising youth of their rights to appeal, taking necessary actions to preserve and perfect the youth's appellate rights, and providing competent representation during any appellate proceedings or arranging for substitute appellate counsel from OCR's approved list of appellate attorneys.

G. An attorney appointed as GAL, CLR or counsel for youth in all other proceedings governed by this Directive shall perform all duties as directed by the court, as set forth by statute and as required by the Rules of Professional Conduct as described in Section V.B. These duties may include all or some of the duties described below:

1. Attend all court hearings relevant to the child and advocate for the child's best interests and legal rights as applicable. Present information relevant to the child's interests through oral or written recommendations, motions or other acceptable means consistent with the court's appointment orders and the attorney's statutory authority and ethical obligations.

2. Conduct an independent investigation in a timely manner that includes:

- a. Personally meeting with and observing the child;
- b. Meeting with current and proposed placements, guardians or custodians, when appropriate;
- c. Reviewing court files and relevant records, reports and documents.

Commentary: The investigative activities required by Sections V.F.2.b and V.F.2.c may be performed by a qualified professional acting as an agent of the appointed GAL under the GAL's supervision.

- H. In cases in which the parents, child or proposed custodians are living or placed more than 100 miles outside of the jurisdiction of the court, as defined by the geographic boundaries of the judicial district, the requirements to conduct in-person observations and meetings are waived. However, the GAL and CFY continue to have an obligation to personally interview the child or youth as developmentally appropriate, interview caregivers, parents and proposed caregivers, observe the child's or youth's interactions with such individuals and assess the placements or potential placements. This obligation may be accomplished through electronic or other means of communication. To the extent possible, the appointee shall endeavor to see the child or youth in their placement. The OCR will pay reasonable costs associated with meeting these obligations submitted in compliance with OCR billing policies and procedures.
- I. All attorneys with appointments governed by this CJD shall participate in OCR's processes for verifying compliance with this CJD.

VI. Duties of Judges and Magistrates

- A. Judges and magistrates shall ensure that GALs, and CLR, and CFY involved with cases under their jurisdiction are representing the interests of children and youth.
- B. In providing this oversight, judges and magistrates shall:
 1. Routinely monitor compliance with this directive and promptly notify the OCR of failures of GALs, CLRs and CFY subject to dependency and neglect proceedings to comply with this Chief Justice Directive and other Chief Justice Directives in existence or subsequently adopted;
Commentary: The complaint and notice procedure is set forth in Section VII.B, footnote 1. A child whose best interests are being represented by counsel in dependency and neglect and other proceedings is in a particularly vulnerable

position. It is unlikely the child will routinely appear in court and it may be difficult for a child to express concerns or problems with the attorney appointed to represent his or her best interests. For these reasons, judges should take an active role in monitoring attorneys who represent the best interests of children. Often the judge is the only individual in the position to become aware of less than adequate representation or non-compliance with this Chief Justice Directive. Judges should consider practices such as inquiring at each court date the attorney's last contact with the child, as well as asking other questions to ensure quality representation of the child's best interests. Similarly, youth represented by counsel in dependency and neglect proceedings may lack the resources to raise concerns about counsel's representation, and the court should promptly notify the OCR of any inadequacies it has observed with regard to an attorney's performance as CFY in a dependency and neglect proceeding.

2. Provide guidance and clarify the expectations of the court concerning GALs, CLRs and counsel for children subject to dependency and neglect proceedings upon their appointment, throughout the proceedings and through other appropriate mechanisms;
 3. Hold periodic meetings with all practicing GALs, CLRs, and CFY the court deems necessary to ensure adequate representation of the best interests of children or minor wards; and
 4. As explained in Section V.B, hold GALs, CLRs, and CFY to the same standards and expectations imposed by the Colorado Rules of Professional Conduct on every attorney who is licensed to practice law in Colorado and report any violations. Any report should also include notice to the OCR of such report or concern so that the OCR may use this information to protect children on present or future appointments from inadequate representation.
- C. Implement procedures and practices that enable GALs, CLRs and counsel for children to comply with this Chief Justice Directive.
Commentary: Examples of such procedures and practices include entering orders authorizing GALs, CLRs, and CFY to access to all relevant case information, checking their availability when scheduling hearings, promptly notifying them of scheduled court dates and requiring timely service of pleadings and reports.

VII. Procedures for Complaints against GALs, CLRs, and CFY through Contracts with the Office of the Child's Representative.

- A. For all court-appointed GALs, CLRs, and CFY, complaints concerning alleged violations of the Colorado Rules of Professional Conduct shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel and reported, if

possible, to the OCR so that the OCR may be able to consider this information when deciding whether to continue to contract with the attorney, either at the time of the complaint or in the future.

- B. All complaints regarding the performance of any state-paid GAL, CLR or CFY subject to a dependency and neglect proceeding who contracts with the OCR shall be submitted to the OCR in writing, unless the complaint is made by a judicial officer or court staff.¹ The OCR shall investigate the matter and take action necessary to resolve any concerns or issues identified by the OCR. Such action may include but is not limited to: placing the attorney on probationary status with regard to his or her contract with the OCR; suspending or terminating the attorney's contract with the OCR; seeking a court order terminating the attorney's appointment on an active case;² and/or taking remedial action to improve the quality of the attorney's work. At the conclusion of the investigation, the OCR shall issue a written report of its action to the attorney, the complainant and other parties determined by the OCR to be in need of the complaint information. The OCR may redact the written report to protect the confidentiality of persons when the OCR deems such redaction advisable. This paragraph does not preclude the OCR's authority to terminate a contract at will.
- C. The OCR is required to report any violations of the Colorado Rules of Professional Conduct that it becomes aware of during its investigation of a complaint to the Colorado Supreme Court Office of Attorney Regulation Counsel.

VIII. Sanctions

- A. All contracts with the OCR for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Chief Justice Directive may result in OCR terminating the contract, removing the attorney from the OCR appointment list, and seeking court orders terminating the attorney's appointments.

¹ If an issue arises concerning an attorney's ability to competently or adequately represent a child's best interest in any particular case, the court shall immediately contact the OCR. The OCR must respond forthwith, giving immediate consideration and resolution regarding the complaint, which may include termination of contract, removal from the case at issue and/or removal from the OCR approved list. In addressing the complaint, the OCR will give serious consideration to the judicial officer's recommendations as to how the termination of an appointment or any other action taken by the OCR may impact the best interests of the child in the course of a particular case. This complaint process in no way interferes with the court's inherent powers to impose sanctions, exercise its powers of contempt and/or report any violations of the Rules of Professional Conduct to the Supreme Court Attorney Regulation Office.

² The OCR fully understands and appreciates the serious consequences that may result from removing an attorney from an existing case. It can disrupt the continuity of the case, interrupt and delay the court process, extend the length of the case and ultimately may not be in the best interests of the child. As such, only under the most exceptional circumstances after serious consideration and consultation with the court will the OCR seek court removal of an attorney from a case.

- B. Judges and magistrates shall notify appointees that acceptance of the appointment requires compliance with this Chief Justice Directive, and that failure to comply will result in timely notification to the OCR and may result in the OCR terminating the contract, removing the attorney from the OCR appointment list, and termination of appointments as set forth section VIII.A.

This Chief Justice Directive is amended effective *nunc pro tunc* to October 1, 2021.

Done at Denver, Colorado this 23rd day of November, 2021.

/s/

Brian D. Boatright, Chief Justice

I. PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN AD LITEM REPRESENTATION ON THE BASIS OF INDIGENCY

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF 208 (“Application for Court-Appointed Counsel or Guardian ad Litem”) signed under oath, before such an appointment may be considered by the court. Form JDF 208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and where the court appoints a GAL for a judicial bypass proceeding pursuant to §12-37.5-107(2)(b).

Procedures for the Determination of Indigency

The following procedures are used for applicants in cases addressed in CJD 04-06.

- **Completion of Form JDF 208 by Applicant**

Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF 208, and submit it to the court.

- **Review of Financial Information by Court Personnel**

Court personnel shall review the applicant’s information on form JDF 208 to determine whether or not the applicant is indigent on the basis of three factors:

- Income³
- Liquid assets⁴
- Expenses⁵

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian ad litem on the basis of indigency if his or her financial circumstances meet either set of criteria described below.

- 1) **Income is at or below guidelines / Liquid assets equal \$0 to \$1,500**

- If the applicant’s income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500 or less, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation at state expense.

³ *Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers’ Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant’s income in a fashion which would allow the applicant proprietary rights to the roommate’s income.*

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran’ benefits earned from a disability, child support payments or other assistance programs.

⁴ *Liquid assets include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant’s ability to maintain home and employment.*

⁵ *Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF 208.*

2) Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income

- If the applicant’s income is up to 25% above the income eligibility guidelines; the applicant has assets of \$1,500 or less; and the applicant’s monthly expenses equal or exceed monthly income, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation.

In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.

INCOME ELIGIBILITY GUIDELINES (amended February 1, 2022)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 13,590	\$ 1,133	\$ 1,416	\$ 1,770	\$ 16,988	\$ 21,234
2	\$ 18,310	\$ 1,526	\$ 1,907	\$ 2,384	\$ 22,888	\$ 28,609
3	\$ 23,030	\$ 1,919	\$ 2,399	\$ 2,999	\$ 28,788	\$ 35,984
4	\$ 27,750	\$ 2,313	\$ 2,891	\$ 3,613	\$ 34,688	\$ 43,359
5	\$ 32,470	\$ 2,706	\$ 3,382	\$ 4,228	\$ 40,588	\$ 50,734
6	\$ 37,190	\$ 3,099	\$ 3,874	\$ 4,842	\$ 46,488	\$ 58,109
7	\$ 41,910	\$ 3,493	\$ 4,366	\$ 5,457	\$ 52,388	\$ 65,484
8	\$ 46,630	\$ 3,886	\$ 4,857	\$ 6,072	\$ 58,288	\$ 72,859

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 per month to "monthly income" or \$5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

wallace, jennifer

From: Anna Ulrich <aulrich@coloradochildrep.org>
Sent: Monday, June 27, 2022 2:47 PM
To: wallace, jennifer; meinster, ann; Josefina Raphael; young, abigail; johnson, clancy; loew, priscilla; Sheri Danz; Melanie Jordan; welling, craig; morrison, terri; kashby1
Subject: [External] HB22-1038 & Juvenile Rules Subcommittee - Counsel for Youth
Attachments: 20220627 CRJP 4.3 Jury Trial - proposed changes CFY.docx

CAUTION: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi All:

Thank you for your attendance and participation today. Here's a brief recap of what we did:

1. Changes required to EXISTING juvenile rules to incorporate CFY. Consensus that only existing rule that requires changing in CRJP 4.3 Jury Trials. Discussion regarding best language to make necessary changes. *See attached word document for language resulting from discussion on CRJP 4.3 (clean copy and track changes included)*
2. Changes required to CJD 04-06 to incorporate CFY. Sheri Danz described the process approved by Justice Boatright for modifying the CJD, which included obtaining feedback from stakeholders upon completion of draft. Discussion occurred as to how best to support OCR in providing input, and it was determined that OCR would welcome written comments from members of this group. OCR indicated a draft of the revised CJD will be distributed to this group via email upon completion of draft. Additionally, OCR will propose and prepare a presentation on the proposed draft for the August 5th meeting of the larger juvenile rules committee.
3. Changes to draft of proposed juvenile rules under consideration by the drafting subcommittee. All agreed that the bulk of the work for considering and incorporating CFY into the juvenile rules will occur in the drafting subcommittee. OCR will proactively consider the draft rules and propose modifications/additions/etc as necessary.

Thanks again,

Anna

Anna N. Ulrich

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Colorado Rules of Juvenile Procedure & Forms

Rule 4.3. Jury Trial

(a) At the time the allegations of a petition are denied, a respondent, petitioner, the court, or a child through their guardian ad litem or counsel for youth may demand a jury of not more than six. Unless a jury is demanded, it shall be deemed waived.

(b) Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the following three groups shall each have three peremptory challenges: the petitioner, all respondents, and the children through their guardian ad litem or counsel for youth. No more than nine peremptory challenges are authorized.

Rule 4.3. Jury Trial

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(b) Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the following three groups shall each have three peremptory challenges: the petitioner, all respondents, and the children through their guardian ad litem or counsel for youth~~shall be entitled to three peremptory challenges~~. No more than nine peremptory challenges are authorized.

Drafting Subcommittee Proposal

The full committee left blanks for the drafting subcommittee to fill in an appropriate deadline. The subcommittee selected 5 days (based on the deadline for reports from [CJD 96-08\(3\)\(b\)](#)) and 48 hours based on C.R.C.P. 48(b)(1)(A) (subpoenas must be served no later than 48 hours before the time for appearance set out in the subpoena):

Evidence Rule

[Draft from Adjudication Subcommittee]

(a) – (b) [NO CHANGE]

(c) Reports.

- (1) **Advisement.** The court must inform the child, his or her parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other materials relating to the child’s mental, physical, and social history.
- (2) **Deadline For Providing Report.** Except in emergency proceedings and temporary custody hearings under section 19-3-403, C.R.S., any party who intends to offer evidence in the form of written reports and other material relating to the child’s mental, physical, and social history at a proceeding must file and serve the written reports and other material to the other parties at least 5 days in advance of the hearing unless a greater or lesser time is ordered by the court.
- (3) **Testimony of Person who Wrote the Report.** If requested by the child, the child’s parent or guardian, or other interested party within 48 hours before the hearing the court must require the person who wrote the report or prepared the material to appear as a witness and be subject to both direct and cross-examination. Absent such a request, the court may, at any time, order the person who wrote the report or prepared other material to appear at the proceeding if it finds that the interest of the child so requires.

(d) – (h) [NO CHANGE]