

## **SUPREME COURT OF COLORADO**

### **OFFICE OF THE CHIEF JUSTICE**

#### **DIRECTIVE CONCERNING COURT APPOINTMENTS OF CHILD AND FAMILY INVESTIGATORS PURSUANT TO SECTION 14-10-116.5, C.R.S.**

##### **I. INTRODUCTION**

The following policy, adopted to assist the administration of justice through the appointment and training of child and family investigators (“CFIs”), applies to all CFIs appointed pursuant to section 14-10-116.5, C.R.S.

In 1997, Colorado statute created CFIs, formerly “Special Advocates,” and authorized them to investigate, report, and make independent and informed recommendations to the court, following a court appointment by order that clearly sets forth the subject matter and scope of the CFI’s duties. The statute permits attorneys, mental health professionals, and other individuals with appropriate training, qualifications, and independent perspectives acceptable to the court to fill this role.

In its August 2002 Final Report, the Commission on Families in the Colorado Courts recommended the drafting of standards to clarify the role and accountability of CFIs. The Supreme Court’s Standing Committee on Family Issues, through its Other Professionals Subcommittee, solicited comments from members of the public, judges, attorneys, and CFIs from around the state and found the lack of clear standards problematic in certain key areas, including role clarification and avoidance of multiple roles, communication issues, payment issues, establishment of clear procedures for complaints, and consistency in court procedures. The Other Professionals Subcommittee made several amendments in 2007 to provide clarification on access to CFI reports and to the CFI’s role in court.

Subsequently, in its November 2010 Final Report, the Supreme Court Standing Committee on Family Issues recommended a limit on the fees charged by CFIs to eliminate investigations that are indistinguishable from parental responsibility evaluations. In response, this Chief Justice Directive (“CJD”) established a maximum CFI fee for privately paid CFIs. Similarly, CJD 04-05 stated the maximum fee for state paid non-attorney CFIs and CJD 04-06 stated the maximum fee for state paid attorney CFIs. Pursuant to amendment of section 13-91-101, C.R.S., *et seq.*, effective January 1, 2016, the Office of the State Court Administrator (“SCAO”) oversees state pay and private pay CFIs, whether attorney or non-attorney. CJD 04-05 governs the rates, presumptive maximum fees, and billing procedures for state pay CFIs.

CFI investigations are not, by definition, parental responsibility evaluations. The purpose of a CFI investigation is to provide a brief assessment that is nonintrusive, efficient, and cost-effective. If a CFI finds that a case warrants a more comprehensive assessment, they should provide that recommendation to the court. The court may then choose to appoint a parental responsibility evaluator other than the appointed CFI or take other necessary action. A CFI appointment may expand in scope to appointment as a parental responsibility evaluator for an appointee qualified pursuant to section 14-10-127, C.R.S., only upon written stipulation of the parties approved by the court.

The CFI standards and duties of the courts set forth in this CJD recognize that people from different professions and backgrounds will serve as CFIs. These standards guide CFI conduct and provide a structure for their regulation to better serve Colorado families. The standards do not, however, exhaust the ethical and professional considerations that should inform a CFI in their duties. Violation of a standard should not, in and of itself, give rise to a cause of action, nor should it create any presumption that the CFI breached a legal duty or committed a professional ethical violation. The statutory purpose and definition of a CFI should guide interpretation of the CFI standards. The comments accompanying each standard explain and illustrate the meaning of the standard and shall also guide its interpretation.

## **II. STATUTORY AUTHORITY AND EXISTING CHIEF JUSTICE DIRECTIVES**

A. This CJD sets forth comprehensive standards for all CFIs appointed pursuant to section 14-10-116.5, C.R.S., and also sets forth the courts' duties when appointing CFIs. Section 14-10-116.5, C.R.S., authorizes the courts to appoint CFIs in domestic relations cases. Attorneys, mental health professionals, and other individuals with appropriate training, qualifications, and independent perspectives acceptable to the courts may serve as CFIs. The statutorily defined role of the CFI is to investigate, report, and make recommendations to the court on issues affecting the best interests of the minor and dependent child/ren involved in domestic relations cases. The order of appointment shall clearly set forth the subject matter and scope of the CFI's duties. See "Order Appointing Child and Family Investigator pursuant to §14-10-116.5," ("JDF 1318").

B. Effective January 1, 2016, CJD 04-05 addresses appointment and payment procedures for all state paid CFIs. Prior to January 1, 2016, CJD 04-06 addressed appointment of state paid attorney CFIs through the Office of the Child's Representative.

## **III. MAXIMUM FEES**

A. Privately Paid CFIs.

1. Investigation and Report. For appointments made after the effective date of this CJD, the presumptive maximum fee for the investigative and reporting work of privately paid CFIs is \$3,250 per appointment. The fee shall not exceed this presumptive \$3,250 cap without prior court approval in the form of a written order with specific findings concerning the extraordinary circumstances justifying the excess fees. Even if the parties stipulate to exceed the presumptive maximum fee, the judicial officer must approve the stipulation in a written order with specific findings concerning the extraordinary circumstances. Fees shall be paid as a retainer, with the CFI billing and deducting from said retainer as work is completed. Any amount remaining from the retainer at the time the CFI appointment terminates must be returned to the parties.

Discovery costs specific to a case are not included in the presumptive maximum fee but are to be allocated to the parties pursuant to the order of appointment for the payment of fees. Discovery costs are the actual cost to obtain specific records/reports (not time spent) charged by the agency releasing the report, which include but are not limited to police reports, DHS reports, TRAILS reports, and medical records.

So long as the CFI provides alternative means of making payment that would not require a processing fee, credit card fees charged for processing an actual payment by a party are

to be allocated solely to the party using the credit card and are not included in the presumptive maximum fee.

Only direct fees can be billed to a CFI investigation and any fees not specifically mentioned herein as excluded must be included in the maximum presumptive fee. The costs of doing business (overhead costs) incurred by a CFI cannot be passed along to the parties in a CFI investigation.

2. **Testimony and Preparation Time.** In some matters, the parties may request, or the court may order, that a privately paid CFI testify. In such matters, a presumptive maximum fee of \$500 per appointment shall govern this testimony, including preparation or other work performed in association with giving testimony. The total testimony and preparation fees of a privately paid CFI shall not exceed this presumptive \$500 cap without court approval in the form of a written order with specific findings concerning the extraordinary circumstances justifying the excess fees. Payment of the testimony fee shall be made within seven days of the request for the CFI to testify, but in no case later than 48 hours before the hearing, paid by the requesting party, subject to reallocation at the hearing. If both parties are requesting that the CFI testify, the fee shall be split pursuant to the division in the order of appointment, subject to reallocation by the court. If the court orders the CFI to testify prior to a request from either party, the court shall state how the testimony fee is to be paid.

3. **Hourly Rate.** Every order appointing a privately paid CFI shall state the CFI's hourly rate. If the CFI charges one rate for investigative and reporting work, and another rate for testimony and preparation time, the CFI appointment order shall state both hourly rates.

B. **State Paid CFIs.** Effective January 1, 2016, CJD 04-05 establishes the maximum hourly rate and maximum total fee per appointment for state paid CFIs, whether attorney or non-attorney. The SCAO shall pay CFI costs in matters in which one or more of the parties are found to be indigent. CFIs seeking fees that exceed the maximum allowable amount must comply with the procedures set forth in CJD 04-05.

C. **Mixed Pay Cases.** When the court orders a CFI's fees to be partially state paid and partially privately paid, the court shall specify the percentage of time to be paid by each party. The presumptive maximum fee shall be determined by the percentage of time allocated to each form of payment. For example, if the court allocates 50% of the time for fees to be state paid and 50% of the time to be private paid, the presumptive maximum fee shall be 50% of the current state allowable "maximum total fee per appointment" plus 50% of the current private paid presumptive maximum fee. The CFI shall bill the hourly rate that corresponds to the court's allocation of pay.

#### **IV. GUIDELINES FOR APPOINTMENT**

A. **Eligibility for appointment as a CFI requires:**

1. An "Affidavit of Mandatory Consent and Disclosure for Eligibility of Appointment as a Child and Family Investigator and Placement on Statewide Eligibility Roster" ("CFI Affidavit").

2. A successful background check through processes and guidelines established by the SCAO. Prospective CFIs are responsible for completing this process and paying the associated fees. CFIs should allow a minimum of four weeks for completion of the background check.

3. Completion of the mandatory Colorado Judicial Department Child and Family Investigator training referenced in Standard 6 of section VIII.C. of this CJD.

4. Selection for the Statewide Eligibility Roster and Judicial District Eligibility Rosters.

**B. Placement on Eligibility Rosters.**

1. **Statewide Eligibility Roster.** Based on the CFI Affidavit, background check, and statewide or local need for additional CFIs, the SCAO will determine whether to place the CFI on the Statewide Eligibility Roster. Only individuals listed on the Statewide Eligibility Roster may be added to an individual District Roster.

2. **Judicial District Rosters.** Each judicial district has the discretion to compile and maintain its own eligibility roster or have the SCAO maintain the eligibility roster for their district. Only individuals listed on the Statewide Eligibility Roster may be listed on a specific Judicial District's roster and serve as a CFI for that District.

Generally, a CFI cannot be appointed to a case in a Judicial District if they are not on that specific Judicial District's Roster. In rare circumstances, however, a CFI on the Statewide Roster may be appointed to a case in a Judicial District despite not being included on the local roster, based on the stipulation of the parties, the express consent of the CFI, and confirmation from the presiding judicial officer that the CFI has not been removed from that local roster for cause.

3. **Policies Governing CFI Eligibility and Appointment.** The SCAO shall establish and disseminate policies governing CFI appointments and eligibility. See <http://www.courts.state.co.us/Administration/Section.cfm?Section=jp3domprog>.

**V. COMPLAINTS**

A. The administrative complaint process set forth in this section is not intended to duplicate, supersede, or review judicial decision-making concerning CFI recommendations, nor does it replace proper litigation in the trial court. Generally, concerns regarding the performance of a CFI that arise during the CFI investigation, but prior to resolution of the allocation of parental responsibilities, should be handled by the filing of a proper motion in the trial court, through cross examination of the CFI, and/or through submission of other testimony or evidence at the hearing.

B. The administrative complaint process set forth in this section is not intended to duplicate or supersede regulatory authority of the Department of Regulatory Agencies ("DORA") and the state boards overseeing the practice and discipline of licensed mental health professionals. Therefore, complaints addressing conduct covered by provisions of Title 12, Article 245, Parts 1 – 8, of the Colorado Revised Statutes, are beyond the scope of this CJD, including complaints regarding confidentiality, governed by §12-245-220, C.R.S., complaints regarding prohibited actions, governed by §12-245-224, C.R.S., and complaints regarding unauthorized practices, governed by §12-245-228, C.R.S.

C. The administrative complaint process set forth in this section is not intended to duplicate or supersede regulatory authority of the Office of Attorney Regulation Counsel and the oversight of the practice and discipline of attorneys. Therefore, complaints addressing conduct covered by

CRCP Ch. 20 and the Rules of Professional Conduct (Appendix to Chapters 18 to 20) are beyond the scope of this CJD.

D. The administrative complaint process set forth in this section is limited to sanctioning CFIs for violation of this Directive as set forth in Section VI herein.

1. Prior to filing a complaint with the SCAO, parties or their counsel of record shall request preliminary findings on the record from the judicial officer presiding over the current case that the CFI failed to comply with the court's order of appointment or has violated a practice standard set forth in this CJD. The complainant must request a preliminary finding for each practice standard for which they intend to file a formal complaint. Preliminary findings must be requested within 60 days of termination of the CFI's appointment but are strongly encouraged prior to final orders being entered. Preliminary findings and/or founded complaints made after entry of final orders regarding issues the CFI investigated will not result in changes to those orders. The court must make a ruling on requested preliminary findings within 90 days.

- a. The court, counsel of record, parties or anyone with knowledge regarding the CFI's failure to make a mandatory disclosure to the SCAO of any malpractice suit or criminal charge brought or filed against them or notification of any grievance, formal complaint, or disciplinary action that is under investigation pursuant to section VII(B) may file a complaint with the SCAO without a judicial finding.
- b. The court, counsel of record, or parties to the case may file a complaint with the SCAO without a judicial finding regarding violation of Standard 6: The CFI shall establish and maintain competence through training.

2. Parties or their counsel of record shall request the preliminary findings by filing a motion requesting such findings in the current case. The CFI shall be notified of the request for findings and allowed 21 days to respond. The judicial officer is not required to hold a separate hearing to either deny the motion for preliminary findings or to make such findings, so long as the court issues a written order on any properly filed motion. Unless otherwise approved by the court, neither the motion nor response shall exceed ten pages. An order which simply removes the CFI or states "So Ordered" shall be insufficient to establish preliminary findings of a violation. The trial court may consider whether the parties stipulated to some or all of the recommendations of the CFI in determining whether the CFI committed a violation. The court has the discretion to address the issue of fees for the CFI's time spent responding to the motion for preliminary findings.

3. Parties or their counsel of record shall file a complaint with the SCAO only after the judicial officer presiding over the case has made oral or written preliminary findings on the record that the CFI failed to comply with the court's order of appointment or has violated a practice standard set forth in this CJD. The findings must specifically enumerate with which practice standards or which provisions in the court's order the CFI has failed to comply.

4. Nothing in this CJD shall be construed to require the judicial officer to make an ultimate conclusion regarding sanctions to be imposed on the CFI at the statewide level. Violation of a standard should not, in and of itself, give rise to a cause of action, nor should it create any presumption that the CFI breached a legal duty or committed a professional ethical violation.

5. The presiding judicial officer may make findings and file a complaint with the SCAO pursuant to this section at any time.

6. Nothing in this CJD shall be construed as superseding a Judicial Officer's authority to manage an order of appointment, including sanctions and/or removal in any current case over which they preside.

E. Only parties, their counsel of record and judicial officers may file complaints regarding CFI noncompliance with the order of appointment or the Standards of Practice set forth in section VIII of this CJD, except as detailed in section V.D.1.a of this CJD. Complaints must be filed within six months of the termination of the CFI appointment. Individuals filing complaints must do so through the online "Child and Family Investigator Formal Complaint Procedures and Form" ("CFI Complaint Form") on the Colorado Judicial website, <http://www.courts.state.co.us/Administration/Section.cfm?Section =jp3domprog>, or by printing the online form and providing it by mail or in person to the Court Executive in the relevant Judicial District. If an individual needs an accommodation pursuant to the Americans with Disabilities Act in order to file a complaint, the individual should contact the CFI Program Coordinator at [CFIprogram@judicial.state.co.us](mailto:CFIprogram@judicial.state.co.us). The complaint must state the specific facts upon which the complaint is made, identify the specific standard(s) from this CJD alleged to have been violated, and provide the date on which the preliminary findings supporting each allegation in the complaint were made.

F. Complaints will automatically be denied without investigation under the following circumstances:

1. Complaints made more than six months following termination of the CFI appointment;

2. Complaints involving a CFI not listed on the Statewide Eligibility Roster;

3. Complaints without preliminary findings from the presiding judicial officer (except for the exclusions in V.D.1.a&b);

4. Complaints setting forth only subjective or conclusory comments of a complainant or only setting forth disagreement with the recommendations of the CFI; or

5. Complaints involving conduct or professional discipline within the scope of Title 12, Article 245, Parts 1-8 or CRCP Ch. 20 or Rules of Professional Conduct (Appendix to Chapters 18 to 20).

G. If the judicial officer makes preliminary findings that the CFI failed to comply with the court's order of appointment or has violated a practice standard set forth in this CJD, and a complaint is filed through the complaint process above, the SCAO will conduct a formal investigation, which may include review of active cases.

H. The SCAO, the Court Executive, or a designee in the judicial district where the case is pending, shall review the complaint and acknowledge receipt within 14 days of receiving a CFI Complaint Form.

I. No later than 60 days after receiving a CFI Complaint Form, the SCAO, in consultation with the Court Executive or designee, shall provide a written response to the complainant regarding the status of the investigation.

J. For founded complaints involving attorney CFIs, the SCAO shall inform the Colorado Supreme Court Office of Attorney Regulation Counsel (“Attorney Regulation”) and notify the complainant of the founded complaint. In providing notice to Attorney Regulation, the SCAO will provide a copy of the complaint and investigation report, redacting the names, addresses and birthdates of the children and collateral witnesses. The SCAO will mark these redacted documents “Confidential Pursuant to CJD 04-08” before providing them to Attorney Regulation. At the request of Attorney Regulation, the SCAO will provide the CFI report, redacting the names, addresses and birthdates of the children and collateral witnesses and will mark the redacted report “Confidential pursuant to CJD 04-08”. The SCAO will request that Attorney Regulation inform the SCAO of the final outcome of any professional conduct investigation.

K. For any founded complaints involving CFIs who are mental health professionals regulated by DORA, the SCAO shall inform DORA and notify the complainant of the founded complaint. In providing notice to DORA, the SCAO will provide a copy of the complaint and investigation report, redacting the names, addresses and birthdates of the children and collateral witnesses. The SCAO will mark these redacted documents “Confidential Pursuant to CJD 04-08” before providing them to DORA. At the request of DORA, the SCAO will provide the CFI report, redacting the names, addresses and birthdates of the children and collateral witnesses and will mark the redacted report “Confidential pursuant to CJD 04-08”. The SCAO will request that DORA inform the SCAO of the final outcome of any professional conduct investigation.

L. Regardless of the qualifications of the CFI, if there is a founded complaint, the complainant will only receive a letter informing them of the date of the finding, the standard or section of the CJD violated, and the sanction imposed.

M. The judicial district and the SCAO may publicly disclose only the existence of a founded complaint, the date of the finding, the standard or section of the CJD violated, and the sanction imposed. This information will be publicly available on the judicial website.

## **VI. SANCTIONS AND SUITABILITY**

A. Founded complaints against a CFI may result in sanctions, up to and including, removal from one or more judicial district eligibility roster(s) and/or the Statewide Eligibility Roster. If a judicial officer makes preliminary findings, as detailed in Section V of this CJD, the SCAO retains the discretion to suspend the CFI pending further investigation.

B. The SCAO, in consultation with the Court Executive or a designee, shall determine the appropriate sanction for all founded complaints. The SCAO’s decision as to whether a complaint is founded and as to what action to take, if any, are final, unappealable decisions.

C. Founded complaints may result in the court ordering a partial or total refund of fees. The parties are responsible for enforcing an order regarding refund of fees, and the SCAO shall play no role in this process. If a CFI is non-compliant with an order regarding fees, they may be suspended from the roster until compliant.

D. Regardless of the filing of a complaint, if a judicial district, in consultation with its Chief Judge, determines that a CFI is no longer suitable for appointment in that judicial district and removes the CFI from the judicial district's eligibility roster, the Court Executive shall inform the SCAO of the reason for removal. The SCAO may also remove the CFI from the Statewide Eligibility Roster pursuant to information disclosed through this process.

E. Regardless of the filing of a complaint, if the SCAO determines that a CFI is no longer suitable for appointment, the SCAO may remove the CFI from the Statewide Eligibility Roster. Judicial districts shall also remove the CFI from district eligibility rosters if SCAO removes the CFI from the Statewide Eligibility Roster. The SCAO's determination of suitability is a final, unappealable decision.

1. If the SCAO becomes aware of public acts or statements which call into question the suitability of a CFI, the SCAO has the authority to suspend the CFI from the statewide roster pending a suitability investigation. The SCAO's determination to suspend and investigate is a final, unappealable decision.

F. If a CFI is determined to be no longer suitable pursuant to Sections VI.D. or E of this CJD, the judicial district and the SCAO may publicly disclose only that the CFI is no longer suitable and the date of the determination. This information will be publicly available on the judicial website.

G. If sanctions or suitability led to a CFI being removed from the roster, the decision as to whether they complete pending appointments is left to the discretion of the appointing court.

## **VII. LIABILITY, MALPRACTICE, AND GRIEVANCES**

A. If a CFI can obtain professional liability insurance, the CFI must maintain such insurance for work performed as a CFI. CFIs with professional liability insurance must provide written notice to the SCAO within seven days if such insurance coverage terminates and must not accept CFI appointments until reinstatement of coverage.

B. Anyone who has filed a CFI Affidavit shall notify the SCAO in writing within seven days of their notification of any malpractice suit or criminal charge brought or filed against them or notification of any grievance, formal complaint or disciplinary action under investigation. CFIs shall likewise notify the SCAO in writing within seven days of notification of any malpractice suit or criminal charge brought or filed against members of the CFI's staff who are approved to attend home visits, or any grievance, formal complaint, or disciplinary action under investigation against any members of the CFI's staff approved to attend home visits pursuant to the "Practice Guideline – Use of Support Staff, CJD 04-08 Standard 8."

## **VIII. STANDARDS OF PRACTICE**

### **A. General Principles**

Standard 1. The CFI shall act professionally.

Standard 2. The CFI shall avoid an actual conflict of interest or an appearance of impropriety.

### **B. Role of the Child and Family Investigator**

Standard 3. The CFI serves as an investigative arm of the court.

Standard 4. The CFI shall not serve inconsistent dual roles.

Standard 5. The CFI may move to the role of parenting coordinator, decision-maker or arbitrator after termination of their appointment.

### **C. Duties of the Child and Family Investigator**

Standard 6. The CFI shall establish and maintain competence through training.

Standard 7. The CFI shall collect data and conduct an investigation sufficient to allow the CFI to provide competent recommendations.

Standard 8. The CFI shall have appropriate communication with the child/ren involved.

Standard 9. The CFI shall report child abuse to the proper agency and the court.

Standard 10. The CFI shall prepare a clear, concise, and timely report.

Standard 11. The CFI shall provide copies of their file.

Standard 12. The CFI shall not conduct psychological testing. The CFI shall not perform or require drug, alcohol, polygraph, or other testing/evaluations, or inspection unless specifically ordered by the court.

Standard 13. The CFI shall maintain confidentiality.

Standard 14. The CFI appointment shall terminate no later than entry of permanent orders or the post-decree order.

### **D. Communications**

Standard 15. The CFI shall develop written policies for the parties.

Standard 16. The CFI shall develop written policies for counsel.

Standard 17. The CFI shall review the court's order of appointment.

Standard 18. The CFI shall have no private or *ex parte* communications with the court.

## STANDARDS OF PRACTICE

### A. General Principles

#### **Standard 1. The CFI shall act professionally.**

**CFIs shall provide their services in a manner consistent with the highest professional standards. They shall be accurate and honest in their work and in their communications with the parties and the court. While the best interests of the child/ren are paramount, CFIs shall respect the rights, the dignity, and the welfare of the parties and the child/ren with whom they work.**

#### COMMENT

Within the scope of the order of appointment, the CFI's primary responsibility is to explore, understand, and accurately convey to the court the best interests of the child/ren served, as defined in section 14-10-124, C.R.S., or consistent with the applicable post-decree legal standard. In meeting this responsibility, the CFI should understand that they are working with families at a difficult and stressful time. They should attempt to establish a positive and constructive professional working relationship with family members.

The CFI should be mindful of the diverse nature of families and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and should consider these factors when working with a family. They should be sensitive to the separate interests, rights, wishes, and concerns of the parents, child/ren, and other parties in a case. They must remember that they are in—and are viewed as being in—a position of influence over a family's future.

During the course of their work, a CFI will communicate with a variety of individuals and agencies through interviews, phone contact, faxes, e-mail, or written correspondence. There is no one right way to communicate, but a CFI should be aware of their position as an investigative arm of the court.

#### **Standard 2. The CFI shall avoid an actual conflict of interest or an appearance of impropriety.**

**To avoid a conflict of interest or an appearance of impropriety, the CFI shall not seek or accept an appointment if the CFI has or has had a financial, familial, or social relationship with the parents, child/ren, counsel, or other parties involved in the case. If the CFI becomes aware of an insurmountable bias or prejudice in dealing with a case, or a conflict of interest, they shall ask the court to terminate the appointment with proper notice to the parties.**

#### COMMENT

Within seven days of appointment, the CFI must file JDF 1338, Mandatory Disclosure, requiring the disclosure to each party, attorneys of record, and the court, of the existence or non-existence of any past or present familial, financial, or social relationship with the child, either party, the attorneys of record, or the judicial officer. If such a relationship exists, the CFI must

disclose the nature of the relationship. The CFI shall not accept or seek an appointment when such a relationship exists.

A CFI must base recommendations on an independent fact-finding investigation and review of a case as the court's investigative arm. They should guard against undue influence from conclusions of other professionals involved with the case in the past or present. They should guard against the appearance of alignment with one side over the other. If the CFI cannot set aside a bias or feelings that may develop when working with challenging parties or high conflict families, the CFI must notify the court and request removal from the case.

If a party or counsel believe a CFI has an actual conflict of interest, or an appearance of impropriety exists, they shall file a timely objection in the trial court in accordance with C.R.S. 14-10-116.5(2.5)(b), and the trial court shall determine whether to appoint the CFI to the case. The trial court's confirmation of the CFI's appointment over the objection of a party or counsel cannot serve as the basis for a complaint against the CFI pursuant to Section V of this CJD.

## **B. ROLE OF THE CHILD AND FAMILY INVESTIGATOR**

**Standard 3. The CFI serves as an investigative arm of the court.**

**The CFI serves as an investigative arm of the court. The CFI must gather information, formulate recommendations, and report to the court concerning the child/ren's best interests, as set forth in the order of appointment. The parties may conduct direct or cross-examination of the CFI if the CFI testifies.**

### **COMMENT**

This CJD does not prescribe a regimented set of investigative steps that a CFI must follow, but rather emphasizes the primary role of the CFI in providing information and making recommendations to allow the parties, counsel, and the court to craft orders that best serve the child/ren. As the issues in each family are unique, the type, scope, or extent of investigation will vary. Disagreement with the recommendations of the CFI does not, without more, constitute a violation of these standards.

These standards should not limit the flexibility of the parties or the court when deciding upon the appointment of a CFI and when preparing the order of appointment. Within the scope of the order of appointment, this flexibility allows the CFI to use the information gathered to facilitate or encourage settlements, if appropriate. A CFI may participate in conferences with the parties and/or the court, consistent with the order of appointment.

**Standard 4. The CFI shall not serve inconsistent dual roles.**

**The CFI shall not: (a) serve as a formal mediator in the case; (b) provide psychotherapy to any of the parties or children in the case; (c) provide legal advice to any party or otherwise act as an attorney in the case; (d) later accept an appointment as a child's legal representative ("CLR") in the same case or with the same family; (e) accept the appointment if they had a prior personal relationship or a prior professional role with the family, other than a prior appointment as a CFI; (f) serve as an arbitrator or special master in the case prior to termination of their role as a CFI; or (g) except upon request of the court or written request of the parties, provide referrals for other professionals.**

## COMMENT

(a) Mediation. Because CFIs investigate, prepare reports, and make recommendations, they cannot, by definition, promise confidentiality to the parties. In contrast, mediation is confidential, as set forth in section 13-22-307, C.R.S. The CFI's primary duty is advising the court on the child/ren's best interests regarding specific issues, not resolving such issues for the parties. The CFI may discuss their recommendations with the parties and/or counsel outside of mediation without violating this provision.

(b) Psychotherapy. As with mediators, therapists have a duty of confidentiality to their clients that conflicts with a CFI's duties. The roles, purposes, goals, responsibilities, approaches, and professional and ethical requirements of a treating therapist conflict with those of a CFI.

(c) Legal Advice. A CFI must investigate and submit a report consistent with the court order. A CFI cannot provide legal advice to any party. An attorney CFI cannot perform a dual role as advisor and investigator. A non-attorney CFI cannot engage in the unauthorized practice of law.

(d) Child's Legal Representative. The roles of the CFI and CLR conflict. Section 14-10-116.5(1), C.R.S., specifically prohibits this dual role.

(e) Prior Contacts. A CFI must avoid multiple relationships that could reasonably be expected to impair objectivity, competence, or effectiveness. For example, service as a CFI would impair objectivity and compromise prior therapeutic relationships and pre-existing alliances and loyalties between a therapist, attorney, other professional, or friend.

(f) Arbitrator or Special Master. A CFI must not serve in any role that would require the arbitration of disputes between parties as doing so would require a CFI to take positions that would compromise the ability to gather information and serve as the investigative arm of the court.

(g) Referrals. Because a CFI serves as an investigative arm of the court, a CFI must not make referrals or recommendations to the parties or to the court for specific professionals for ongoing services beyond the scope of the investigation, unless a party makes a written request for referral or recommendation, or the court requests a referral or recommendation. This does not prohibit the CFI from making recommendations to a specific type of professional.

### **Standard 5. The CFI may move to the role of parenting coordinator, decision-maker or arbitrator after termination of their appointment.**

**In some cases, a CFI may agree to move to the role of parenting coordinator ("PC"), decision-maker ("DM"), or arbitrator after completing all CFI duties and after termination of the CFI appointment. CFIs may move to the role of PC or DM only by agreement of the parties and with the written, informed consent of the parties and the CFI. A CFI who accepts an appointment as a PC, DM, or arbitrator shall not accept a subsequent appointment as CFI or conduct a supplemental investigation in the same case.**

## COMMENT

At the conclusion of the CFI's investigation and upon entry of orders, the family may need assistance from a third party, such as assistance resolving parenting disputes. Some parties may

find that the CFI's prior investigation and familiarity with the family dynamics would facilitate the resolution of issues. Following termination of the CFI appointment, upon agreement of the parties and the CFI, the CFI may accept a court appointment as PC, DM, or arbitrator by a new appointment order clearly outlining the new duties. These CFI standards do not govern appointment or service as a parental responsibility evaluator, PC, DM, or arbitrator.

### **C. DUTIES OF THE CHILD AND FAMILY INVESTIGATOR**

#### **Standard 6. The CFI shall establish and maintain competence through training.**

The SCAO shall establish policies governing the implementation of training standards and make them available online through the state court website, [www.courts.state.co.us](http://www.courts.state.co.us), consistent with the following conditions:

(a) **Individuals seeking placement on the Statewide Eligibility Roster shall submit the completed mandatory CFI Affidavit, demonstrating a minimum level of competence including understanding legal and psychological/social issues common in dissolution or parenting cases.**

(b) **Individuals seeking placement on the Statewide Eligibility Roster shall complete the mandatory Colorado Judicial Department Child and Family Investigator training curriculum established by the SCAO.**

(c) **Individuals seeking placement on the Statewide Eligibility Roster shall complete no less than twenty hours of initial domestic violence and child abuse training, and no less than fifteen hours of ongoing domestic violence and child abuse training every five years. The required training must focus on domestic violence and child abuse, including child sexual abuse, physical abuse, emotional abuse, coercive control, implicit and explicit bias (including biases relating to parties with disabilities), trauma, long-term and short-term impacts of domestic violence and child abuse on children, and victim and perpetrator behavioral patterns and relationship dynamics within the cycle of violence. All training will have a five year look back period.**

(d) **Every five years, a CFI must renew their eligibility on the Roster, by completing the CFI Renewal Affidavit, which includes the release for criminal history check and the submission of proof of continuing education. CFIs shall complete at least ten hours of continuing education in relevant areas, in addition to the fifteen hours of domestic violence and child abuse training detailed above.**

#### **COMMENT**

A CFI attains a level of competence through a combination of education, specialized training, and professional experience. The CFI has a responsibility to develop and demonstrate the necessary understanding of the applicable law and the professional standards that govern the role of CFI, set forth in section 14-10-116.5, C.R.S. The mandatory CFI Affidavit must document a minimum of twenty-five hours of course work, ten hours of which are in the relevant areas listed below, fifteen of which are specific to domestic violence and child abuse, as detailed in 14-10-116.5, C.R.S. and 14-10-127.5, C.R.S. By completing the mandatory CFI affidavit, the CFI affirms they have experience, education, or skills pertaining to relevant areas, including but not limited to:

- (a) The effects of divorce, single parenting, and remarriage in children, adults, and families;
- (b) Dynamics of high conflict divorce;
- (c) Child development, including cognitive, personality, emotional, and psychological development;
- (d) Child and adult psychopathology;
- (e) Family dynamics and dysfunction;
- (f) Domestic violence;
- (g) Child abuse and child sexual abuse;
- (h) Substance abuse;
- (i) Parenting capacity;
- (j) Diversity issues;
- (k) Available services and resources for the child/ren and parties, including medical, mental health, educational, and special needs;
- (l) Applicable legal standards; and
- (m) Techniques for interviewing children and others.

A CFI must maintain records of training and ongoing education and must provide those records upon request of a judicial district, judicial officer or the SCAO.

**Standard 7. The CFI shall collect data and conduct an investigation sufficient to allow the CFI to provide competent recommendations.**

**A CFI shall complete a fact-finding investigation consistent with the order of appointment, the applicable legal standard, and the complexity of the issues.**

**The CFI must ensure all parties to the case involved in the investigation have an opportunity to respond to allegations made about them before the CFI relies on the allegations for their recommendations and includes said allegations in the report.**

COMMENT

A CFI must exercise care to assure both fairness and the appearance of fairness, allowing the parties relatively comparable opportunities to present their perspectives, consistent with the order of appointment. Depending on the case, the CFI may need information from collateral sources, such as teachers or therapists; may need to review school, medical, Department of Human Services, or other records; may need to check criminal histories or obtain results of drug testing; or may require other case-specific information. The flexibility of the CFI role allows the court to set forth specific areas to investigate under the order of appointment.

A CFI must use data collection methods that are consistent with accepted professional standards. The CFI must indicate any limits to the data or information and how those limits may impact the

CFI's recommendations. They must maintain clearly documented records to ensure accountability, recognizing the discoverable nature of the CFI file.

**Standard 8. The CFI shall have appropriate communication with the child/ren involved.**

**The CFI shall inform the child/ren of the purpose of the CFI's involvement and the limits of confidentiality. The CFI shall obtain information from the child/ren, including their wishes, through appropriate interview techniques.**

COMMENT

The CFI should explain the nature of the legal proceeding or issues to the child/ren in a developmentally appropriate manner. The CFI should ask non-suggestive questions, with the awareness that a child's stated views may vary over time or may reflect fear, intimidation, or manipulation. While the CFI must consider the wishes of the child/ren, the CFI need not adopt them unless they serve the child/ren's best interests.

**Standard 9. The CFI shall report child abuse to the proper agency and the court.**

**Child and Family Investigators are mandatory reporters pursuant to section 19-3-304, C.R.S. If the CFI has reasonable cause to know or suspect that a child has been subjected to abuse or neglect, or has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect, the CFI shall take the steps required under section 19-3-307, C.R.S., to notify law enforcement, the county Department of Human Services, or the child abuse reporting hotline and the court.**

COMMENT

If the child/ren are not optimally cared for or the parents' conflict or interactions are harmful but not abusive, the CFI should address the problem in any oral or written CFI report or recommendation to the court.

**Standard 10. The CFI shall prepare a clear, concise and timely report.**

**The CFI shall present their conclusions and recommendations in a timely manner to the parties and the court in a clear, concise, and non-technical written report, based upon information obtained in the course of the fact-finding investigation. A CFI report is not a PRE report. It need not address every facet of the CFI investigation. A CFI's report must list the services performed by the CFI and must detail the time spent. The CFI must keep accurate, itemized records of their fees and other charges and shall make their records available to the parties in accordance with Section VIII, Standard 11, of this CJD.**

**The report is timely if filed in accordance with the order of appointment or other order of the court. If the court order does not specify the due date, the report is timely if filed at least 35 days before the trial or hearing.**

COMMENT

The CFI shall produce a concise report, recognizing the limitations on specific issues governing the CFI appointment and the CFI's compensation. The CFI should write the report for

review by the parties, the court, and, if applicable, counsel. The report must include information about the CFI's investigation and data collection process and must address the applicable legal standard. The report must set forth the CFI's conclusions and recommendations consistent with the order of appointment. It should also set forth the child/ren's wishes, even if the CFI's recommendations differ from those wishes. Given that a CFI report is not as broad as a parental responsibilities evaluation, the CFI report should not recite all information obtained during the course of the investigation, but rather summarize relevant information consistent with the order of appointment. The report should not include opinions and recommendations beyond the scope of the order of appointment unless otherwise authorized.

**Standard 11. The CFI shall provide copies of their file.**

**Upon written request of the parties or their counsel, the CFI shall make their file available after filing the CFI report and prior to the hearing in the case. The CFI file shall include CFI notes, data, witness statements, completed questionnaires, and any information underlying the CFI's report, subject to the confidentiality requirements in Section VIII, Standard 13, of this CJD and the Address Confidentiality Program. A CFI shall not release underlying data, reports, testing, or evaluations completed by a professional other than the CFI without an order from the appointing court if the information was obtained directly from that professional. If the information was obtained by a party to the case or a collateral, the information must be released with the file. CFIs must maintain files for seven years following the termination of appointment.**

COMMENT

A CFI has an obligation to document and, upon written request, provide all information that forms the basis for their opinions and recommendations within 14 days of receiving the written request (with payment of costs as set forth below), unless otherwise ordered by the court. The CFI has the authority to require payment prior to releasing the file. If the requesting party does not make payment until the 14<sup>th</sup> day, the release of the file may be delayed.

This CJD shall not abridge or modify existing law. Where state or federal law governs the release of confidential records, those laws shall apply. Where state or federal law prohibits secondary disclosure, the CFI shall, if legally allowed to do so, transmit information under confidential cover. CFIs may not release information protected by the Address Confidentiality Program, section 24-30-2101, C.R.S., *et seq.* If a CFI believes that the release of any information would endanger a person's welfare, they should inform counsel and the court of these concerns and await further order from the court before releasing the information. The CFI must redact notes taken during collateral interviews of professionals, so as not to disclose information that would otherwise not be released if that information came directly from underlying data, reports, testing, or evaluations completed by that professional.

The CFI may deliver the file to a photocopy business for duplication or scanning, if the business assures confidential treatment of the file, and charge the actual cost of the service. Otherwise, the CFI may charge \$0.25 per page scanned or duplicated by the CFI, whether in paper or digital format. The CFI may not charge for time spent duplicating or scanning. The CFI may bill at their hourly rate on the order of appointment to duplicate audio or video recordings, to not exceed one hour of time spent. The cost to duplicate the file is not included in the maximum

presumptive fee. CJD 04-05 is the controlling authority for fees regarding copying a file for state paid cases.

**Standard 12. The CFI shall not conduct psychological testing. The CFI shall not perform or require drug, alcohol, polygraph, or other testing/evaluations, or inspection unless specifically ordered by the court.**

**If the CFI believes testing, evaluation, or inspection would benefit the parties or child/ren and would assist the court, the CFI shall notify the court and parties as soon as possible and shall include this information in the CFI report. This prohibition does not prevent the CFI from conducting domestic violence screening the CFI is competent to perform.**

#### COMMENT

Consistent with distinguishing the roles of CFI and parental responsibility evaluator, the CFI investigation is limited in time and scope. Under no circumstance may a CFI conduct psychological testing. When the court specifically orders a drug, alcohol, or other evaluation, a qualified individual shall conduct such evaluation. CFIs qualified to conduct drug and alcohol evaluations may do so only if specifically ordered.

**Standard 13. The CFI shall maintain confidentiality.**

**The CFI shall maintain the confidentiality of the file and report. The CFI shall disclose the file and/or report only to the parties and their counsel or by court order.**

#### COMMENT

The CFI shall not disclose the CFI report and underlying information in any proceeding other than the proceeding before the appointing court, absent the appointing court's determination that the need for the requested information outweighs the need for privacy. The CFI report and file are suppressed records and, therefore, a CFI has neither the authority to produce these documents, nor may the CFI disclose their contents absent an order from the appointing court.

Notwithstanding the above, in responding to professional grievances or complaints with DORA or Office of Attorney Regulation Counsel related to performance of the CFI role, a CFI may provide the regulatory agency with a copy of the CFI report, relevant parts of the file, and any investigation report regarding a CFI complaint, redacting the names, addresses and birthdates of the children and collateral witnesses. In doing so, the CFI must mark the report(s) "Confidential Pursuant to CJD 04-08." The CFI must also comply with the Address Confidentiality Program, section 24-30-2101, C.R.S., *et seq.*

**Standard 14. The CFI appointment shall terminate no later than entry of permanent orders or the post-decree order.**

**The court may terminate the CFI appointment earlier, but in no event shall the CFI appointment terminate later than entry of permanent orders or the post-decree order resolving the issues for which the court appointed the CFI.**

## COMMENT

Continuing the CFI appointment beyond permanent orders or adjudication of the relevant post-decree motion is an abuse of discretion. The parties' inability to communicate is not a basis for continuing a CFI appointment. The court cannot delegate to a CFI clarification of a parenting plan or resolution of parenting issues. Even if the court adopts a CFI's recommendations, the court, rather than the CFI, issues the findings and rulings. The court cannot transfer judicial decision-making power and authority to a CFI.

The CFI may file a Notice of Termination of CFI appointment upon entry of permanent orders or the post-decree order resolving the issues for which the court appointed the CFI, effective upon filing.

### D. COMMUNICATIONS

**Standard 15. The CFI shall develop written policies for the parties.**

**The CFI shall develop written policies and procedures for the parties and upon appointment, provide them to the parties and counsel, along with a copy of the order of appointment. The information shall include:**

- (a) The nature and scope of the services provided;**
- (b) The CFI's qualifications;**
- (c) The CFI complaint process, including contact information for the SCAO and other applicable regulatory or disciplinary agencies governing the CFI;**
- (d) Fees and billing procedures, including procedures for nonpayment of fees and billing for travel to court appearances and home visits;**
- (e) Communication protocols;**
- (f) Protocols for handling sensitive information;**
- (g) The limitations of confidentiality; and**
- (h) The CFI's mandatory reporting obligations.**

## COMMENT

If a CFI only conducts virtual investigations (including home visits) and/or resides outside of the State of Colorado, they must disclose this to the parties and counsel **prior to accepting the appointment.** In addition, **prior to appointment the CFI must disclose billing procedure if they are required to attend court in person** (including the location from which travel time reimbursement will be calculated). This information must also be detailed in their policies provided to the parties.

The CFI must include this paragraph in their written policies for parties regarding the complaint process: *In order to file a complaint against a CFI, the complainant must first request preliminary findings from the judicial officer currently presiding over the case for each Standard they believe the CFI violated. Unrepresented parties may use JDF form number 1361 to request*

*the preliminary findings. If the judicial officer makes the requested findings, the complainant may then file their complaint through the SCAO at <https://www.courts.state.co.us/Administration/Section.cfm?Section=jp3domprog>*

Billing statements must list all services performed, detailing the time spent and charges incurred.

**Standard 16. The CFI shall develop written policies for counsel.**

**The CFI shall develop written policies for counsel regarding communication and the handling of sensitive information. Upon appointment, the CFI shall provide these written policies to counsel and unrepresented parties.**

COMMENT

Upon appointment, CFIs might find it helpful to consult with counsel of record regarding timing issues and concerns that develop during the course of the CFI investigation. A CFI may not engage in ex-parte communication with counsel except in the usual course of their investigation and when said communication is documented in their file. An *ex parte* communication is any communication in which at least one party lacks notice and an opportunity to participate. Additionally, the CFI's written policy shall include a provision requiring counsel to copy opposing counsel or the pro-se party on all documentation, recordings, pictures, videos, text messages, emails, or other information or communication provided to the CFI. However, the CFI, parties, and counsel may enter into a written agreement for a different procedure concerning communication before the CFI begins work on the case.

After the investigation is complete and the report has been filed, the CFI may have ex-parte communication with counsel or an unrepresented party for the purposes of trial preparation but must inform the other party and/or their counsel.

**Standard 17. The CFI shall review the court's order of appointment.**

**Upon appointment, the CFI shall review the court's order of appointment and ask for clarification or modification of the order when necessary.**

COMMENT

A CFI must have a specific and properly executed court order defining the CFI's role and authority. If the requirements of the order conflict with the CFI's professional ethical obligations or with the Standards of this CJD, the CFI should take steps to resolve the conflict. For example, if the order requires the CFI to act beyond the scope of their competence or to perform prohibited dual roles, the CFI must inform the court and the parties, or their counsel if they are represented. If the conflict remains unresolved, the CFI must request termination of the CFI appointment.

If the order sets fees and retainer amounts that conflict with the CFI's business practices, they should inform the court and request an amended order or termination of the appointment. The CFI should address these issues immediately upon notice of appointment and before beginning work on the case.

**Standard 18. The CFI shall have no private or *ex parte* communications with the court.**

**The CFI shall have no private or *ex parte* communications with the court.**

COMMENT

An *ex parte* communication is any communication in which at least one party lacks notice and an opportunity to participate. A CFI may need to communicate with the court to obtain clarification of the order of appointment or applicable legal standard, to inform the court of a party's lack of cooperation or refusal to pay the CFI fee, or to report harm or risk of harm to the child/ren. A CFI may communicate with the court through a status update or a request with copies to the parties and counsel, during a status conference or hearing, or through a conference call to the court with counsel and any unrepresented parties. A CFI may make a written request to address the court, with notice to the parties and counsel. Attorney CFIs shall not communicate with the court through the filing of motions because the CFI is an investigator, not a party or counsel for a party.

**IX. THE COURT'S AUTHORITY, ROLE, AND RESPONSIBILITIES RELATED TO CHILD AND FAMILY INVESTIGATORS APPOINTED PURSUANT TO SECTION 14-10-116.5, C.R.S.**

- Standard A. The court shall ensure compliance with the CFI standards.
- Standard B. The court shall specifically define the scope and subject matter of the CFI's role in the order of appointment.
- Standard C. The court shall allocate the costs for CFI services and enforce its payment orders.
- Standard D. The court shall terminate the CFI's appointment no later than entry of permanent orders or the post-decree order.
- Standard E. The court shall not appoint the CFI to inconsistent dual roles.
- Standard F. The court shall ensure the confidentiality of CFI reports.
- Standard G. The Court shall ensure the CFI has electronic filing capability and case file access.

**DUTIES AND RESPONSIBILITIES OF THE COURT**

**Standard A. The court shall ensure compliance with the CFI standards.**

**The court shall appoint a qualified CFI and shall monitor any complaints concerning the CFI's services.**

COMMENT

Children deserve to have allocation of parental responsibilities proceedings conducted in the manner least harmful to them and most likely to provide judicial officers with the facts needed to decide the case. Because the CFI is an investigative arm of the court, the court is responsible for ensuring that the CFI is qualified, monitoring compliance with this CJD, and addressing issues of competency or other concerns in a manner that provides an opportunity to remedy unethical or inappropriate conduct, including through litigation. The court may hold periodic meetings with CFIs to clarify procedures and expectations but may not do so in connection with a specific case unless all parties are present.

The Court shall ensure the order of appointment is served by the court to the appointed CFI and shall ensure that all subsequent court orders are similarly served until the CFI appointment is terminated.

**Standard B. The court shall specifically define the scope and subject matter of the CFI's role in the order of appointment.**

**The court shall define the subject matter and scope of the CFI's role in an order of appointment that substantially complies with JDF 1318, "Order Appointing Child and Family Investigator pursuant to §14-10-116.5, C.R.S."**

#### COMMENT

The CFI is the court's investigative arm and serves at the direction and behest of the court. Section 14-10-116.5, C.R.S., requires that the "subject matter and scope of the [CFI's] duties shall be clearly set forth in the court's order of appointment." Consistent with distinguishing the roles of CFI and parental responsibility evaluator, the CFI investigation is limited in time and scope. Accordingly, the court shall provide guidance and specific expectations in the order of appointment, including the scope and subject matter of the investigation, taking into account the parties' financial circumstances.

In setting forth the CFI's duties, the court should provide for the least intrusive means of ascertaining the child/ren's best interests, which cannot include psychological testing by the CFI. The court may specifically order the CFI to perform or require other testing, inspection, or evaluation. When the court specifically orders a drug or alcohol or other evaluation, a qualified individual shall conduct such evaluation. CFIs qualified to conduct drug and alcohol evaluations may do so only if specifically ordered. The court may authorize the CFI to request UA, BA, ETG, hair follicle, or other drug testing of the parent(s) either in the order of appointment or if requested by the CFI.

**Standard C. The court shall allocate the costs for CFI services and enforce its payment orders.**

**The court shall specify in writing the allocation and payment of the CFI fees. The court shall enforce its orders for payment to ensure the provision of adequate and predictable compensation consistent with the provisions of this CJD. The CFI is not required to release their report or supplemental report until they have been paid in full, unless agreed to by the CFI. If the Court extends a deadline for payment of CFI fees beyond the current report or supplemental report due date, the court shall also extend the due date for the report or supplemental report.**

#### COMMENT

Section 14-10-116.5(3), C.R.S., requires the court to enter an order for costs, fees, and disbursements for the CFI. Section 14-10-116.5(3)(b) requires that in a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child and family investigator unless both parties are determined to be indigent after considering the combined income and assets of the parties. The order of appointment addressing fees shall not exceed the presumptive maximum fee set forth herein unless the court

makes specific findings supporting the deviation. The parties shall bear these costs unless a party is found indigent, in which case the state shall pay the costs, pursuant to CJD 04-05.

The court is responsible for enforcing its order concerning CFI payment through its contempt power. When nonpayment or partial payment issues arise, the CFI may notify the court regarding nonpayment and ask for guidance. In its discretion, the court should determine the appropriate course of action, such as continuing court dates, finding parties in contempt, or reallocating the CFI fees among the parties. Because the CFI is an investigative arm of the court and performs valuable duties for the court, the court is responsible for overseeing and ensuring compliance with its appointment and fee order.

**Standard D. The court shall terminate the CFI appointment no later than entry of permanent orders or the post-decree order.**

**The court may terminate the CFI appointment earlier, but in no event shall the CFI appointment terminate later than entry of permanent orders or the post-decree order resolving the issue for which the court appointed the CFI.**

**The order of appointment shall state the due date for the CFI report and the termination date for the CFI appointment. The report is timely if filed in accordance with the order of appointment or other order of the court. If the court order does not specify the due date, the report is timely if filed at least 35 days before the trial or hearing.**

COMMENT

For guidance, see the comment to Section VIII, Standard 14, of this CJD.

**Standard E. The court shall not appoint the CFI to inconsistent dual roles.**

**The court shall not appoint the CFI to serve in dual roles that are inconsistent and conflictual.**

COMMENT

For guidance, see the comment to Section VIII, Standard 4, of this CJD.

**Standard F. The court shall ensure the confidentiality of CFI reports.**

**Because CFI reports often contain personal information, including medical, psychological, substance abuse, or educational information, the court shall ensure their confidentiality and maintain them in the court file as suppressed.**

COMMENT

Courts appoint CFIs to gather information for the court's use in making decisions in the child/ren's best interest. The requirement of confidentiality prevents the sharing of information about the private lives, failures, and shortcomings of the child's family. The court is also more likely to receive complete and candid information with the assurance of confidentiality. Finally, the assurance of confidentiality aids CFIs when confronted by parties or lawyers outside of the domestic case who attempt to subpoena highly personal information contained in the CFI file and

report. The court appointing the CFI must perform an *in camera* review of any requested documentation to make decisions about release or duplication in any other legal actions or proceedings. For additional guidance, see the comment to Standard 13 of Section VIII of this CJD. The court may take judicial notice of prior pleadings and/or reports in its file. However, in subsequent proceedings within the domestic relations case of appointment, neither the court nor the parties should rely on the prior report unless the CFI is subject to direct and cross-examination in the current matter, or unless agreed to by the parties.

**Standard G. The court shall ensure the CFI has electronic filing capability and case file access.**

**Because the CFI is an investigative arm of the court, attorney and non-attorney CFIs shall not be charged any filing fees and shall have the ability to e-file documents at no cost into the court file. Additionally, all CFIs, whether attorney or non-attorney, shall have complete access to the case file.**

#### COMMENT

When the system and necessary equipment are in place to permit third party electronic filing and case access, CFIs may register to use the E-System to file into their current cases. CFIs are an investigative arm of the court and shall not be charged any filing fees when filing documents into their assigned cases or when receiving copies of documents from case files. CFIs shall have complete access to the case file for cases in which they have a current Order of Appointment, except for sealed documents. Once an Order of Appointment is terminated, the CFI shall be removed as a third party from the case and will no longer have access to the file.

Effective September 1, 2004. Amended to reflect statutory amendments and effective November 18, 2005.

Modified and corrected as to statutory references only on the 23rd day of January, 2006, in Denver, Colorado.

Amended to provide clarification on issues related to the nature of the CFI's role and records access and effective January, 2008, in Denver, Colorado.

Amended to provide clarification on issues related to the nature of the CFI's role and fees and made effective April, 2011, in Denver, Colorado.

Amended to provide clarification on issues related to the nature of the CFI's role, fees, guidelines for appointment, complaints, and sanctions and made effective November, 2011, in Denver, Colorado.

Amended to include training and certification requirements, December, 2012.

Amended to reflect the transition of oversight for state pay attorney CFIs from the OCR to the SCAO, effective January 1, 2016, and to update and clarify the CFI's role, fees, appointment, complaints, sanctions and Standards of Practice, effective January 1, 2016.

Amended to clarify the district court's review process upon receiving a CFI complaint, effective November 1, 2019.

Amended based on updates to C.R.S. §14-10-116.5, to incorporate statutorily required domestic violence, child abuse, and child sexual abuse training and to update the three-year renewal cycle to a two-year renewal cycle, effective January 1, 2022.

Amended to implement a new complaint process, increase the presumptive fee, clarify how to calculate the fee for mixed pay cases, update domestic violence and child abuse training pursuant to C.R.S. §14-10-116.5 and C.R.S. §14-10-127.5 and update the renewal cycle to a five-year cycle, delete Standard 7, create Standard G, and modify several of the standards, effective upon signing.

Done in Denver, Colorado this 29<sup>th</sup> day of June, 2023.

/s/

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Brian D. Boatright, Chief Justice