

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 subject to dependency and neglect proceedings and Colorado's Foster Youth in Transition Program and proceedings. As used in this CJD, the term "child" or "children" also refers to "youth," as that term is used in relevant statutes. Child and Family Investigators, adult GAL appointments, and any other juvenile attorney client appointments fall under the provisions of Chief Justice Directive 04-05.

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 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 counsel services for children subject to dependency and neglect proceedings.
 - 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.
 - 6. Provision of GAL services for a child 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 25.
 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.
 15. Provision of GAL services for a minor seeking judicial approval for a marriage license under Title 14.
- 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 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 services for children 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. 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 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 or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order. 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 may be appointed as counsel for 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, 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 incapacitated, in which case the GAL shall remain in the role of GAL and separate counsel for the youth shall be appointed. New counsel shall be appointed if the youth elects to have a new attorney appointed as counsel or the attorney has a conflict of interest.
- 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 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 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 25.
- 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.
- M. Pursuant to Title 12, 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").
- N. Pursuant to Title 19, Counsel for Youth 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 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.

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

A. Training

1. Attorneys appointed as GALs, CLRs or counsel for children subject to

dependency and neglect proceedings shall possess the knowledge, expertise and training necessary to perform the court appointment.

2. In addition, GALs, CLR's and counsel for children subject to dependency and neglect proceedings shall obtain 10 hours 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. The attorney shall provide proof of compliance with his/her application to provide attorney services or contract renewal for the OCR.
- B. All attorneys appointed as GALs or CLR's shall be subject to all of the rules and standards of the legal profession. 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. 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 does not apply if the information must be revealed to ensure the child's best interests. A determination by the GAL or the CLR of a child's best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child's position regarding the disposition of the matter before the court. A GAL or a CLR must also explain to the child the limitations on confidentiality. GALs and CLR's 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.
- C. The attorney appointed as a GAL or a CLR shall diligently take steps that s/he deems necessary to represent and protect the best interests of the child, 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. If the appointee finds it necessary and in the best interests of the child, 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.
- D. Subject to the requirements of Section 5.B. above, a GAL for a child in a dependency and neglect case shall at a minimum perform the following specific tasks:
1. Attend all court hearings 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.

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. 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.

2. 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.
3. 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.
4. Conduct an 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. Personally meeting with placement providers. When possible, meeting with proposed placement providers and observing the child's

interaction with proposed placement providers, either personally or through the use of qualified staff;

- c. 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's interaction with respondent parents;
- d. Reviewing court files and relevant records, reports and documents;
- e. Obtaining first-hand information from other persons or professionals necessary to assess and serve the child's best interests. 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.
- f. 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. When appropriate, visiting the home from which the child was removed.

Additional Commentary: The GAL's initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to serving 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. The duties described in Sections V.D.4.b through V.D.4.g 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.

- 5. Continue to perform an ongoing investigation as necessary to represent the best interests of the child for the duration of the case unless relieved of such duty by the court. The GAL'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 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;
- c. Maintaining contact and communication with placement providers, the caseworker, the CASA and any other parties, persons or professionals necessary to ensure ongoing and timely assessment and representation of the child's best interests;

- d. Other applicable duties listed above in Section V.D.
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6. Ensure the best interests of the Minor Child(ren) are represented on appeal by either personally filing a pleading or formally joining another party's pleading in a manner that represents the Minor Child(ren)'s best interests.
Commentary: As allowed by Colorado Appellate Rules, a GAL of record at the trial level may arrange for appellate representation by another OCR-qualified attorney.
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- E. An attorney appointed as a GAL for a juvenile in a delinquency proceeding or a minor defendant in a direct file proceeding shall represent the juvenile's best interests throughout the appointment in a manner that promotes and protects the juvenile'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 juvenile in a setting that promotes meaningful communication. Ensure the juvenile 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 juvenile to obtain information relevant to the juvenile's best interests.
Commentary: The interview of the juvenile 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 juvenile and GAL. Often, the initial meeting between the GAL and juvenile 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 juvenile'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 juvenile 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 juvenile 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 juvenile, and the GAL's interview and ongoing contact with the juvenile 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 juvenile should elicit information

relevant to the juvenile'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 juvenile 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 juvenile's best interests in a manner consistent with the juvenile's due process and statutory rights. Present independent information relevant to the juvenile'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 juvenile.

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 juvenile. 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 juvenile 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 juvenile's best interests, such as school personnel, pretrial service staff, probation officers and treatment providers. This investigation shall assess at a minimum:

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

Commentary: Each juvenile has unique needs, life experiences and circumstances that inform which, if any, services and court orders serve the best interests of the juvenile and community, constitute reasonable efforts to prevent or eliminate the need for out-of-home placement and assist the juvenile in becoming a productive member of society. The juvenile's unique needs and circumstances will impact the juvenile'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 juvenile's best interests throughout the appointment.

- b. Appointment and availability of defense counsel consistent with the juvenile's constitutional and statutory rights;
- c. Whether the current or proposed placement of the juvenile serves the juvenile's best interests and is consistent with the juvenile'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 juvenile is in an out-of-home placement, the GAL's assessment of the placement shall include an examination of the conditions of the juvenile's confinement or placement and the impact of those conditions on the unique needs of the juvenile.
- d. Whether the services and treatment provided through the case address the unique issues faced by the juvenile and support the juvenile 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 juvenile is incompetent to proceed;
- f. The juvenile'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 juvenile'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 juvenile.

Commentary: Due to the tight time frames of hearings in delinquency proceedings and the restrictions often placed on a juvenile's liberty, this focused investigation must occur as soon as possible. While the unique circumstances of the case and the juvenile 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. 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 juvenile 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 juvenile.

Commentary: The GAL's contact with the juvenile should not be limited to contact at court appearances. Ongoing communication and contact between court appearances promotes up-to-date assessment of the juvenile's best interests. It allows the GAL to ensure the juvenile 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 juvenile's best interests in a timely manner and serves to strengthen the juvenile'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. An attorney appointed as GAL, CLR or counsel for 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.

- G. 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 continues to have an obligation to personally interview the child as developmentally appropriate, interview caregivers, parents and proposed caregivers, observe the child'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 in his or her placement. The OCR will pay reasonable costs associated with meeting these obligations submitted in compliance with OCR billing policies and procedures.
- H. 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 CLRs involved with cases under their jurisdiction are representing the best interests of children/minors.
- 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 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 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 counsel for a child 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 and CLRs 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 CLRs 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 and CLRs 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 Counsel for Children Subject to Dependency and Neglect Proceedings through Contracts with the Office of the Child's Representative.

- A. For all court-appointed GALs, CLRs and attorneys appointed as counsel for children subject to dependency and neglect proceedings, 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, CLRs or counsel for a child 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. 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.

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’s 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.*

INCOME ELIGIBILITY GUIDELINES (amended February 1, 2021)						
Family Size	Poverty Guideline	monthly poverty level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$12,880	\$1,073	\$1,342	\$1,677	\$16,100	\$20,125
2	\$17,420	\$1,452	\$1,815	\$2,268	\$21,775	\$27,219
3	\$21,960	\$1,830	\$2,288	\$2,859	\$27,450	\$34,313
4	\$26,500	\$2,208	\$2,760	\$3,451	\$33,125	\$41,406
5	\$31,040	\$2,587	\$3,233	\$4,042	\$38,800	\$48,500
6	\$35,580	\$2,965	\$3,706	\$4,633	\$44,475	\$55,594
7	\$40,120	\$3,343	\$4,179	\$5,224	\$50,150	\$62,688
8	\$44,660	\$3,722	\$4,652	\$5,815	\$55,825	\$69,781
<p>* 125% of poverty level as determined by the Department of Health and Human Services.</p>						
<p>*For family units with more than eight members, add \$473 per month to "monthly income" or \$5,675 per year to "yearly income" for each additional family member. Poverty guideline is \$4,540/year.</p>						
<p>Source: Federal Register (86 FR 7733, 02/01/2021)</p>						