

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.

The Commission on Families in the Colorado Courts recommended in its August 2002 Final Report 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.

In its November 2010 Final Report, the Supreme Court Standing Committee on Family Issues recommended a limitation on the fee charged by CFIs to eliminate investigations that are indistinguishable from parental responsibility evaluations. In response, this Directive established a maximum CFI fee for privately paid CFIs, while Chief Justice Directive (“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, s/he can 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 Directive 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 his or her 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 Directive sets forth a comprehensive set of 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 Directive, the presumptive maximum fee for the investigative and reporting work of privately paid CFIs is \$2,750 per appointment. The fee shall not exceed this presumptive \$2,750 cap without prior court approval in the form of a written order with specific findings concerning the extraordinary circumstances justifying the excess fees.

2. Testimony and Preparation Time. In some matters, the parties may seek or the court may order a privately paid CFI to 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 prior court approval in the form of a written order with specific findings concerning the extraordinary circumstances justifying the excess fees.

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 rates and maximum total fee per appointment for state paid CFIs, whether attorney or non-attorney. The SCAO provides payment of CFIs for 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.

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 Directive.

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 serve as CFIs.

2. Judicial District Eligibility Rosters. Each judicial district will compile and maintain its own eligibility roster from CFIs on the Statewide Eligibility Roster. Only individuals listed on the Statewide Eligibility Roster and the eligibility roster of one or more judicial districts may serve as CFIs.

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

V. COMPLAINTS

A. 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 Directive. 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 through printing the online form and providing it by mail or in person to the applicable District Administrator. Complaints shall be made no later than one year following the termination of the CFI appointment.

No investigation shall occur for complaints made more than one year following termination of the CFI appointment or involving an individual not listed on the Statewide Eligibility Roster.

B. Within 10 days of receiving a CFI Complaint Form, the District Administrator shall forward the complaint to the judge presiding over the matter in which the CFI was appointed so that the judge may determine whether to take any immediate preventative or corrective action.

C. The judicial district shall then begin an investigation to determine whether the complaint is founded, and what action, if any, to take in resolving the concerns raised by a founded complaint. If the complaint concerns a pending matter, the District Administrator or judge may defer investigation of the complaint until resolution of the pending matter. A district's decisions as to whether a complaint is founded and as to what action to take, if any, are final decisions that are not appealable.

D. For founded complaints involving attorney CFIs, the District Administrator 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 District Administrator will provide a copy of the complaint, investigation report and CFI report, redacting the names, addresses and birthdates of the children and collateral witnesses. The District Administrator will mark these redacted documents "Confidential pursuant to CJD 04-08" before providing them to Attorney Regulation. The District Administrator will also request that Attorney Regulation inform the judicial district and the SCAO of the final outcome of any professional conduct investigation.

E. For any founded complaints involving CFIs who are mental health professionals regulated by the Department of Regulatory Agencies ("DORA"), the District Administrator shall inform DORA and notify the complainant of the founded complaint. In providing notice to DORA, the District Administrator will provide a copy of the complaint, investigation report and CFI report, redacting the names, addresses and birthdates of the children and collateral witnesses. The District Administrator will mark these redacted documents "Confidential pursuant to CJD 04-08" before providing them to DORA. The District Administrator will also request that DORA inform the judicial district and the SCAO of the final outcome of any professional conduct investigation.

F. No later than 60 days after receiving a CFI Complaint Form, the District Administrator shall provide a written response of some kind to the complainant.

G. No later than 10 days after a judicial district issues a final decision regarding a complaint, the District Administrator shall forward to the SCAO the result of the investigation, including any action taken by the judicial district. Upon a request by the SCAO, the District Administrator shall forward to the SCAO a copy of the complaint file, including the CFI Complaint Form, information obtained during the complaint investigation, and other relevant information.

H. If a judicial district fails to conduct an investigation pursuant to the procedures set forth in the CFI Complaint Form or this Directive, the SCAO may conduct its own investigation and take any action necessary to resolve issues raised by a founded complaint.

I. The judicial district and the SCAO may publicly disclose only the existence of a founded complaint, the date of the finding, the standard violated, and the sanction imposed.

VI. SANCTIONS

A. Failure of a CFI to comply with this Directive may result in sanctions, up to and including removal from one or more judicial district eligibility roster(s) and/or the Statewide Eligibility Roster.

B. 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 District Administrator shall inform the SCAO of the reason for removal. The SCAO may also remove the CFI from the Statewide Eligibility Roster.

C. 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.

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 five 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 five days of his or her notification of any malpractice suit or criminal charge brought or filed against him or her or notification of any grievance, formal complaint or disciplinary action that is under investigation. CFIs shall likewise notify the SCAO in writing within five 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 maintain objectivity.

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.

C. Duties of the Child and Family Investigator

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

- Standard 7. The CFI shall acknowledge when an issue is beyond his or her competence.
- Standard 8. The CFI shall collect data and conduct an investigation sufficient to allow the CFI to provide competent opinions.
- Standard 9. The CFI shall have age-appropriate communication with the child/ren involved.
- Standard 10. The CFI shall report child abuse to the proper agency and the court.
- Standard 11. The CFI shall prepare a clear, concise and timely report.
- Standard 12. The CFI shall provide copies of his or her file.
- Standard 13. The CFI shall not conduct psychological testing. The CFI shall not perform or require drug, alcohol, polygraph or other testing, inspection or evaluation unless specifically ordered by the court.
- Standard 14. The CFI shall maintain confidentiality.
- Standard 15. The CFI appointment shall terminate no later than entry of permanent orders or the post-decree order.

D. Communications

- Standard 16. The CFI shall develop written policies for the parties.
- Standard 17. The CFI shall develop written policies for counsel.
- Standard 18. The CFI shall review the court's order of appointment.
- Standard 19. 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 thoroughly 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 s/he is working with families at a difficult and stressful time. S/he 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. S/he should be sensitive to the separate interests, rights, wishes, and concerns of the parents, child/ren, and other parties in a case. S/he must remember that s/he is in—and is viewed as being in—a position of influence over a family’s future.

During the course of his or her 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 his or her position as an investigative arm of the court.

Standard 2. The CFI shall maintain objectivity.

The CFI shall maintain objectivity and independence. 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, s/he 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 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 relationships exist.

A CFI must base opinions on an independent fact-finding investigation and review of a case as the court’s investigative arm. S/he should guard against undue influence from conclusions of other professionals involved with the case in the past or presently. S/he should guard against the appearance of alignment with one side over the other. If, through no fault of the CFI, 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.

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 Directive 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.

These standards should not limit the flexibility of the parties and 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 in the same family; (e) accept the appointment if s/he 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 his or her 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 with regard to specific issues and not resolving such issues for the parties.

(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 since 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 is the investigative arm of the court, a CFI must not make referrals or recommendations to the parties or to the court for specific professionals, unless the party makes a written request for referral or recommendation or unless the court requests a referral or recommendation.

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

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 with the written, informed consent of the parties and the CFI. The CFI who accepts an appointment as a PC, DM or arbitrator shall not accept a subsequent appointment as CFI 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 apply to service as a personal 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, 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 that includes the understanding of 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) Every three years, CFIs shall complete at least 15 hours of continuing education in relevant areas.

COMMENT

A CFI attains a level of competence through a combination of education, specialized training, and professional experience. S/he 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 contain supporting documentation that demonstrates 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) Substance abuse;
- (h) Child 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 acknowledge when an issue is beyond his or her competence.

A CFI has a duty to recognize and inform the parties and the court when an issue falls outside of his or her training or experience.

COMMENT

When the CFI recognizes that an issue exceeds his or her training or experience, the CFI shall inform the parties and the court, with proper notice, and request amendment or termination of the order of appointment, if appropriate. The CFI may inform the court of the professional qualifications that might better assist with the investigation. The CFI may not make specific referrals for professionals or providers unless a party makes a written request for referral or

recommendation or unless the court requests a referral or recommendation, pursuant to Section VIII, Standard 4, of this Directive.

Standard 8. The CFI shall collect data and conduct an investigation sufficient to allow the CFI to provide competent opinions.

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

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. 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. S/he must indicate any limits to the data or information and how those limits may impact the CFI's recommendations. S/he must maintain clearly documented records to ensure accountability, recognizing the discoverable nature of the CFI file.

Standard 9. The CFI shall have age-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. S/he 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, s/he need not adopt them unless they serve the child/ren's best interests.

Standard 10. 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.

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

The CFI shall present his or her 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. 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 the 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. The report should not recite all information obtained during the course of the investigation, but rather summarize legally 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.

A CFI's report must list all services performed by the CFI and must detail the time spent. The CFI must keep accurate, itemized records of the CFI's fees and other charges and shall make his or her records available to the parties in accordance with Section VIII, Standard 12, of this Directive.

Standard 12. The CFI shall provide copies of his or her file.

Upon written request of the parties or their counsel, the CFI shall make the CFI 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 14, of this Directive and the Address Confidentiality Program. 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 his or her opinions and recommendations within 14 days of receiving the written request, unless otherwise ordered by the court. A CFI may not release underlying data, reports, testing, or evaluations completed by a professional other than the CFI without an order from the appointing court.

This Directive 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 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, s/he should inform counsel and the court of these concerns and await further order from the court before releasing the information.

The CFI may deliver the file to a photocopy business for duplication or scanning if the business assures confidential treatment of the file. Otherwise, the CFI may charge \$0.25 per page scanned or duplicated by the CFI. The CFI may not charge for time spent duplicating or scanning.

Standard 13. The CFI shall not conduct psychological testing. The CFI shall not perform or require drug, alcohol, polygraph or other testing, inspection or evaluation unless specifically ordered by the court.

If the CFI believes testing, inspection, or evaluation 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 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.

Standard 14. 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. Pursuant to section 14-10-126(2), C.R.S., the CFI report and, by implication, the CFI file, "shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by consent of the court." See Section VIII, Standard 12, of this Directive for additional guidance. Because the CFI report and file are under seal, a CFI has no authority to produce these sealed 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 the Department of Regulatory Agencies 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 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 15. 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 issue for which the court appointed the CFI.

COMMENT

Judicial officers should terminate appointments upon the filing of the CFI report, thereby reducing the cost of CFI investigations. 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.

D. COMMUNICATIONS

Standard 16. 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, 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;**
- (e) Communication protocols;**
- (f) Protocols for handling sensitive information;**
- (g) The limitations of confidentiality; and**
- (h) The CFI's mandatory reporting obligations.**

COMMENT

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

Standard 17. 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.

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 non-disclosed communications with one party or one party's counsel. 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.

Standard 18. 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 Directive, the CFI should take steps to resolve the conflict. For example, if the order requires the CFI to act beyond the scope of his or her 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, s/he 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 19. 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 letter or short written report 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.

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 parental responsibility 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 the investigative arm of the court, the court is responsible for ensuring that the CFI is qualified, for monitoring compliance with this Directive, and for addressing issues of competency or other concerns in a manner that provides an opportunity to remedy unethical or inappropriate conduct, including through the litigation process. The court should hold periodic meetings with CFIs to clarify procedures and expectations but not in connection with a specific case unless all parties are present.

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.

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.

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. 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 the 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 15, of this Directive.

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 Directive.

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 under seal.

COMMENT

Courts appoint CFIs to gather information for the court's use in making decisions in the child/ren's best interest. As recognized in section 14-10-126(2), C.R.S., the requirement of confidentiality prevents the sharing of information about the private lives, failures, and shortcomings of the child's family, contrary to the child's best interests. 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 the requested documentation to make decisions about its release or duplication. For additional guidance, see the comment to Standard 14 of Section VIII of this Directive. In subsequent actions, neither the court nor parties should rely on the report unless the CFI is subject to direct and cross-examination.

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.

Done in Denver, Colorado this 21 day of December, 2015.

/s/

Nancy E. Rice, Chief Justice