

# SUPREME COURT OF COLORADO

## OFFICE OF THE CHIEF JUSTICE

### COURT APPOINTMENTS THROUGH THE OFFICE OF THE CHILD'S REPRESENTATIVE

The following policy is adopted to assist the administration of justice through the appointment and training of Guardians ad Litem (GALs) and Child's Legal Representatives (CLRs) appointed on behalf of minors/children, as well as attorneys appointed as Counsel for Youth (CFY) subject to dependency and neglect proceedings and participating in Colorado's Foster Youth in Transition Program and proceedings. As used in this Chief Justice Directive (CJD), the terms "child," "children," and "youth" are used interchangeably to refer to individuals represented by attorneys contracting with or employed by the Office of the Child's Representative (OCR). Payment for Child and Family Investigators, adult GAL appointments, and certain other juvenile attorney client appointments fall under the provisions of CJD 04-05. Appointment of state funded counsel through the Public Defender's Office or the Office of Alternate Defense Counsel in juvenile delinquency cases falls under the provisions of CJD 14-01.

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

#### **I. Authorities**

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

neglect proceedings, as well as counsel appointed to children under 12 in such proceedings at the discretion of the court.

4. Provision of GAL services in delinquency matters under Title 19.
5. Provision of GAL services in adoption and relinquishment proceedings under Title 19 when one or more parties qualify as indigent. Provision of CFY services for youth 12 and older in adoption and relinquishment proceedings when the CFY is also appointed to represent the youth in a dependency and neglect proceeding.
6. Provision of GAL services for a child or youth charged or prosecuted as an adult pursuant to Section 19-2.5-801, C.R.S., or Section 19-2.5-802, C.R.S.
7. Provision of GAL services in parentage and support matters brought under Title 19 when one or more parties qualify as indigent.
8. Provision of GAL services to minors in alcohol or drug abuse proceedings under Title 27.
9. Provision of GAL services to minors in mental health proceedings under Title 27.
10. Provision of GAL services to minors in probate proceedings under Title 15 when the parties are indigent.
11. Provision of GAL services to minors involved in truancy proceedings under Titles 19 and 22.
12. Provision of CLR services in domestic relations cases under Title 14 when one or more parties qualify as indigent.
13. Provision of GAL appointments judicial bypass cases pursuant to Title 13 and Chapter 23.5 of the Colorado Rules of Civil Procedure.
14. Provision of CFY 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.
16. Provision of attorney services for children and youth on matters related to other OCR appointments and determined by the OCR to be an acceptable use of OCR's reimbursed Title IV-E administrative costs pursuant to

§ 26-2-102.5, C.R.S.

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

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 Sections 13-91-101 *et seq.*, C.R.S.

## **II. OCR Authority and Responsibilities**

A. The OCR's enabling legislation charges the OCR with enhancing the provision of attorney services and improving the quality of representation and advocacy provided to children and youth in the Colorado court system. The OCR's authority and responsibilities include but are not limited to: the provision of high-quality, accessible training; the exclusive authority and discretion to select and contract with attorneys to provide state-paid GAL, CLR, and CFY services for children and youth, including the authority to reject attorneys for any reason; the authority to terminate, at will, contracts; the authority to seek termination of existing court appointments as provided by this Directive; and the responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services, investigation and resolution of complaints regarding attorneys who contract with the OCR, and other means as determined by the OCR.

B. The OCR shall maintain and provide to the courts a list of qualified attorneys eligible for appointments. The courts shall appoint from this list, and the OCR shall assign attorneys from this list to provide CFY services for youth voluntarily participating in or seeking to participate in Colorado's Foster Youth in Transition Program. It is within the OCR's sole discretion to determine which attorneys are placed on the appointment list. The OCR will not process payment for services of attorneys with whom the OCR does not have a contract and who are not on the OCR list. Should any unusual, exceptional, or emergency circumstances present the need for the appointment of an attorney not listed as an OCR-qualified attorney, the court shall contact the OCR for approval prior to the appointment of that attorney. The OCR shall provide a prompt response to the court's request.

## **III. Authority and Requirement for Appointments through the OCR**

A. A GAL shall be appointed for a child under age 12 in a dependency and neglect action pursuant to Title 19. The GAL's appointment shall continue until the entry

of a final decree of adoption, the child is 12, or the jurisdiction of the juvenile court is terminated either by operation of law or by court order.

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

Pursuant to Title 19, a GAL may be appointed for a minor parent in a dependency and neglect proceeding if the parent has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction.

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

An appointed GAL in a dependency and neglect proceeding shall begin acting as CFY immediately upon the youth's 12<sup>th</sup> birthday, unless the court finds it necessary to continue the GAL appointment because the appointment is necessary due to the youth's diminished capacity, in which case the GAL shall remain in the role of GAL and a separate CFY shall be appointed. New counsel must be appointed if the attorney asserts there is a conflict of interest as defined under the Colorado Rules of Professional Conduct that requires the attorney to conflict off of the representation of one or all members of a sibling group.

Pursuant to Title 19, the court may appoint counsel for a child under age 12 in addition to a GAL if the court deems representation by counsel is necessary to protect the interests of the child.

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

- D. Pursuant to Title 19, the court, in its discretion, may appoint a GAL in any direct file of charges against a youth in adult criminal court.
- E. Pursuant to Title 19, a GAL may be appointed for a child in a truancy proceeding under Title 22, unless the child is already represented by defense counsel. Pursuant to Title 19, a court may appoint both counsel and a GAL for the child if the court finds that such appointment is in the best interests and welfare of the child.
- F. A CLR may be appointed in a domestic relations case pursuant to Title 14.
- G. A GAL may be appointed for a minor in formal proceedings involving guardianship or conservatorship of a minor; trusts or estates of decedents, minors and protected persons; and in judicially supervised settlements pursuant to Title 15 if the court determines that a need for such representation exists.
- H. A GAL shall be appointed in a mental health proceeding pursuant to Title 27 for any child under age 15 who is a ward of the Department of Human Services or for any minor under 15 who objects to their 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 parentage action pursuant to Title 19.
- K. A GAL may be appointed for a minor upon the filing of a petition for involuntary commitment of persons with substance use disorders if the court deems the minor's presence in court may be injurious to them pursuant to Title 27.
- L. Pursuant to Title 19, a GAL for a minor may be appointed in a proceeding concerning the relinquishment of the minor if the court finds that that a conflict of interest exists between the child and the parents, guardian, or legal custodian; the court finds that such appointment is necessary to serve the best interests of the child; or the court determines that the child is twelve years of age or older and that the welfare of the child mandates the appointment. If a CFY is appointed in a dependency and neglect proceeding, the court shall also appoint that attorney as CFY in the relinquishment proceeding,
- M. Pursuant to Title 13, a GAL may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act and Chapter 23.5 of the Colorado Rules of Civil Procedure ("Rules of Procedure for Judicial Bypass of Parental Notification Requirements").
- N. Pursuant to Title 19, a CFY shall be appointed by the court for a youth in a Foster

Youth in Transition proceeding and may be assigned by the OCR prior to the filing of the petition. A GAL may also be appointed for a youth participating in the Foster Youth in Transition Program if the Court finds that the appointment is necessary due to the youth's diminished capacity.

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

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

- A. Allocation of Costs—Requirement of Indigency Finding
  - 1. An indigency determination is not required for state payment of GAL, CLR, or CFY services in matters other than these specific cases:
    - a. The State, through the OCR, shall bear the costs for the services of a CLR appointed pursuant to Section 14-10-116, C.R.S., only if the court finds one or more of the parties responsible for the costs indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 14-10-116, C.R.S., which specifies that the parties are responsible for all costs absent a specific finding of indigency. Pursuant to Section 14-10-116, C.R.S., prior to the entry of a decree of dissolution of marriage or legal separation, the court shall not enter an order requiring the state to bear the costs of the appointment unless both parties are determined to be indigent after considering the combined income and assets of the parties. In cases involving unmarried parties, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state. When a responsible party is indigent, the state will pay the CLR the portion of the hourly rate and authorized expenses for which the indigent party is responsible.
    - b. The State, through the OCR, shall bear the costs for GAL services in parentage 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 or CFY services in adoption and relinquishment proceedings only when the court finds the party(ies) responsible for the costs indigent. The State is precluded from paying for services and any costs associated with GAL services for non-indigent parties under Section 19-5-103, C.R.S., which specifies that the Court shall order the relinquishing parent to pay reasonable fees.
  - d. The State, through the OCR, shall bear the costs for GAL services provided to a minor under Title 15 (probate, guardianship, and conservatorship) and other civil cases only when the court makes indigency findings regarding the party(ies) ordered to be responsible for the costs or the minor's estate.
2. The following procedures shall apply to a court's determination of indigency:
    - a. The responsible party(ies) must complete, or have completed on their behalf, application form JDF 208 ("Application for Public Defender, Court-Appointed Counsel, or Guardian ad Litem") signed under oath, before an appointment may be considered.
    - b. An indigent person is one whose financial circumstances fall within the fiscal standards set forth by the Supreme Court through Chief Justice Directive (See Attachment A). A court shall not order representation to be at state expense absent the completion of form JDF 208, a finding of indigency, and an order of the court.
    - c. If one party is indigent, the State, through the OCR, will pay the portion of the state-set hourly rate allocated to the State.

**B. Guidelines for Payment by the OCR**

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

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

**A. Training**

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

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

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

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

The GAL or CLR should explain their determination of the child or youth's best interests and the basis for that determination to the child or youth in a developmentally appropriate manner.

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

2. **CFY Role and Professional Responsibilities:** The client of the CFY is the youth, and the ethical obligations of the CFY under the Colorado Rules of Professional Conduct (Colo. RPC) are analyzed in light of this attorney-client relationship. The CFY must strive throughout every phase of the proceeding to engage in developmentally appropriate communication with the youth and continue to advise the youth client of their rights, the subject matter of the litigation, the CFY's role, what to expect in the legal process, and options available to the youth. Developmentally appropriate communication means structuring all communication to account for the individual youth's age, level of education, cultural context, and degree of language acquisition to ensure the youth's ability to provide client-based directions regarding the objectives of the representation.

*Commentary:* A CFY has a duty to explain to the youth in a developmentally appropriate manner the information that will assist the youth in having maximum input in determining the particular position at issue. A CFY should inform the youth of the relevant facts and applicable laws and the ramifications of taking various positions.

*While the youth is entitled to determine the overall objectives to be pursued, the CFY may make certain decisions with respect to the manner of achieving those objectives, as provided by Colo. RPC 1.2. A CFY may express an opinion concerning the likelihood of the court or other parties accepting particular positions and may inform the youth of an expert's recommendations germane to the issue. As in any other attorney-client relationship, a CFY may express their assessment of the case, the best position for the youth to take, and the reasons underlying such recommendation. A CFY must remain aware of the power dynamics inherent in adult-child relationships, strive to understand what the youth knows and what factors are influencing the youth's decisions, and strive to ensure that the youth's expressed preferences reflect the youth's actual position. A CFY should attempt to determine from the youth's opinion*

*and reasoning what factors have been most influential or have been confusing or glided over by the youth. The CFY's duty to engage in a robust initial and ongoing investigation required by Sections V.D.3 and V.D.4 of this Directive supports the CFY in carrying out these responsibilities, as other professionals, family members, and significant persons in the youth's life may educate a CFY about the youth's needs, priorities, and previous experiences.*

*In explaining the CFY's role to the youth client as required by this Directive, the CFY must explain the CFY's duty of confidentiality under Colo. RPC 1.6, as well as the limitations of the CFY's duty of confidentiality. The CFY may advise the youth of the implications of sharing or not sharing information with other parties to or professionals involved in the case but must explain that it is the youth's decision whether the CFY will share confidential information.*

*While Title 19 allows a court to appoint a GAL in addition to the CFY if the court finds that the appointment is necessary due to the youth's diminished capacity, it provides that age or developmental maturity cannot be the sole basis for a finding of diminished capacity. Similarly, a CFY's assessment of whether a youth client has diminished capacity should not be based solely on the youth's age or developmental maturity. When an attorney is assessing whether to take protective action such as requesting appointment of a GAL, the attorney should consider Colo. RPC 1.14 and assess whether all factors authorizing protective action under Colo. RPC 1.14 apply.*

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

3. **Caseloads:** GALs, CLRs, and CFY must maintain reasonable caseloads that support full compliance with their ethical obligations and the practice standards established by 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/youth.
4. **Duty of Loyalty and Independence:** GALs, CLRs, and CFY must guarantee loyalty and independence throughout their representation.

- a. **Transition from GAL to CFY Role:** The possibility or actuality that an attorney who has transitioned from the role of GAL to CFY for a youth in a dependency and neglect proceeding will take positions as CFY contrary to previous positions the attorney took as GAL for the child or that the attorney shared information about the child while representing the child as GAL does not by itself create a conflict of interest under Colo. RPC 1.9.
- b. **Representation of Siblings:** GALs, CLRAs, and CFY may be appointed to represent multiple siblings in a sibling group if the attorney does not assert that a conflict of interest exists. An attorney's assessment of conflicts must be case-specific, as joint representation of a sibling group alone does not create a conflict of interest.

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

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

If a GAL or CFY's representation of a sibling group presents a conflict of interest, the attorney must determine that all requirements applicable to continued representation in Colo. RPC 1.7 and 1.9 have been met in order to continue to represent members of the sibling group. In implementing the informed consent provisions of Colo. RPC 1.7 and 1.9, a CFY may rely on the informed consent, confirmed in writing, of a youth age 12 or older. The GAL may rely on their determination that the representation does not adversely impact the best interests of the child and must document this determination in writing.

CFY and GALs should engage in developmentally appropriate communication to assess for conflicts, explain conflicts and their implications, understand the child or youth's position regarding the

conflicts, and ensure that any consent required for ongoing representation is informed.

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

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

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

- *the siblings are of different ages;*
- *the siblings have different parents;*

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

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

- c. **Conflicting Roles for the Same Youth:** An attorney can never simultaneously serve as both GAL and CFY for the same child/youth and must decline any appointments that present this conflict of interest.
- C. The attorney appointed as a GAL or a CLR shall diligently take steps that they deem necessary to represent and protect the best interests of the child or youth, under the terms and conditions of the order of appointment, including any specific duties set forth in the appointment order or in any subsequent order. The attorney appointed as CFY shall provide competent and diligent representation to the youth client within the scope of the order of appointment and in accordance with the attorney's professional responsibilities under the Colorado Rules of Professional Conduct.
- If the appointee finds it necessary and in the interests of the child or youth, the appointee may request that the court expand the terms of the appointment and scope of the duties. CFY and GALs may provide representation on related matters consistent with their ethical duties and obligations and may be compensated by OCR for this work, subject to available federal funding and OCR policies and approval.
- D. Subject to the requirements of Section V.B. above, a GAL or CFY for a child or

youth in a dependency and neglect case shall at a minimum perform the following specific tasks:

1. Provide effective legal advocacy throughout the proceeding.
  - a. Attend all court hearings.
    - i. As GAL, advocate for the child's best interests. Present independent information relevant to the child's best interests at each hearing through oral or written recommendations, motions, examination of witnesses, and other acceptable means consistent with the court's appointment orders and the GAL's statutory authority and ethical obligations. State the child's position, when ascertainable. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.
    - ii. As CFY, advocate for the youth's expressed interests at each hearing through oral or written motions, examination of witnesses, legal and factual arguments, monitoring and advocating for compliance with court orders, and other legal means.

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

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

or youth's experience at the hearing.

- c. Exercise discovery necessary to provide effective representation and advocate against discovery requests that are unduly burdensome, unreasonable, outside the legal scope of discovery, or made for improper purposes.
- d. Attend meetings and staffings concerning the child or youth as needed.

*Commentary: Attending staffings and meetings may be performed by a qualified professional assigned to the attorney's legal team. The GAL or CFY should also promote developmentally appropriate and meaningful participation by the child or youth at meetings and staffings.*

- e. As necessary, coordinate the attorney's legal representation on the dependency and neglect case with the legal representation provided by GALs on other pending cases involving the child or youth.
  - f. Advocate for findings regarding the holder of the child's or youth's psychotherapist-patient privilege when necessary to protect the rights and interests of the child or youth.
    - i. If appointed privilege-holder as GAL, engage in advocacy necessary to protect the child's privilege and ensure that the GAL's exercise of the therapist-patient privilege is consistent with the child's best interests and informed by the child's position as required by Section V.B.1.
    - ii. As CFY, represent the youth with regard to youth's exercise of their privilege.
2. Engage in timely, regular, and meaningful communication with the child or youth.
- a. Conduct an in-person placement visit as soon as is reasonable but in no event later than 30 days following the appointment.
    - i. As GAL, personally conduct an in-person meeting with the child and interview the child if appropriate to the child's developmental level, explain the role of GAL and the child's rights in a developmentally appropriate manner, observe the child with their caregiver in their placement, and conduct an

in-person assessment of the child's placement;

- ii. As CFY, personally conduct an in-person meeting with the youth, explain the role of CFY and the youth's rights, interview the youth, observe the youth with their caregiver in their placement, and conduct an in-person assessment of the youth's placement.

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

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

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

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

*The change of placement visit requirement also applies to a change of physical address when the child's placement provider remains the same; however, the attorney may use a qualified*

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

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

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

*Commentary: Attorneys for children and youth should maintain frequent contact and intentional communication, tailored to the child or youth's individual circumstances and preferences. In*

*determining the frequency of contact that is necessary to fulfill the requirements of this Directive, attorneys should consider the following:*

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

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

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

3. Conduct an initial independent investigation in a timely manner. This

investigation must take place within the first 45 days of the appointment unless sooner as required below and must include at a minimum:

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

*Commentary: While this Directive does not require an in-person meeting with the parent as part of the attorney's initial investigative responsibilities, the attorney should strive to interview parents in a setting that promotes meaningful and open communication about the attorney's role and the child's and family's strengths and needs. The attorney should make efforts to conduct these interviews outside of the courthouse whenever possible and should convey to parents that the attorney values the information they have about their child(ren) and families. Participating in staffings and meetings that parents attend does not fulfill the requirement to interview parents. Pursuant to Colo. RPC 4.2, the attorney must obtain consent of parent counsel prior to interviewing the parent or using any member of the attorney's legal team to communicate with the parent about the subject matter of the litigation. When an attorney is unable to arrange an interview with the parent despite diligent efforts or to obtain the consent of counsel to interview a parent, the attorney should document the efforts made to contact the parent and/or to obtain consent.*

- c. Reviewing court files and relevant records, reports, and documents.
- d. Obtaining first-hand information from other persons or professionals necessary to assess the child's best interests (for the GAL) and to advise and counsel the youth (for the CFY). Such persons or professionals shall include caseworkers, CASA volunteers, relatives, school personnel, therapists, treatment providers, and any other persons or professionals necessary to assess and advocate for the child's best interests (for the GAL) and to advise, counsel, and advocate for the youth (for the CFY).

- e. Confirm that the county department's investigation has included a diligent search for any prospective kinship placement and/or adoption or potential tribal affiliation, or independently conduct such investigation, in the event these attempts to reunify fail.
- f. When appropriate, visiting the home from which the child was removed.

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

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

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

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

*The duties described in Sections V.D.3.c through V.D.3.f not personally assigned to the attorney may be performed by a qualified professional assigned to the attorney's legal team.*

4. Continue to perform an ongoing investigation as necessary to represent the youth (as CFY) and the best interests of the child (as GAL) for the duration of the appointment. The GAL or CFY's ongoing investigation shall include, but shall not be limited to:
  - a. Maintaining contact and communication with placement providers, the caseworker, the CASA, other parties, and any other persons or professionals necessary to ensure ongoing and timely assessment and representation of the child or youth's interests;
  - b. Other applicable duties listed above in Section V.D.3.

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

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

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

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

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

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

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

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

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

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

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

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

*ongoing advocacy for the youth's best interests throughout the appointment.*

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

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

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

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

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

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

- a. Maintaining contact and ongoing communication with the youth.

*Commentary: The GAL's contact with the youth should not be limited to contact at court appearances. Ongoing communication and contact between court appearances promotes up-to-date assessment of the youth's best interests. It allows the GAL to ensure the youth understands the proceedings and to promptly address any questions, confusion, or competency issues. It also maximizes the GAL's ability to address factors impacting the youth's best interests in a timely manner and serves to strengthen the youth's confidence in the role of the GAL as an advocate for their best interests.*

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

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

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

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

compliance orders and actions, and other legal means.

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

- b. Provide developmentally appropriate notice to the youth of all court hearings and advance the youth's right to attend and meaningfully participate in court hearings by discussing the court process with the youth, explaining the youth's right to go to court and the benefits of attending court hearings, identifying barriers to court appearances/participation, advocating for the elimination of barriers to the youth's attendance at court, and conducting a post-hearing follow up with the youth regarding the outcome of the hearing and, if applicable, the youth's experience at the hearing.
  - c. Exercise discovery necessary to provide effective representation and advocate against discovery requests that are unduly burdensome, unreasonable, outside the legal scope of discovery, or made for improper purposes.
  - d. Attend meetings and staffings concerning the youth as needed.
  - e. As appropriate, coordinate their representation with the representation of any other attorneys on related cases concerning the youth.
  - f. Engage in both informal and formal advocacy at both the county and state level to ensure the youth has full access to all services and supports provided by Colorado's Foster Youth in Transition Program.
2. Engage in timely, regular, and meaningful communication with the youth.
    - a. Personally conduct an in-person meeting with the youth, explain the role of the CFY and the youth's rights, and interview the youth as soon as is reasonable but in no event later than 30 days following the CFY's appointment or assignment. This initial meeting must be in a location that promotes meaningful and confidential communication but need not be at the youth's placement if the youth requests to have a meeting elsewhere.

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

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

3. Conduct a timely initial investigation during the first 45 days of appointment or assignment by reviewing relevant records, communicating with the youth as required by Section V.F.2, and contacting the professionals, providers, and resources necessary to assess the youth's service and support needs, advise the youth about their legal rights to all available services and supports under the program, and provide effective legal advocacy. Given the voluntary and youth-driven nature of this program, this investigation should be done with youth's consent and input. This investigation should include an assessment at a minimum of the youth's rights to the following:
  - a. Medicaid and other public benefits enrollment assistance;
  - b. Safe, affordable, and stable housing;
  - c. Employment or financial support;
  - d. Access to health and education records, driver's license, and/or other government-issued identification card;
  - e. Support in pursuing their educational goals and applying for financial assistance;
  - f. Criminal record expungement;
  - g. Support in applying for Special Immigrant Juvenile Status or other applicable immigration relief;
  - h. Support in accessing information about relatives, siblings, kin, and other individuals important to the youth and maintaining and building relationships with those relatives and individuals.

*Commentary: The CFY's initial and ongoing investigative activities in Foster Youth in Transition Program cases may be performed by a qualified professional assigned to the CFY's legal team.*

4. Continue to perform an ongoing investigation as necessary to represent, advise and counsel the youth. The CFY should consult with the youth client about the scope of this investigation and obtain necessary authority for the release of information.
  5. Ensure the youth's interests are represented in any appellate matters by advising youth of their rights to appeal, taking necessary actions to preserve and perfect the youth's appellate rights, and providing competent representation during any appellate proceedings or arranging for substitute appellate counsel from OCR's approved list of appellate attorneys.
- G. An attorney appointed as GAL, CLR, or counsel for youth in all other proceedings governed by this Directive shall perform all duties as directed by the court, as set forth by statute, and as required by the Rules of Professional Conduct as described in Section V.B. These duties may include all or some of the duties described below:
1. Attend all court hearings relevant to the child and advocate for the child's best interests and legal rights as applicable. Present information relevant to the child's interests through oral or written recommendations, motions, or other acceptable means consistent with the court's appointment orders and the attorney's statutory authority and ethical obligations.
  2. Conduct an independent investigation in a timely manner that includes:
    - a. Personally meeting with and observing the child;
    - b. Meeting with current and proposed placements, guardians or custodians, when appropriate;
    - c. Reviewing court files and relevant records, reports and documents.

*Commentary: The investigative activities required by Sections V.G.2.b and V.G.2.c may be performed by a qualified professional assigned to the GAL's legal team.*

- H. In cases in which the parents, child or proposed custodians are living or placed more than 100 miles outside of the jurisdiction of the court, as defined by the geographic boundaries of the judicial district, the requirements to conduct in-

person observations and meetings are waived. However, the GAL and CFY continue to have an obligation to personally interview the child or youth as developmentally appropriate, interview caregivers, parents and proposed caregivers, observe the child's or youth's interactions with such individuals and assess the placements or potential placements. This obligation may be accomplished through electronic or other means of communication. To the extent possible, the appointee shall endeavor to see the child or youth in their placement. The OCR will pay reasonable costs associated with meeting these obligations submitted in compliance with OCR billing policies and procedures.

- I. All attorneys with appointments governed by this Directive shall participate in OCR's processes for verifying compliance with this Directive.

## **VI. Duties of Judges and Magistrates**

- A. Judges and magistrates shall ensure that GALs, and CLR, and CFY involved with cases under their jurisdiction are representing the interests of children and youth.
- B. In providing this oversight, judges and magistrates shall:
  1. Routinely monitor compliance with this Directive and promptly notify the OCR of failures of GALs, CLRs and CFY 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 a GAL 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 their best interests. For these reasons, judges should take an active role in monitoring attorneys who represent the best interests of children. Often the judge is the only individual in the position to become aware of less than adequate representation or non-compliance with this Chief Justice Directive. Judges should consider practices such as inquiring at each court date the attorney's last contact with the child, as well as asking other questions to ensure quality representation of the child's best interests. Similarly, youth represented by counsel in dependency and neglect proceedings may lack the resources to raise concerns about counsel's representation, and the court should promptly notify the OCR of any inadequacies it has observed with regard to an attorney's performance as CFY in a dependency and neglect proceeding.*

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

*Commentary: Examples of such procedures and practices include entering orders authorizing GALs, CLRs, and CFY to access all relevant case information, checking their availability when scheduling hearings, promptly notifying them of scheduled court dates, and requiring timely service of pleadings and reports.*

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

- A. For all court-appointed GALs, CLRs, and CFY, complaints concerning alleged violations of the Colorado Rules of Professional Conduct shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel and reported, if possible, to the OCR so that the OCR may be able to consider this information when deciding whether to continue to contract with the attorney, either at the time of the complaint or in the future.
- B. All complaints regarding the performance of any state-paid GAL, CLRs, or CFY 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.<sup>1</sup> The OCR shall

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<sup>1</sup> If an issue arises concerning an attorney’s ability to competently or adequately represent a child or youth’s interests 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

investigate the matter and take action necessary to resolve any concerns or issues identified by the OCR. Such action may include but is not limited to: placing the attorney on probationary status with regard to their 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;<sup>2</sup> 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.

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OCR may impact the interests of the child or youth 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.

<sup>2</sup> 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 January 9, 2023.

Done at Denver, Colorado this 12th day of October , 2022.

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/s/

Brian D. Boatright, Chief Justice

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

### **Indigency Determination**

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

### **Procedures for the Determination of Indigency**

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

- **Completion of Form JDF 208 by Applicant**  
Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF 208, and submit it to the court.
- **Review of Financial Information by Court Personnel**  
Court personnel shall review the applicant’s information on form JDF 208 to determine whether or not the applicant is indigent on the basis of three factors:
  - Income<sup>3</sup>
  - Liquid assets<sup>4</sup>
  - Expenses<sup>5</sup>

### **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.

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

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

<sup>4</sup> *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.*

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

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

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

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

INCOME ELIGIBILITY GUIDELINES (amended January 2023)						
Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 14,580	\$ 1,215	\$ 1,519	\$ 1,898	\$ 18,225	\$ 22,781
2	\$ 19,720	\$ 1,643	\$ 2,054	\$ 2,568	\$ 24,650	\$ 30,813
3	\$ 24,860	\$ 2,072	\$ 2,590	\$ 3,237	\$ 31,075	\$ 38,844
4	\$ 30,000	\$ 2,500	\$ 3,125	\$ 3,906	\$ 37,500	\$ 46,875
5	\$ 35,140	\$ 2,928	\$ 3,660	\$ 4,576	\$ 43,925	\$ 54,906
6	\$ 40,280	\$ 3,357	\$ 4,196	\$ 5,245	\$ 50,350	\$ 62,938
7	\$ 45,420	\$ 3,785	\$ 4,731	\$ 5,914	\$ 56,775	\$ 70,969
8	\$ 50,560	\$ 4,213	\$ 5,267	\$ 6,583	\$ 63,200	\$ 79,000
* 125% of poverty level as determined by the Department of Health and Human Services.						
*For families/households with more than eight persons, add \$536 per month to "monthly income" or \$ 6,432 per year to "yearly income" for each additional family member. Poverty guideline is \$5,140/year.						
Source: Federal Register (88 FR 3424, 01/19/2023)						