### Request Summary
Under both the United States and Colorado Constitutions, as well as state law, defendants and respondents in various criminal, delinquency, juvenile, and other matters are to be afforded due process in the courts, including the right to competent legal representation, regardless of their financial ability. Costs incurred by the Judicial Department associated with assuring that these rights are upheld are funded through the Mandated Costs line item. The Judicial Branch requests that an additional $ for Mandated Costs be provided for the reasons outlined in this Decision Item.

### General Description of Request
The problem that must be addressed concerns the pay rates required to procure competent legal services, i.e., court-appointed counsel, to efficiently and effectively handle the representation of indigent parties. Despite the increases awarded in the past 2 years, Colorado’s fees offered to court-appointed counsel continue to be severely below competitive and recommended court-appointed counsel rates, meanwhile, the cost of doing business in the legal profession continues to rise.

The Judicial Branch needs additional funds to provide reasonable compensation for work performed. This will be critical to ensure Colorado’s ability to maintain a base of qualified professionals willing to accept court appointments.

### Background
The Judicial Branch, in conjunction with Office of the Child’s Representative (OCR) and Alternative Defense Counsel (ADC), has studied and evaluated the needs with regard to improving compensation for court-appointed counsel. Based on direction received from the
Joint Budget Committee, parallel requests are being submitted to ensure equitability in rates across the respective offices. It has become increasingly difficult for the courts to find attorneys willing to accept court appointments.

In 2005, the Branch conducted a study to obtain a broad spectrum of information on rates paid for comparable attorney work in the government sector. A rate of $71 per hour (based on the rate study performed in 2003 plus 2004 and 2005 inflation/COLA adjustments) was determined to be competitive when compared to the compensation packages of county attorneys and attorneys in Public Defender and District Attorney offices (data from a five metro county region). Mid-point hourly rates were used. The $71 rate determined in 2005 factored in overhead expenses of a law firm. In addition, to determine the appropriate state-paid rate, the Branch analyzed national and regional data and studies, consulted the Colorado Bar Association, various attorneys, judges, and court administrators. To date, the compensation paid to court appointed attorneys in Colorado has yet to reach the $71 per hour level determined to be competitive in 2005.

The current rates paid are $60 per hour for both in and out-of-court time\(^1\). As a point of comparison, the current rate for court-appointed counsel in federal cases is $90 per hour (since 2002), 150% of what Colorado state appointees earn.

At the time the salary study was completed, the Department also evaluated the changes that have occurred in the last ten years that place greater demands on court-appointed counsel. Some of those changes were as follows:

- Malpractice insurance, office rent, operating and technology costs, health insurance, and wages for support staff have all increased;
- Heavier caseloads, which equates to a greater demand for legal services;
- Practice of law, in general, has become more complex;
- Probate matters are often contested and litigious;
- Increased demand for trials in dependency and neglect and juvenile delinquency proceedings;
- More medical/clinical issues and variety of testing, requiring increased and expanded expertise;
- More interaction with other agencies including Department of Human Services, hospitals, and social workers.

In 2004, the Judicial Department surveyed court managers regarding the court appointed counsel system. In 2007, the Judicial Branch with the assistance of the National Center for State Courts, National Counsel for Juvenile and Family Court Judges, and National Association of Counsel for Children performed a needs assessment of respondent parents’ counsel (RPC), the largest class of court appointed counsel compensated by the Judicial Branch. The following issues with compensation were identified in the 2004 survey and the Needs Assessment:

**Low State Rates** (#1 complaint) – It is no longer economically feasible for most attorneys to accept court appointments. The current rate, still does not cover the

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\(^1\) For FY 2007, a flat rate of $57 per hour was instituted to replace differentiated rates for in and out of court time. In FY 2008 the rate paid to court appointed counsel was increased to $60 per hour.
overhead expenses required to maintain an office. Attorneys have many cases and demands on their time, and private paid cases (where they can earn substantially more money) inevitably come first. It is more difficult to retain court-appointed counsel outside of the immediate Denver area, largely because of the more limited “supply” of attorneys in the less populated counties. New attorneys are willing to accept cases, but after a few years when they become more experienced they move on to strictly accepting private cases, which generate substantially more revenue for the law practice. Colorado’s judges often are faced with appointing an attorney whether or not the attorney actually wants the appointment.

**Complexity and Duration of Cases** – Court appointed cases require more of the attorney’s time due to the duration of these types of cases in the legal system (e.g., dependency and neglect actions) as well as increased case complexity. The level of compensation is not regarded as proportionate to the work that is required in dependency cases, particularly in jurisdictions in which the Judicial Branch’s flat fee compensation system exists. Also, clients in these matters are frequently uncooperative and difficult to work with. When an attorney takes a court appointed case, all of these factors prevent him/her from having time to spend on more profitable cases.

**Lack of Available Attorneys, and Inexperienced and Ineffective Attorneys** – The pool of attorneys who will take these appointments continues to shrink. Because of the number of cases, the trial courts have sometimes run out of counsel on the appointment list. Often, courts must rely on inexperienced attorneys to accept court appointments at the current level of compensation. However, even these attorneys often lose interest as soon as they gain experience. Having to rely on inexperienced or potentially ineffective attorneys creates its own natural set of problems and concerns, such as: dealing with attorneys that are unprepared for court, attorneys failing to appear for scheduled hearings, and attorneys who are difficult to work with. This appears to be particularly true with regard to RPC, who were perceived by stakeholders in the Needs Assessment as being the least active and least prepared parties in proceedings. These problems open the real possibility of denying competent counsel to parents faced with distinct possibility of losing their parental rights, or the loss of freedoms and rights for elderly persons or others facing institutionalization. In addition, courts in Colorado have reported that inexperienced attorneys tend to slow case processing, causing continuances and other costly delays in cases, particularly if the attorney ultimately is forced to withdraw from the case due to performance issues.

Under the current level of compensation, the Branch has made efforts to recruit and train court-appointed counsel. Each judicial district posts and advertises for court-appointed counsel opportunities each year, and judges encourage attorneys to accept state paid cases. The Judicial Branch has also offered two training conferences for court-appointed RPC in FY 2007. However, it remains increasingly difficult to recruit and retain skilled attorneys at the current rates and under the current compensation structure.
The Judicial Branch’s request for a rate increase for court appointed counsel is one component of its broader effort to examine and improve the current administration and overall quality of court appointed counsel. In 2005, the Department convened a RPC Task Force, a group of stakeholders representing all aspects of the dependency system, to examine the current administration of RPC and to make recommendations for improving the performance of RPC. In September, 2007, the Task Force submitted its final report to the Chief Justice, which incorporated findings and recommendations identified in the Needs Assessment. Based on that report and the example of other offices overseeing court appointed counsel in Colorado, the Judicial Branch intends to explore and implement some of the following steps to improve the performance and capacities of RPC: increasing centralized selection and oversight of respondent parents’ counsel; piloting and evaluation of alternative compensation structures for RPC (e.g., fee for service; staff model office, similar to the El Paso GAL Office) in select areas of the state; further development and delivery of relevant training for RPC; and improved centralized support for RPC. These efforts, combined with a rate of compensation that allows the recruitment and retention of qualified counsel, should lead to overall system improvements in representation of parties.

**Proposed Increase**

Faced with continued concerns about the declining quality of services and major difficulties in securing interest from attorneys in accepting court appointments, the Branch proposes to increase the hourly rate paid to court appointed counsel to a level of $68 per hour.

**Consequences if Not Funded**

The Department foresees a time when it will not able to provide court-appointed counsel services because there are no attorneys willing to work at current rates. Currently, some districts have had to bring in attorneys from other districts because none of the local attorneys would accept the appointments. In one district, it has been noted that judges literally have to appoint whether or not the attorney wants the appointment.

**Calculations for Request**

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<tr>
<th>Fiscal Year</th>
<th>CAC Hours</th>
<th>Proposed Hourly Rate Increase</th>
<th>Total Cost</th>
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<tr>
<td>2009*</td>
<td>169,813</td>
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*Estimated number of Hours

**Assumptions for Calculations**

1. FY 2007 Court Appointed Counsel actual hours were 158,829.
2. The number of Court Appointed Counsel hours is estimated to grow at a rate of 3.4% per year.

**Impact on Other Government Agencies**

The Office of the Child’s Representative and Office of Alternate Defense Counsel are seeking a commensurate increase in the FY 2009 Budget Request.
Statutory Authority
Titles 12, 13, 14, 15, 19, 22, 25, 27, CRS; Colorado and United States Constitutions

Performance Measures

**MEASURE I-1:**
**Objective** – Increase positive perceptions of court experience.

<table>
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<tr>
<th>Performance Measure</th>
<th>Outcome</th>
<th>FY 07-08 (actual)</th>
<th>FY 08-09 (actual)</th>
<th>FY 09-10 (estimate)</th>
<th>FY 10-11 (projected)</th>
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<td>Percentage of respondents surveyed indicating positive perception of access and fairness.</td>
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