

# **SUPREME COURT STANDING COMMITTEE ON FAMILY ISSUES**

**June 24, 2010**



## **INTERIM REPORT ON COURT APPOINTED PROFESSIONALS IN DOMESTIC RELATIONS CASES**

## Executive Summary

In January 2010, Chief Justice Mary Mullarkey charged the Standing Committee on Family Issues (Family Issues Committee) to study the quality assurance and oversight of Child and Family Investigators (CFIs) and Parenting Coordinators (PCs) in domestic relations cases. The Family Issues Committee has preliminarily identified that changes to the current Chief Justice Directives and statutes will likely be required to achieve system improvement and will continue to evaluate the need for additional FTE within the Judicial Department to implement these improvements.

Preliminary recommendations are summarized as follows:

**Recommendation #1: Limit the Scope of the Order of Appointment:** Judicial officers should clearly define the scope of the work to be performed in the order of appointment to either or both limit the time to be spent or the fee to be charged for all CFI appointments.

**Recommendation #2: Centralize and Clarify Complaint Process:** At a minimum, create a central “clearing house” for complaints/grievances and a clear definition of which go to the District Administrator, Department of Regulatory Agencies (DORA), Office of Attorney Regulation, Office of the Child’s Representative, and the State Court Administrator's Office.

**Recommendation #3: Standardize the Qualification Process:** Develop a standard protocol to determine competency and continued qualifications; however, it should not be so burdensome as to deter persons from serving in remote/rural areas.

**Recommendation #4: Maintain a List of Qualified CFIs:** Create a statewide list of CFIs eligible for appointment, maintain the list at the State Court Administrator’s Office, and publish the list on the Judicial Department website.

**Recommendation #5: Continue Study of PCs:** The role of PCs has been evaluated but requires further study before further recommendation can be issued.

## I. BACKGROUND

In October of 2002, Chief Justice Mary Mullarkey appointed the Supreme Court Standing Committee on Family Issues (Family Issues Committee) to implement the recommendations of the Commission on Families in the Colorado Courts and to monitor and continue to improve the ways in which Colorado Courts serve families. The commission issued the following recommendations related to court appointed professionals in domestic relations cases:

**Recommendation 69, A – F:** A committee should be created consisting of the various court-related personnel to develop standards of practice in the court context; these standards should be developed by July 1, 2003. The committee should address the following:

- A. Develop an assessment process for personnel named by the court that determines whether the individuals are meeting the established standards. Individuals who do not meet the standards should be subject to consequences.
- B. Develop a system that allows for removal of individuals who are not competent in the functions of the position or role to which they have been appointed. The committee should develop an appropriate process for identifying individuals who are not performing competently and steps for corrective action and/or removal of those individuals. These processes should specify the regulatory entities and/or court to be involved.
- C. Court facilitators should be responsible to recommend to the court which professionals need to be involved in a case to ensure that they are brought into the case at the appropriate time.
- D. Pursue an amendment to the special advocate statute to identify the regulatory entity responsible for each type of special advocate.
- E. Identify professionals who are given court appointments, including Parenting Coordinators, for whom there is no statutory authority and pursue statutory additions or amendments.
- F. For both D. and E. above, assure that the statutory provisions place court-appointed professionals' accountability for complying with the standards of practice with their professional regulatory board or agency.

The Chief Justice's 2010 Charge focused on the specific issues of quality assurance and oversight of Child and Family Investigators (CFIs) and Parenting Coordinators (PC). This charge was in response to several inquiries and questions by members of the Colorado Legislature in regard to the quality assurance and oversight of court appointed professionals. Recognizing the scope of the Chief Justice's Charge, Justice Allison Eid (Family Issues Committee Liaison) and Chief Judge Schapanski (Family Issues Committee) organized the Family Issues Committee into two multi-disciplinary sub-committees: 1) Complaint Process and Qualifications Sub-committee (Magistrate Beth Dumler, Chair) ; and 2) Training and Approval of Professional's sub-committee (Judge Randall Arp, Chair). In addition, an Executive Committee consisting exclusively of Judicial Department members of the Family Issues Committee has been tasked with making all final recommendations to the Chief Justice.

The charge of the two multi-disciplinary sub-committees was to study the questions contained in the Chief Justice's charge and prepare recommendations for the Executive Committee to consider. Additionally, SCAO staff was tasked with studying and researching the questions contained in the charge and reviewing public complaints provided to the Judicial Department. At the time of this report, only five documented CFI complaints (all mental health CFIs) had been received by the SCAO. However, during a meeting among representatives from SCAO, Department of Regulatory Agencies (DORA) and the Attorney General's Office on May 25, 2010, DORA representatives reported that they dismiss approximately sixty CFI complaints annually for lack of jurisdiction.

This Executive Committee Interim Report is designed to give the Executive Committee an overview of the process that has been undertaken to date, to provide relevant information pertaining to the Chief Justice's Charge, and to set forth the interim findings and

recommendations of the Family Issues Committee that will be included in an Interim Report which will be submitted to the Chief Justice no later than June 30, 2010.

## II. Recommendations

***Recommendation #1: Limit the Scope of the Order of Appointment:*** *Judicial officers should clearly define the scope of the work to be performed in the order of appointment to include either or both time to be spent or fee to be charged for all CFI appointments.*

The CFI statute was intended primarily to provide the trial court with expedient information relevant to the child's best interest in high conflict custody cases involving indigent parties.<sup>1</sup> The current review indicates that in many instances, CFI investigations have expanded beyond their original intent, blurring the line between a CFI investigation and the more extensive Parental Responsibilities Evaluation (PRE).<sup>2</sup> Reports indicate that CFI investigations now regularly result in lengthy reports that routinely include psychological, domestic violence and parental alienation evaluations and cost parties tens of thousands of dollars in private-pay cases.

The standard order of appointment, as it is currently crafted, contributes to the issuance of orders that do not always limit or define the scope or cost of the CFI's investigation.<sup>3</sup> Additionally, current policy regulating CFIs does not prescribe the type of evaluations and tests to be used to conduct the investigation.<sup>4</sup> For example, when psychological testing is appropriate, the Court may authorize the mental health CFI to perform the testing but current Chief Justice Directive or statute does not proscribe the particular methodology to be used. The CFI statute does not require a CFI to be licensed.<sup>5</sup> Some members of the Committee are hesitant to recommend a legislative change requiring a CFI to be licensed because it could change the original intent of the CFI statute and possibly elevate the role of the CFI from an investigator to an expert.

Recognizing that the testing and evaluations, such as psychological testing, that are sometimes authorized by the Court in the course of a CFI investigation may be necessary, and that these tests are required to be administered by a licensed professional or expert, requires us to ask if CFIs are functioning as experts or actually performing PREs.<sup>6</sup> Additionally, current policy only requires that the CFI disclose the underlying data resulting from a psychological evaluation to a qualified psychologist upon request of the parties, a requirement that presumes the underlying data can only be examined by an expert.<sup>7</sup>

Setting aside the fact that psychological, domestic violence and parental alienation evaluations and testing may exceed the original intent of the CFI statute, the lack of an objective standard to evaluate the work of a CFI makes it difficult for the Court, parties, and oversight bodies to

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<sup>1</sup> 14-10-116.5, C.R.S. (2009)

<sup>2</sup> 14-10-127, C.R.S. (2009)

<sup>3</sup> JDF 1318, Order Appointing Child and Family Investigator

<sup>4</sup> Orders limiting tests such as the MMPI-2 and the MCMI-III would provide standard evaluations that could be evaluated for accuracy.

<sup>5</sup> 14-10-116.5 *supra* note 1 at Section (2).

<sup>6</sup> CJD 87-01(1)(3) sets \$100.00 and 10 hours as the maximum allowable costs for a state paid expert witness such as license psychologist and requires written approval from the court to exceed the ten hour limit.

<sup>7</sup> CJD 04-08 Standard 12, The CFI Shall Provide Copies of His or Her File

scrutinize their work and determine if the recommendations they issue are based on validated scientific tools.

Therefore, the Committee concluded that the judicial officer appointing the CFI must define the scope of the work to be performed and consider limiting the fee and hours of the investigation as a potential method of achieving this end.

Analysis of state-paid CFI billing records by the State Court Administrator's Office for fiscal years 2007, 2008, 2009 indicates that the average number of hours billed by non-attorney CFIs is twenty-eight hours or \$700 (\$25/hr) per case. The same analysis conducted by the Office of Child's Representative indicates an average number of hours billed by attorney CFIs is eighteen or \$1,170 (\$65/hr) per case.

The State Court Administrator's Office has set maximum limits for non-attorney CFI appointments as follows:<sup>8</sup>

Title 19 (Dependency and Neglect Matters)	\$1,250.00
Title 19 (Other Matters i.e. delinquency, Support, adoption, paternity)	\$ 625.00
Title 14 and 15	\$1,250.00
Appeals	\$1,250.00

When examining the limits set by the Judicial Department for non-attorney CFIs, the maximum number of hours a non-attorney CFI can bill in a Title 14 or Title 19 action is 50 hours. Research also revealed that the Eighth Judicial District caps the cost of all CFI investigations at \$1,800. In comparison, the results of a review of two counties qualified CFI lists revealed that CFIs charge \$20 - \$350 per hour and request retainers of \$500 - \$10,000. The difference is related to whether the case is a state-paid or a private-pay case.

The adoption of maximum cost and hours limits for private paid CFI appointments combined with steps to define the scope of the work that should be performed by the CFI will likely eliminate CFI investigations that are indistinguishable from PREs.

***Recommendation #2: Centralize and Clarify Complaint Process:*** *At a minimum, create a central "clearing house" for complaints/grievances and a clear definition of which complaints should be addressed to the District Administrator, DORA, Office of Attorney Regulation, Office of the Child's Representative, and the State Court Administrator's Office.*

The current system provides for meaningful regulatory oversight of attorney CFIs. Attorneys are overseen by the appointing court,<sup>9</sup> District Administrator,<sup>10</sup> the Office of the Child's

<sup>8</sup> CJD 04-05 Section IV (D), Guidelines for Payment

<sup>9</sup> CJD 04-08, Court's authority, role and responsibilities related to child and family investigators appointed pursuant to 14-10-116.5

<sup>10</sup> CJD 04-05 Section IX (A)(B)(C), Complaint Process

Representatives (state paid cases only),<sup>11</sup> and the Office of Attorney Regulation.<sup>12</sup> The State Court Administrator's Office also retains the authority to investigate complaints against privately-paid attorney CFIs but does not have an affirmative duty to investigate complaints.<sup>13</sup> The current framework of regulation for attorney CFIs provides several checks and balances to ensure that the attorney CFI is held accountable for any violations of the CFI standards or codes of professional conduct.

Conversely, the non-attorney CFIs are overseen solely by the appointing court<sup>14</sup> and the District Administrator.<sup>15</sup> The State Court Administrator's Office continues to retain its authority to investigate but has no affirmative duty to investigate complaints, nor is there any oversight by other regulatory agencies.<sup>16</sup> In fact, 12-43-215(7), C.R.S. (2009), strips the Department of Regulatory Agencies of jurisdiction to investigate mental health professionals who are performing duties as court-appointed CFIs. The current regulatory scheme ensures that mental health professionals functioning as CFIs are unlikely to be held accountable for any violation of a code of professional conduct in the administration of duties they fulfill as a CFI, which may include administering psychological, domestic violence and parental alienation evaluations.

The district administrators serving on the Family Issues Committee pointed out that they are not qualified to investigate complaints involving mental health professionals because they do not have the requisite skill or expertise and recommended that this function be handled at the state level. This recommendation to some extent contemplates that the State Court Administrator's Office take on a larger role in overseeing complaints against mental health professionals; however, the qualifications and necessary expertise are also not present within the State Court Administrator's Office to adequately assess recommendations resulting from psychological testing. Therefore, a modification to 12-43-215(7), C.R.S. (2009), seems necessary so that an appropriate investigation of mental health CFIs can be performed by the Department of Regulatory Agencies. Failure to permit the Department of Regulatory Agencies to investigate mental health CFIs would likely require additional resources within the Judicial Department so that these types of complaints can be adequately addressed.

The dialogue during a May 25<sup>th</sup> meeting with DORA indicated a willingness on the part of DORA to modify the existing statute in a manner that would grant them jurisdiction over CFI complaints without negatively impacting the court process.<sup>17</sup> DORA also indicated that a management board, similar to the Sex Offender Management Board, could be created to oversee CFIs.

Representatives from DORA explained that, in order for a CFI board to exist, the Judicial Department would need to set up a process for approving providers and maintaining a centralized online list of approved providers, reviewing initial complaints, responding to complaints and/or forwarding to the appropriate Board at DORA if there appears to be a violation of the CFI

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<sup>11</sup> CJD 04-06 Section I (B), Authority

<sup>12</sup> CJD 04-05 *supra* note 10; CJD 04-06 Section V (B), Duties of Attorney

<sup>13</sup> CJD 04-05 *supra* note 10 at Section (C)

<sup>14</sup> CJD 04-08, *supra* note 9

<sup>15</sup> CJD 04-05 *supra* note 10

<sup>16</sup> CJD 04-05 *supra* note 13

<sup>17</sup> 12-43-215(7), C.R.S. (2009)

standards established by Judicial or the Colorado Mental Health Practice Act.<sup>18</sup> If a violation were substantiated, the Judicial Department could take action by removing the CFI from the Judicial Department's list in addition to any sanctions that the Board would impose (i.e. removal from the list, suspension from the list, requirement for additional CEUs, limitation of the number of CFI cases, limitation of the type of family situations the CFI may be presented with, etc). DORA could also provide Judicial with the names of approved providers who have received professional disciplinary notices unrelated to their CFI work.

DORA also suggested that Judicial may not need a Board but could, instead, create a committee or some other body to carry out the review. DORA advised that such a process would require dedicated administrative staff (at least some portion of an FTE) and that the task of reviewing complaints can become burdensome. SCAO staff plan to meet with DORA representatives again to discuss statutory changes because the DORA statute is scheduled to sunset in 2011. DORA representatives have also indicated a willingness to attend the Family Issues Committee meeting on July 30, 2010 if the committee is inclined to invite them.

The Complaint Process and Qualifications Sub-committee recommended the creation of local multi-disciplinary committees designed to assist the District Administrator in reviewing CFI complaints on an annual basis. The multi-disciplinary make-up of the committee would ensure that the appropriate skills, knowledge and abilities needed to examine a complaint against a mental health professional or attorney were available to the District Administrator. The Committee also recommended that a standard CFI complaint form be placed on the internet so that aggrieved parties could submit their complaint easily and that the process would be more visible.

The Standing Committee has not yet agreed upon specific policies or protocols for handling complaints against CFIs. However, it appears that a standard complaint process needs to be implemented in each judicial district. Currently, only a few judicial districts have procedures in place to manage complaints against CFIs. This lack of a visible and understandable process seems to add to the public's frustration. Representatives of the Eighth, Seventeenth and Twentieth Judicial Districts report that clearly defined procedures for handling CFI appointments and complaints allow for the effective and efficient oversight of CFI appointments and processing of complaints.

Finally, protocols supporting ongoing communication among the District Administrators, State Court Administrator's Office, Office of the Child's Representative, Office of Attorney Regulation, and the Department of Regulatory Agencies will improve the oversight of all CFIs. Since the system of CFIs include attorneys, non-attorneys, state-paid cases and private-paid cases, a CFI is often subject to the jurisdiction of multiple agencies and currently these agencies have not implemented standard procedures for information sharing. As part of standardized protocols, defining the scope of work to be performed in the order of appointment will assist the agency responsible for conducting the evaluation. For example, if a mental health CFI is ordered to perform specific psychological testing such as the MMPI-2, the Department of Regulatory Agencies will be able to examine the underlying testing data and determine if the CFI conclusions were in fact based on the testing data.

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<sup>18</sup> 12-43-101, C.R.S (2009) et seq.

***Recommendation #3: Standardize the Qualification Process:*** *Develop a standard protocol to determine competency and continued qualifications; however, it should not be so burdensome as to deter persons from serving in remote/rural areas.*

Individuals seeking non-attorney CFI appointments and private paid attorney appointments are required to submit an application to the District Administrator for placement on a qualified list.<sup>19</sup> Several Judicial Districts do not maintain a qualified list and do not have a standardized protocol for determining the competence and continued qualifications of CFIs. Since the availability of CFIs varies across the state, it is important that any standardized protocol designed to determine competence is not overly burdensome and does not limit the potential pool of CFIs available to the Court.

To serve as a CFI in Colorado, an individual must demonstrate that they have completed forty hours of child related training and fifteen hours of continuing education in a three year period.<sup>20</sup> This requirement does not proscribe the types of training that should be completed and, therefore, requires the District Administrator to examine a diverse range of qualifications before qualifying an applicant. The introduction of a standardized training curriculum for CFIs would allow for consistency in training qualifications and would provide a common standard for determining competence and continued qualifications across judicial districts. The utilization of distance learning would likely need to be implemented to ensure that standard training is accessible to CFIs in rural and remote jurisdictions.

Another area of concern related to the qualifications of non-attorney CFIs is the fact that non-attorney CFIs do not have to undergo background checks in order to be placed on a qualified list. Further complicating this issue is the fact that non-attorney CFIs are not required to be licensed and their criminal history is unknown to the Court at the time of appointment. Since CFIs often conduct private interviews of children, the need for a criminal background check is essential. To institute a background check program for non-attorney CFIs, a standard setting forth the disqualifying factors will need to be established and combined with an affirmative duty to report any violations. This process will likely need to be centralized through the State Court Administrator's Office so that the resulting workload is not placed upon the judicial districts, a step that may require additional resources within the State Court Administrator's Office.

The training and qualifications for attorney CFIs applying for placement on the OCR qualified list have some standardization in qualifications due to the fact that the same statewide agency reviews and approves the applications. These attorneys are also subject to the forty hours of child related training and fifteen hours of continuing education in a three year period, but their performance could benefit from a standard training curriculum. Finally, the background check issue does not exist with the attorney CFIs because they are licensed and are under an affirmative duty to report any law violations.

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<sup>19</sup> CJD 04-05Section III, Guidelines for Appointment

<sup>20</sup> CJD 04-08 Standard 6, The CFI Shall Maintain Competence Through Training

Finally, any possibility of DORA performing oversight of non-attorney CFIs through a management board model will require the Judicial Department to adopt standard qualifications and training for all CFIs.

***Recommendation #4: Maintain a List of Qualified CFIs:*** *Create a statewide list of CFIs eligible for appointment, maintain the list at the State Court Administrator's Office, and publish the list on the Judicial Department website.*

Several judicial districts maintain qualified lists of CFIs for non-attorney and private paid attorney CFI appointments; however, a statewide list of CFIs (non-attorney and private paid attorneys) is not maintained currently.<sup>21</sup> The creation of a statewide qualified list would ensure standard screening of CFIs in every judicial district and would facilitate a removal sanction from the approved CFI list when a complaint is founded. Currently, a CFI may be removed from a local list but this local sanction does not preclude the CFI from receiving appointment in another judicial district because this information is not routinely shared.

In order to create a statewide list of qualified CFIs, the State Court Administrator's Office should adopt a model similar to the one that is currently used to award contracts to state paid attorneys (e.g. respondent parents' and MH attorneys). This model would continue to permit the local jurisdiction to accept CFI applications while simultaneously requiring the CFI to be certified by the State Court Administrator's Office after passing a background check.

In comparison, the Office of the Child's Representative maintains a qualified list of state-paid attorney CFIs and they provide that list to judicial districts; only attorneys on their list can be appointed.<sup>22</sup> OCR's qualified list appears to be an effective mechanism for the oversight and quality assurance of the attorney CFIs and a hybrid of this model as described above could easily be adopted by the State Court Administrator's Office but may require additional resources.

The creation of a statewide list that is published on the Judicial Website will increase the sharing of information among agencies and provide a visible list of the qualified CFIs for the public and professionals alike.

***Recommendation #5: Continue Study of PCs:*** *The role of PCs has been evaluated but requires further study before further recommendation can be issued.*

The Training and Approval of Professionals Sub-committee has preliminarily considered the creation of a statewide qualified list for PCs and the development of a second category of PCs to serve as problem solvers working with the parties after a parenting plan is ordered in some cases (e.g. in high conflict families, cases involving entrenched personality disorders or transitional parenting plans).

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<sup>21</sup> CJD 04-05 *supra* note 18

<sup>22</sup> CJD 04-06 Section II (B), OCR Responsibility and Authority

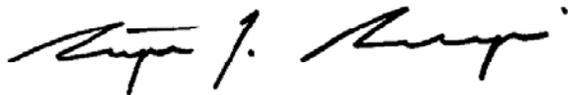
### III. Conclusion

The work of the Family Issues Committee over the past five months has fostered dialogue about the quality control and oversight of court appointed professionals as a first step in the process of identifying system improvements and potential actions steps towards those improvements.

This dialogue has revealed that the unique demographic, economic, and geographic factors present in each judicial district have a considerable impact on the utilization of CFIs and PCs statewide. Close study of the complaints, in combination with the relevant Chief Justice Directives and applicable statutes, has revealed several gaps in the regulatory scheme that may lead to abuses of the system.

Committee members overwhelmingly agree that these gaps and abuses can be addressed through the implementation of changes that more clearly define the work to be performed by the CFI, centralization and clarification of the complaint process, standardization of qualifications, and maintenance of a statewide list of qualified professionals. Committee dialogue also underscored the importance of communication and coordination among local courts, the State Court Administrators Office, the Office of the Child's Representative, and the Department of Regulatory Agencies in order to provide better quality assurance and oversight of CFIs and PCs.

The Standing Committee on Family Issues and the Colorado State Court Administrator's Office wishes to thank all of the professionals who have joined in the dialogue and who have shared, and will continue to share, their valuable experience and expertise.



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Chief Judge Stephen Schapanski (Committee Chair)