

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE

**DIRECTIVE CONCERNING COURT APPOINTMENTS
OF CHILD AND FAMILY INVESTIGATORS PURSUANT TO C.R.S. 14-10-116.5**

I. INTRODUCTION.

The following policy is adopted to assist the administration of justice through the appointment and training of child and family investigators pursuant to section 14-10-116.5, C.R.S. It is intended to apply to all child and family investigators appointed pursuant to section 14-10-116.5, including those child and family investigators paid with state funds pursuant to either CJD 04-05 or CJD 04-06.

Child and Family Investigators (formerly “Special Advocates”) were created by statute in 1997 and authorized to investigate, report, and make independent and informed recommendations to the court, following a court appointment by order which clearly sets forth the subject matter and scope of the child and family investigator’s duties. The statute provides that a CFI may be an attorney, a mental health professional or any other individual whom the court believes is able to fill this role.

The Commission on Families in the Colorado Courts recommended in its August 2002 Final Report that standards be drafted to clarify the role and the accountability of child and family investigators. The Supreme Court’s Standing Committee on Family Issues through its Other Professionals Subcommittee solicited comments from members of the public, judges, attorneys, and child and family investigators from around the state, and learned that a lack of clear standards has created problems in certain key areas. These are: role clarification and avoidance of multiple roles, communication issues, payment issues, establishment of clear procedures for complaints, and consistency in court procedures. In response to questions, the Other Professionals made several amendments in 2007 to provide clarification on access to CFI reports and to the CFI’s role before the court.

The Supreme Court Standing Committee on Family Issues recommended in its November 2010 Final Report that the order of appointment of a CFI limits the fee to be charged for all CFI appointments in order to eliminate CFI investigations that are indistinguishable from parental responsibility evaluations. In response to this recommendation, a maximum CFI fee is established within this directive.

CFI investigations are not, by definition, parental responsibility evaluations. CFIs are appointed to provide a simple solution when a parental responsibilities evaluation is not necessary. The purpose of a CFI appointment is to provide a brief assessment that is non-intrusive, efficient, and cost effective. In the event that a CFI finds that a more comprehensive assessment is required, s/he can provide that recommendation to the court in the final report and based on that recommendation, the court may choose to appoint a parental responsibility evaluator who is not a CFI.

The standards, duties of the courts, and the model CFI appointment order set forth in this CJD have been drafted with the knowledge that the role of CFI will be filled by people from different professions and backgrounds. These standards are intended to provide guidance to child and family investigators and to provide a structure for regulating conduct in order to better serve the families of Colorado. The standards do not, however, exhaust the ethical and professional considerations that should inform a CFI in his or her duties. Violation of a standard should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached or that a professional ethical violation has occurred. They should be interpreted with reference to the purpose of a CFI as defined by

the statute. The comments set forth with each standard explain and illustrate the meaning and purpose of the standard, and are intended as a guide to that interpretation.

II. STATUTORY AUTHORITY AND EXISTING CHIEF JUSTICE DIRECTIVES

- A. Section 14-10-116.5, C.R.S provides for the appointment of child and family investigators in domestic relations cases. The CFI may, but need not, be an attorney. The role of the child and family investigator, as defined by statute, is to investigate, report, and make recommendations to the court on issues that affect the best interests of the minor and dependent children involved in a domestic relations case. The subject matter and scope of the child and family investigator's duties shall be clearly set forth in the court's appointment order.
- B. CJD 04-05 and CJD 04-06 were effective May 1, 2004 and CJD 97-02 was repealed effective May 1, 2004. CJD 04-05 addresses appointment and payment procedures for non-attorney child and family investigators appointed pursuant to Section 14-10-116.5, C.R.S. These non-attorney child and family investigators are reimbursed by the State Court Administrator's Office ("SCAO") when parties have been found indigent. CJD 04-06 addresses court appointments of attorney child and family investigators through the Office of the Child's Representative ("OCR") when parties have been found indigent.
- C. This CJD sets forth a comprehensive set of standards for and responsibilities of appointing courts for all child and family investigators, attorney and non-attorney; whether state paid or privately paid, if appointed pursuant to section 14-10-116.5, C.R.S.

III. GUIDELINES FOR PAYMENT OF CFIS

A maximum CFI fee of \$2000 shall be established. Unless the CFI is a state paid attorney, under no circumstances shall the total fees of a CFI exceed the maximum outlined without a detailed written order showing the specific special circumstances that justify fees in excess of the maximum. This is a presumptive cap subject to extraordinary circumstances that may justify a fee in excess of \$2000.

As set forth by chief justice directive 04-06, presumptive maximum fees for state paid attorney CFIs are set by OCR. State paid attorney CFIs seeking fees in excess of the presumptive maximum fee set by the OCR must comply with the OCR's billing policies and procedures.

IV. CFI STANDARDS

A. GENERAL PRINCIPLES

- 1. THE CFI SHALL ACT PROFESSIONALLY
- 2. THE CFI SHALL MAINTAIN OBJECTIVITY

B. ROLE OF THE CHILD AND FAMILY INVESTIGATOR

- 3. THE CFI SERVES AS AN INVESTIGATIVE ARM OF THE COURT
- 4. THE CFI SHALL NOT SERVE INCONSISTENT DUAL ROLES
- 5. THE CFI MAY MOVE TO THE ROLE OF PARENTING COORDINATOR OR DECISION-MAKER

C. DUTIES OF THE CHILD AND FAMILY INVESTIGATOR

6. THE CFI SHALL MAINTAIN COMPETENCE THROUGH TRAINING
7. THE CFI SHALL ACKNOWLEDGE WHEN AN ISSUE IS BEYOND HIS OR HER COMPETENCE
8. THE CFI SHALL COLLECT DATA AND CONDUCT AN INVESTIGATION SUFFICIENT TO ALLOW THE CFI TO PROVIDE COMPETENT OPINIONS
9. THE CFI SHALL HAVE AGE-APPROPRIATE COMMUNICATION WITH THE CHILD/REN INVOLVED
10. THE CFI SHALL REPORT CHILD ABUSE TO THE PROPER AGENCY AND THE COURT
11. THE CFI SHALL PREPARE A CLEAR AND TIMELY REPORT
12. THE CFI SHALL PROVIDE COPIES OF HIS OR HER FILE
13. THE CFI SHALL NOT CONDUCT PSYCHOLOGICAL TESTING OR DRUG AND ALCOHOL EVALUATIONS
14. THE CFI SHALL MAINTAIN CONFIDENTIALITY
15. THE CFI SHALL REQUEST TERMINATION OF THE APPOINTMENT WHEN PERMANENT ORDERS OR POST-DECREE ORDERS ARE ENTERED

D. COMMUNICATIONS

16. THE CFI SHALL DEVELOP WRITTEN POLICIES FOR THE PARTIES
17. THE CFI SHALL DEVELOP WRITTEN POLICIES FOR COUNSEL
18. THE CFI SHALL REVIEW THE COURT'S ORDER OF APPOINTMENT
19. THE CFI SHALL HAVE NO PRIVATE OR EX PARTE COMMUNICATIONS WITH THE COURT

A. GENERAL PRINCIPLES

STANDARD 1 THE CFI SHALL ACT PROFESSIONALLY

Child and family investigators shall provide their service in a manner consistent with the highest standards of their respective professions. They shall be accurate and honest in their work and in their communications with the parties and the court. While the best interests of the child/ren are paramount, child and family investigators shall respect the rights, the dignity, and the welfare of the parties and the children with whom they work.

COMMENT

The child and family investigator's primary responsibility is to assure that the "best interests" of the child/ren s/he has been appointed to serve, as defined in section 14-10-124, C.R.S.(1998) are thoroughly explored, understood, and accurately conveyed to the court. In meeting this responsibility the CFI should understand that s/he is working with families at a difficult and stressful time. S/he should attempt to establish a positive and constructive professional working relationship with family members.

The CFI should be mindful of the diverse nature of families and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with a family. S/he should be sensitive to the separate interests, rights, wishes and concerns of the parents and other parties in a case. S/he must remember that s/he is in – and is viewed as being in – a position of influence over a family's future.

During the course of his or her work, a CFI will be in communication with a variety of individuals and agencies. The means of communication may involve direct interviews, phone contact, faxes, e-mail, or written correspondence. There is no one right way to communicate, but a CFI should be aware of his or her position as an investigative arm of the court.

STANDARD 2 THE CFI SHALL MAINTAIN OBJECTIVITY

The CFI shall strive to maintain objectivity and independence. If the CFI becomes aware of an insurmountable bias or prejudice in dealing with a case s/he shall request the court terminate the appointment with proper notice to the parties.

COMMENT

A child and family investigator's opinions are to be based on his or her independent investigation and review of a case. S/he should guard against being unduly influenced by the conclusions of other professionals who are working or have worked on the case. S/he should even guard against the appearance of being aligned with one side over the other.

There are times when objectivity is difficult to maintain and the child and family investigator, through no fault of his or her own, simply cannot set aside a bias or feelings that occasionally develop when working with challenging parties or high conflict families. When this occurs the CFI should request removal from the case.

B. ROLE OF THE CHILD AND FAMILY INVESTIGATOR

STANDARD 3 THE CFI SERVES AS AN INVESTIGATIVE ARM OF THE COURT

A CFI is appointed to serve as an investigative arm of the court. The CFI shall be subject to direct and cross examination by both parties if called as a witness. He or she is to gather information, formulate recommendations, and report to the court concerning a child's best interests with regard to whatever issues were set forth in the court's order of appointment.

COMMENT

The focus on investigation is not intended to prescribe a regimented set of investigative steps that a CFI must follow in his or her work, but rather to emphasize that the primary role is to provide information and make recommendations that will allow the parties, counsel and the court to craft orders that best serve the child/ren. The issues in, or concerns about, different families will be different. The type, scope, or extent of investigation needed in different families will be different. These standards are not intended to limit the flexibility available to the parties and the court when deciding that an investigation by a CFI would be helpful and when preparing the order of appointment.

This flexibility means that within the scope of the investigative role, a CFI may use the information s/he has gathered in ways that facilitate or encourage settlements if appropriate. A CFI might, for example, provide information to the parties about effective parenting or co-parenting. S/he might also assist a family by providing information to the parents about their child/ren's wishes and needs or about better communication techniques. In some cases the CFI can help de-escalate conflict and help the parties refocus on the needs of their child/ren.

A CFI may participate in conferences with the parties and/or the court. When doing so the CFI should act in ways consistent with the court's appointment in the case.

STANDARD 4 THE CFI SHALL NOT SERVE INCONSISTENT DUAL ROLES

The CFI shall not

- A) serve as a formal mediator in the case,**
- B) provide psychotherapy to any of the parties or children in the case,**
- C) provide legal advice to any party or otherwise act as an attorney in the case,**
- D) later accept an appointment as a child's legal representative ("CLR") in the same case or in the same family if s/he is an attorney,**
- E) accept the appointment if s/he has had a prior personal relationship, or a prior professional role with the family. This shall not include a prior appointment as child and family investigator.**
- F) serve as an arbitrator or special master in the case prior to termination of his or her role as a CFI.**

COMMENT

A) Mediation. Because child and family investigators investigate and make reports and recommendations they cannot, by definition, promise confidentiality to the parties involved. Mediation

by contrast is confidential. Section 13-22-311, C.R.S. The main goal of mediation is dispute resolution. A CFI may on occasion facilitate conflict resolution or help negotiate a specific issue during the course of his or her appointment, but this informal assistance should not be deemed mediation and is not confidential. The child and family investigator's primary duty is advising the court on the child/ren's best interest with regard to some issue, not resolving it for the parties.

B) Psychotherapy. As with mediators, therapists have confidentiality obligations to their clients that are at odds with a child and family investigator's duties. The roles, purposes, goals, responsibilities, approaches, and professional and ethical requirements of a treating therapist are in conflict with those of a child and family investigator.

C) Legal Advice. Because a CFI is charged with investigating, s/he will often testify in the case. Colorado Rule of Professional Conduct 3.7(a) precludes a licensed attorney from acting as a lawyer in any case in which s/he is likely to be a necessary witness.

D) Child's Legal Representative. The role requirements of the CFI and the CLR are in conflict with each other. Section 14-10-116.5 (1), C.R.S. specifically prohibits this dual role.

E) Prior Contacts. A CFI should avoid multiple relationships which could reasonably be expected to impair objectivity, competence or effectiveness. Prior therapeutic relationships, for example, will be compromised and pre-existing alliances and loyalties that a therapist or attorney or other professional or friend has established will impair objectivity.

F) Arbitrator or Special Master. A CFI should not serve in any role that would require her/him to arbitrate disputes between parties since this would require a CFI to take positions that would compromise her/his ability to serve as the information gathering, investigative arm of the court.

STANDARD 5 THE CFI MAY MOVE TO THE ROLE OF PARENTING COORDINATOR OR DECISION-MAKER

In some cases a CFI may agree to move to the separate role of parenting coordinator (hereinafter "PC") decision-maker (hereinafter "DM") or arbitrator after all of his or her duties as CFI are completed and the appointment has been terminated by the court. This move should only occur with the informed consent of both of the parties and the child and family investigator. The CFI who accepts an appointment as a PC, DM or arbitrator shall not be appointed as a CFI in the same case in the future.

COMMENT

At the conclusion of the child and family investigator's investigation for the court, and the entry of orders related to the parental responsibility issues before the court, the family may have ongoing needs for assistance from a third party, or may in the future require assistance related to parenting disputes. Some parties may find that the child and family investigator's prior investigation and familiarity with the family's dynamics would assist them in resolving outstanding or new issues. If the parties and the CFI agree, it may be appropriate to appoint the CFI to the role of PC, DM or arbitrator by a new appointment order clearly outlining the new duties. PCs, DMs and arbitrators are being used with some frequency in Colorado to assist high conflict families which have ongoing disputes and their role is defined by statute. These CFI standards are not meant to apply to those serving in a PC, DM or arbitrator type role.

C. DUTIES OF THE CHILD AND FAMILY INVESTIGATOR

STANDARD 6 THE CFI SHALL MAINTAIN COMPETENCE THROUGH TRAINING

The CFI shall accept appointments only after attaining a level of competence that includes an understanding of both the legal and psychological/social issues that are typically present in dissolution or parenting cases, and shall maintain and regularly update his or her training in relevant areas.

New child and family investigators shall complete 40 hours of training in relevant areas prior to accepting appointments.

Attorneys and mental health professionals and other members of the community who are working as child and family investigators, shall complete no less than 15 hours of continuing education in relevant areas every three years.

COMMENT

A CFI achieves competence through some combination of education, specialized training, supervision, consultation, and professional experience. S/he has a responsibility to develop and maintain the necessary understanding of the applicable law and the professional standards that govern his or her duties and participation in legal proceedings. The “relevant areas” in which a CFI should demonstrate experience, education or skills include the following:

- The effects of divorce, single parenting, and remarriage in children, adults, and families;
- Dynamics of high conflict divorce;
- Child development, including cognitive, personality, emotional and psychological development;
- Child and adult psychopathology;
- Family dynamics and dysfunction;
- Domestic violence;
- Substance abuse;
- Child abuse;
- Parenting capacity;
- Diversity issues;
- Available services for the child/ren and parties including medical, mental health, educational, and special needs;
- The legal standards applicable in each case in which the CFI is appointed;
- Interview techniques for interviewing children and others.

A CFI should maintain current, accurate records of training and on-going education and provide those records upon request.

STANDARD 7 THE CFI SHALL ACKNOWLEDGE WHEN AN ISSUE IS BEYOND HIS OR HER COMPETENCE.

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

COMMENT

When a CFI recognizes that an issue falls outside of his or her area of expertise, the parties should be informed and a referral should be made to a professional in the appropriate discipline. To accomplish this, the CFI should ask the parties to cooperate with the referral or, with proper notice, inform the court and request that the order of appointment be amended.

STANDARD 8
THE CFI SHALL COLLECT DATA AND CONDUCT AN INVESTIGATION SUFFICIENT TO ALLOW THE CFI TO PROVIDE COMPETENT OPINIONS

A CFI shall complete whatever investigation is necessary in light of the scope of the court order, the legal standard being addressed, and the complexity of the family and the family issues being evaluated.

COMMENT

A CFI must be careful to assure both fairness and the appearance of fairness, allowing the parties relatively equal and comparable opportunities to present their perspectives. Depending on the case, the CFI may need information from collateral sources such as teachers or therapists; may need to review school, medical, or other records; may need to check criminal histories or obtain drug testing; or may require other case-specific information or evaluations. The flexibility of the role allows the court to set forth specific areas to investigate under the order of appointment, and the CFI to tailor his or her investigation accordingly.

A CFI should use methods of data collection that are consistent with accepted professional standards. S/he should indicate any limits to the data or information and how that may impact his or her ultimate opinions. S/he should document the investigation to ensure accountability. A CFI should recognize that his or her file may be discoverable by parties and counsel in the case, and therefore should maintain clearly documented records.

A CFI may use qualified employees, co-workers, interns or trainees. The person named on the court order of appointment, however, assumes responsibility for the services and provides any necessary supervision or consultation for other professionals providing services.

STANDARD 9
THE CFI SHALL HAVE AGE-APPROPRIATE COMMUNICATION WITH THE CHILD/REN INVOLVED

The CFI shall inform the child/ren of the purpose of the child and family investigator's involvement and the limits of confidentiality. S/he shall obtain information from the child/ren, including the wishes of the child/ren, through appropriate interview techniques.

COMMENT

The nature of the legal proceeding or issue should be explained to the child/ren in a developmentally appropriate manner. The CFI should ask non-suggestive questions. S/he should be aware that a child's stated views may vary over time or may be the result of fear, intimidation, or manipulation. While the CFI must consider the wishes of the child/ren, s/he need not adopt them unless they serve the child/ren's best interest.

STANDARD 10
THE CFI SHALL REPORT CHILD ABUSE TO THE PROPER AGENCY AND THE COURT

In cases in which the CFI suspects or knows that the child/ren are being neglected or abused, the CFI shall take the steps required to ensure that law enforcement and/or the department of social services is informed, and shall take whatever additional steps are believed necessary to protect the child/ren.

COMMENT

In cases in which the CFI finds that the child/ren are not being optimally cared for, or finds that the parents' conflict or interactions are harmful but not abusive or negligent, the CFI should develop plans to address the problem and should include them in any report or recommendation to the court.

STANDARD 11
THE CFI SHALL PREPARE A CLEAR, CONCISE AND TIMELY REPORT

The CFI's conclusions and recommendations shall be presented in a timely manner to the parties and the court in a written report that is clear, concise and non-technical.

COMMENT

The report should be as concise as possible, recognizing that there are limitations on the specific issues to be addressed and the fee to be paid to the CFI. The CFI should write his or her report remembering that the parties, along with the court, will be the readers. The report should include information about the investigation and data collection process used, and should address the legal standard that applies to the case. It should set forth the child/ren's wishes even if those wishes are not ultimately recommended. It should not include opinions and recommendations beyond the scope of the court's original order of appointment without further authorization.

In subsequent actions, the report should not be relied upon by the court or the parties unless the CFI is subject to direct and cross examination. A child and family investigator's report should list all services performed and detail the time spent and the charges incurred.

STANDARD 12
THE CFI SHALL PROVIDE COPIES OF HIS OR HER FILE

The CFI shall, if requested, make available to counsel or a party not represented by counsel in the case or the child's legal representative (if appointed in this case) his or her file of underlying data or reports prior to any scheduled hearing for which the CFI was appointed, and only after the CFI report has been filed. This specifically includes disclosure of CFI notes, witness statements, completed questionnaires and results of the psychological testing (the report). Underlying data for psychological testing can only be released to CFIs who are qualified psychologists.

See Standard 13.

COMMENT

A CFI has an obligation to document and be prepared to make available all data that form the basis for his or her opinions and recommendations. The data to be disclosed includes all underlying data in the child and family investigator's file including the names and addresses of all persons with whom the CFI has consulted, except that, if a CFI believes that the release of any particular information or test data would endanger any person's welfare s/he should inform counsel and the court of his or her concerns and await further direction from the court before releasing the information in question. Counsel or parties seeking release of the file or underlying data or report subsequent to the hearing for which the CFI was appointed must request a court order to release the file. This directive is not intended to abridge or modify existing law. Where state or federal law governs the release of confidential records, those laws shall apply. Where secondary disclosure is prohibited by state or federal law, the court shall transmit information under confidential cover.

STANDARD 13
THE CFI SHALL NOT CONDUCT PSYCHOLOGICAL TESTING OR DRUG AND ALCOHOL EVALUATIONS

Psychological testing and drug and alcohol evaluations shall not be performed by the CFI. If the CFI believes psychological testing or drug and alcohol evaluation would be a benefit to the parties and/or the children and would assist the court the CFI shall include this information in his/her report to the court.

COMMENT

Consistent with distinguishing the role of a CFI and a parental responsibility evaluator the CFI investigation should be limited in time and scope. Psychological testing or substance abuse evaluations should not routinely be done in connection with CFI investigations and reports. In situations where the court specifically orders such testing or evaluations they should not be done by the CFI.

STANDARD 14
THE CFI SHALL MAINTAIN CONFIDENTIALITY

The CFI shall maintain the confidentiality of his or her file and report, and shall disclose either only to the parties and their counsel or by court order.

COMMENT

The CFI report or underlying investigation materials shall not be disclosed in any proceeding other than the proceeding before the appointing court absent a court determination that the need for the information requested outweighs the need for privacy. A child and family investigator's report, and by implication a child and family investigator's underlying case file, "shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by consent of the court." Section 14-10-126(2), C.R.S.; *see also* Standard 12 above. Because a child and family investigator's report and file are court documents under seal, a CFI has no authority to produce these sealed court documents nor to disclose their contents absent consent and an order from the appointing court.

STANDARD 15
THE CFI SHALL REQUEST TERMINATION OF THE APPOINTMENT WHEN
PERMANENT ORDERS OR THE POST-DECREE ORDER IS ENTERED

Although it is the court’s responsibility to terminate the appointment upon the entry of permanent orders or post-decree adjudication, if the court fails to do so the CFI shall request that the appointment be terminated.

COMMENT

Once permanent orders enter, a child and family investigator’s appointment pursuant to section 14-10-116.5, C.R.S. terminates. It is an abuse of the court’s discretion to continue the CFI appointment beyond permanent orders, or adjudication of post-decree parental responsibility issues. The role of the CFI is to determine and recommend alternatives in the best interests of the child. The parties’ inability to communicate is not a sufficient ground to continue the appointment of the CFI to act as a mediator or facilitator for the parties. *See In re Marriage of Finer*, 920 P.2d 325 (Colo. App. 1996). Once permanent orders, or orders concerning post-decree parental responsibility issues enter, the court has nothing more to do unless and until some issue is brought back before it by proper motion. If the court has nothing more to resolve in the case, then by definition a CFI has completed his or her work. Nor can the court in its order delegate to a CFI the job of crafting or fine-tuning a parenting plan or of resolving other parenting issues. The court might consider and adopt a child and family investigator’s recommendations, but the actual rulings must come from the court. It is an abuse of discretion for the court to transfer its ultimate decision-making power and authority to a child and family investigator. *In re the Marriage of McNamara*, 962 P.2d 330 (Colo. App. 1998).

Finally, once orders enter “there is no reason why the child and parents should suffer the expense and continued invasion of privacy caused by an indefinite appointment.” *In the Interest of A.R.W.*, 903 P.2d 10 (Colo. App. 1994) (concerning a GAL in a paternity case).

D. COMMUNICATIONS

STANDARD 16
THE CFI SHALL DEVELOP WRITTEN POLICIES FOR THE PARTIES

The CFI shall develop written information about his or her policies and procedures. The information shall include the nature of the services provided, the child and family investigator’s qualifications, where complaints should be directed, fees and billing procedures, how communication will be handled, how sensitive information will be handled, and the child and family investigator’s reporting obligations.

COMMENT

When first appointed, a CFI should provide the parties with written information that clarifies, along with the court’s appointment order, the nature and scope of the services to be provided and the limits of confidentiality in court-appointed work. The initial information should describe the child and family investigator’s policies, procedures, qualifications, and reporting obligations, as well as how a party can contact the professional’s applicable regulatory or disciplinary agency. If no applicable regulatory body for a particular CFI exists, then information should be included about how to contact the court should a concern or complaint about the CFI arise.

It is also the responsibility of a CFI to provide specific information to the parties regarding fees, billing policies, and procedures used if there is non-payment of fees. A child and family investigator's billing statements should list all services performed and detail the time spent and the charges incurred.

STANDARD 17
THE CFI SHALL DEVELOP WRITTEN POLICIES FOR COUNSEL

The CFI shall develop written information about how communications and sensitive information from counsel or parties acting as their own counsel will be handled.

COMMENT

There are many reasons a child and family investigator, when first appointed, might find it helpful to consult with counsel. They include clarifying the scope of the court's appointment order, discussing timing issues, or raising problems or concerns which develop during the course of a child and family investigator's work.

There should be no non-disclosed conversations with one party's counsel. A CFI should remain careful about bias and the appearance of bias in the eyes of parties engaged in high conflict when those parties learn of one-sided communications. If, however, the child and family investigator, the parties, and counsel all agree to some different procedure concerning communication between the CFI and counsel, they should reduce the agreement to writing before the CFI begins work on the case.

STANDARD 18
THE CFI SHALL REVIEW THE COURT'S ORDER OF APPOINTMENT

Upon appointment, the CFI shall review the court's order of appointment and ask for clarification or modification of the order when necessary.

COMMENT

A CFI must ensure that there is a properly executed court order of appointment prior to providing services.

If there is a conflict between the requirements of the order and the child and family investigator's professional ethical constraints or obligations, then the CFI should take steps to ensure that the conflict is resolved. If, for example, the order requires the CFI to act beyond the scope of his or her competence, or to perform contradictory multiple roles, then the court and counsel should be informed. If the conflict cannot be resolved then the CFI should request removal from the case.

If the order sets fees and retainer amounts that conflict with the child and family investigator's business practices, s/he should inform the court and request further order or withdrawal from the case. These issues should be addressed immediately upon notice of appointment and before beginning any work on the case.

STANDARD 19
THE CFI SHALL HAVE NO PRIVATE OR EX PARTE COMMUNICATIONS WITH THE COURT

The CFI shall have no private or *ex parte* communications with the court.

COMMENT

An *ex parte* communication is any communication in which at least one party does not have notice and an opportunity to participate in the communication.

For many reasons a CFI may need to communicate with the court during the course of his or her appointment. The reasons include obtaining information from the court concerning the order of appointment or applicable legal standards, informing the court of the refusal of a party to participate or to pay, or reporting harm or the potential for harm to the child/ren.

The court can be informed of such issues in several ways. Most common would be a short written report with copies to the parties and counsel. If the CFI attends a status conference or court hearing, issues could be raised there. If time were of the essence, a CFI may be able to arrange a conference call to the court. Finally, a CFI might request an opportunity to address the court and then give the parties and counsel reasonable and proper notice of the date and time set.

An attorney CFI shall not communicate with the court by way of motions because Colorado Rule of Professional Responsibility 3.7(a) precludes a licensed attorney from acting as a lawyer in any case in which s/he is likely to be a necessary witness.

V. COURT'S AUTHORITY, ROLE AND RESPONSIBILITIES RELATED TO CHILD AND FAMILY INVESTIGATORS APPOINTED PURSUANT TO 14-10-116.5

- A. THE COURT SHALL ENSURE COMPLIANCE WITH THE CFI STANDARDS
- B. THE COURT SHALL MAKE ITS ORDERS CLEAR
- C. THE COURT SHALL ALLOCATE THE COSTS FOR CFI SERVICES AND ENFORCE ITS PAYMENT ORDERS
- D. THE COURT SHALL TIMELY TERMINATE THE CFI'S APPOINTMENT
- E. THE COURT SHALL NOT APPOINT THE CFI TO INCONSISTENT DUAL ROLES
- F. THE COURT SHALL ENSURE THE CONFIDENTIALITY OF CFI REPORTS

A. THE COURT SHALL ENSURE COMPLIANCE WITH THE CFI STANDARDS

The Court shall appoint a qualified CFI and shall monitor any complaints concerning that person's services.

COMMENT

Children deserve to have parental responsibility proceedings conducted in the manner least harmful to them, and most likely to provide judges and magistrates with the facts needed to decide the case. Because the CFI is the investigative arm of the court, it is the court's responsibility to ensure that the CFI is qualified, and to monitor compliance with this Chief Justice Directive. A CFI is subject to cross and direct examination. If issues are raised concerning competency or any other concerns, the court should inquire and provide an opportunity to remedy any unethical or inappropriate conduct.

The court should hold periodic meetings with all practicing child and family investigators to clarify procedures and court expectations concerning CFI investigations.

B. THE COURT SHALL MAKE ITS ORDERS CLEAR

The court shall define the subject matter and scope of the CFI's investigation in an order in substantial compliance with Attachment A to this Chief Justice Directive.

COMMENT

The CFI is the court's investigator and serves at the direction and behest of the court. The statute itself requires that the "subject matter and scope of the child and family investigator's duties shall be clearly set forth in the court's order of appointment." The Court should provide guidance and a clear statement of its expectations in the order of appointment. The court order should set forth the scope of service. In appointing a CFI, the court needs to take into account the financial circumstances of the parties.

In setting forth the CFI's duties, the court should provide for the least intrusive means of ascertaining the child's best interests. Psychological testing and drug and alcohol evaluations shall not be performed by the CFI. If the CFI believes psychological testing or drug and alcohol evaluation would be a benefit to the parties and/or the children and would assist the court the CFI shall include this information in his/her report to the court. The court shall not order expanded testing unless warranted by special circumstances. Those special circumstances should be articulated in the court order. If necessary the CFI and/or parties can return to the court to request an expanded order.

C. THE COURT SHALL ALLOCATE THE COSTS FOR CFI SERVICES AND ENFORCE ITS PAYMENT ORDERS

The court shall make clear to all parties, orally and in writing, how the CFI fees will be apportioned and paid. The court shall enforce its orders for payment by all available means. Child and family investigators are entitled to receive adequate and predictable compensation.

COMMENT

Section 14-10-116.5(3), C.R.S. requires the court to enter an order for costs, fees and disbursements for the CFI appointed by the court. Those costs shall be borne by the parties unless a party is found to be indigent in which case the state shall pay the costs. Refer to CJD 04-05 for non-attorney CFI state paid cases. Refer to CJD 04-06 for attorney CFI state paid cases.

It is the responsibility of the court to enforce its order concerning payment of the CFI through its contempt power. When non-payment or partial payment issues arise, the CFI may notify the court regarding the non-payment issue and ask for guidance. The court, at its discretion, should determine what course of action is appropriate, including continuing court dates, finding parties in contempt, or reallocating the parties' division of fees. Because the CFI is the investigative arm of the court and is performing valuable duties for the court under the court's order, the court is responsible for ultimately overseeing and ensuring compliance with its appointment and fee order.

D. THE COURT SHALL TIMELY TERMINATE THE CFI'S APPOINTMENT

The Court shall terminate the CFI's appointment upon entry of permanent orders or post-decree adjudication.

COMMENT

See the Comment under IV.C. Standard 15.

E. THE COURT SHALL NOT APPOINT THE CFI TO INCONSISTENT DUAL ROLES

The Court shall not appoint the CFI to serve in dual roles which are inconsistent, and create conflicts.

COMMENT

See the Comment under IV.C. Standard 4.

**F. THE COURT SHALL ENSURE CONFIDENTIALITY OF
CFI REPORTS**

Because the report of a CFI often contains otherwise private medical, psychological, substance abuse, or educational information, the court shall ensure its confidentiality and maintain it under seal.

COMMENT

CFIs are appointed to gather information for the court's use in making decisions in the child/ren's best interest. It is unlikely to be in any child's best interest to have the private lives, failures, and foibles of his or her family spread across the public record. This is recognized by statute, section 14-10-126(2), C.R.S. The court is also more likely to get complete and candid information if confidentiality is assured. Finally, this directive aids child and family investigators who can turn to the court for guidance when parties or lawyers outside of the domestic case attempt to subpoena the highly personal information contained in their files and reports. The court that appointed the CFI must perform an in camera review of the requested documentation to determine what may be released and/or copied.

In subsequent actions, the report should not be relied upon by the court or the parties unless the CFI is subject to direct and cross examination.

See the Comment under IV.C. Standard 14.

Effective September 1, 2004. Amended to reflect statutory amendments and effective November 18, 2005.

Modified corrected as to statutory references only on the 23rd day of January, 2006 in Denver, Colorado.

Amended to provide clarification on issues related to the nature of the CFI's role and records access and effective January, 2008 in Denver, Colorado.

Amended to provide clarification on issues related to the nature of the CFI's role and fees and made effective this 14th day of April, 2011 in Denver, Colorado.

/s/

Michael L. Bender, Chief Justice

Protection/Restraining Orders:

There is is not a protection/restraining order in place involving the parties and/or child(ren):

County of _____, State of _____, in case number
_____.

The person restrained is: _____. The protected person(s)
is/are _____.

Responsibilities of the Child and Family Investigator:

1. The CFI shall comply with the applicable provisions set forth in Chief Justice Directives 04-05, 04-06, and 04-08, as subsequently amended, and with the requirements of §14-10-116.5, C.R.S.
2. The CFI shall investigate, report and make recommendations on the following specific

issues: _____

_____ that affect, or may

affect, the best interests of the minor or dependent child(ren), as that term is described in §14-10-124, C.R.S.

3. The CFI shall not conduct psychological testing or drug or alcohol evaluations. If the CFI believes any such testing or evaluation would be a benefit to the parties and/or child(ren) and would assist the court the CFI shall include this information in his/her report to the court. Such testing may be conducted by further order of the court by a professional other than the CFI.
4. No services of other professionals shall be provided unless agreed to by the parties or ordered by the Court; except that each party may obtain individual therapy for him/herself at any time.
5. The CFI shall file a concise, written report and shall provide copies to the parties and/or their counsel of record by _____ (date). The next event in this case is a _____ scheduled for _____ (date) at _____ (time) in Courtroom _____. The CFI is is not directed to attend this hearing in person by telephone at this number: _____.

Responsibilities of the Parties:

1. Each party or their counsel shall initiate contact with the CFI within 10 days from the date of this Order to arrange his/her first meeting with the CFI. Each party and counsel shall confer with the CFI when and as the CFI directs, and shall cooperate fully with the CFI. The CFI may report to the court a party's cooperation or lack of cooperation.
2. The parties shall provide the CFI with all court orders addressing matters of parenting time or parental rights and responsibilities that are issued on or after the effective date of this Order. These orders are to be provided to the CFI and all documentation currently in the court file that will assist the CFI in his/her investigation.
3. The parties or their counsel are responsible for providing information concerning other cases which have a relationship to this case when requested to do so by the CFI.

Release of Confidential Information:

The parties shall sign any releases necessary to allow the CFI to properly conduct his/her investigations; and the CFI may request the Court to issue any other necessary order for release information.

Modification or Termination of the Child and Family Investigator's Appointment:

The Court shall maintain the discretion to modify or terminate this appointment at any time during the proceedings. This appointment shall terminate upon the following unless otherwise ordered by the Court:

- when the CFI's report has been filed with the Court.
- upon entry and the Court's signature of the Permanent Orders in this case.
- when motions have been resolved by the entry of orders in this post-decree issue.
- other: _____

Payment of Costs and Fees in Favor of the Child and Family Investigator:

The CFIs fees are in the nature of child support as the role of the CFI is to investigate, report and make recommendations to the Court on any issues that affect or may affect the best interest of the child(ren).

For all CFIs other than state paid CFIs, the total fees and costs of the CFI shall not exceed \$2,000.00 without further order of the court setting forth specific findings of extraordinary circumstances justifying additional fees and costs. If the court is approving a higher amount at the time of this order a separate order must be attached containing said findings. State paid attorney CFI fees in excess of the presumptive maximum fee set by the Office of the Child's Representative (OCR) must comply with the OCR's billing policies and procedures. State paid non-attorney CFI fees must comply with CJD 04-05.

After considering the financial resources and/or other equitable circumstances of the parties, the Court apportions the payment of the fee of the CFI as follows:

- No party is indigent. The CFI will be paid a flat fee of \$ _____ .00 OR a retainer of \$ _____ to be applied to an hourly rate of \$ _____, no later than _____ (date). If an hourly rate is indicated, the CFI shall bill the hourly rate against the retainer, any fees and costs in excess of the retainer, up to the maximum set forth above or otherwise ordered, shall be apportioned as set forth below and shall be paid within 30 days of the date billed, unless otherwise ordered by the court or agreed in writing between the parties.**
 - The Petitioner will pay the CFI amount of \$ _____ or _____ % by that date.
 - The Co-Petitioner/Respondent will pay the CFI the amount of \$ _____ or _____ % by that date.

The Court finds that both parties are indigent. Both the Petitioner and Co-Petitioner/Respondent have completed the required JDF 208 form, and are indigent, in accordance with the requirements of CJD 04-05 (non-attorney CFI) or CJD 04-06 (attorney CFI), and therefore orders that the fees and costs of the CFI will be borne by the State pursuant to the procedures and at the hourly rate set forth in CJD 04-05 (non-attorney CFI) or CJD 04-06 (attorney CFI). Presumptive maximum fees for state paid attorney CFIs are set by the OCR. State paid attorney CFIs must submit a request for fees in excess of that maximum to OCR for consideration prior to incurring those fees.

The Court finds that one party _____ (name of party) is indigent.
 The party identified above has completed the required JDF 208 form, and is indigent, in accordance with the requirements of CJD 04-05 (non-attorney CFI) or CJD 04-06 (attorney CFI) and therefore orders that _____% of the fees and costs of the CFI will be borne by the State pursuant to the procedures and at the hourly rate set forth in CJD 04-05 (non-attorney CFI) or CJD 04-06 (attorney CFI), with the remaining amount as determined by the Court to be paid by the non-indigent party to the CFI directly. Presumptive maximum fees for state paid attorney CFIs are set by the Office of the Child Representative (OCR). State paid attorney CFIs must submit a request for fees in excess of that maximum to OCR for consideration prior to incurring those fees.

The non-indigent party _____ (name of party) shall pay the CFI a flat fee of \$ _____ OR a retainer of \$ _____ to be applied to an hourly rate of \$ _____ no later than _____ (date). If an hourly rate is indicated, then the CFI shall bill the hourly rate against the retainer, any fees and costs in excess of the retainer, up to _____ % of the maximum set forth above or otherwise ordered, shall be paid within 30 days of the date billed, unless otherwise ordered by the court.

The Court approves a sliding fee scale as follows: _____

The Court maintains the discretion to reallocate the apportionment of fees at permanent orders or the post-decree final hearing.

The CFI shall not commence the Court’s investigation until the flat fee or retainer is paid in full and the CFI shall apprise the Court within ten days of his/her inability to proceed with the case because of non-payment. Upon notification to the Court, the Court may set a forthwith hearing which will require the mandatory appearance of the non-paying party(ies). Failure of either party to comply with this Order may result in sanctions by the Court, up to six months in the County Jail, or a \$1,000.00 fine.

Date: _____
 Judge Magistrate

CERTIFICATE OF SERVICE

I certify that on _____ (date), I mailed, faxed, e-filed, or hand-delivered a copy of this Order to the following:

- Attorney for Petitioner or Petitioner *pro se*
- Attorney for Co-Petitioner/Respondent or Co-Petitioner/Respondent *pro se*
- Child and Family Investigator
- Other: _____

Clerk