

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

Appointment and Payment Procedures for Court-appointed Counsel, Guardians *ad litem*, Child and Family Investigators, and Court Visitors paid by the Judicial Department in proceedings under Titles 12, 13, 14, 15, 19 (adoption and special respondents in dependency and neglect only), 22, 25.5, and 27, C.R.S., and Counsel for Respondents in Extreme Risk Protection Order Cases under Article 14.5 of Title 13.

Chief Justice Directive 04-05
Amended April 2024

This policy is adopted to assist the administration of justice with respect to the following appointments:

- Appointment of counsel for children and adults under Titles 12, 13, 14, 15, 19 (adoption and special respondents in dependency and neglect only), 22, 25.5, and 27, C.R.S.;
- Appointment and training of guardians *ad litem* and court visitors appointed on behalf of wards or impaired adults in any case type;
- Appointment of child and family investigators (CFIs) in the best interest of children pursuant to section 14-10-116.5, C.R.S. For additional policies addressing practice standards, guidelines for appointment, complaint process, and other matters related to CFIs refer to Chief Justice Directive 04-08. This Chief Justice Directive 04-05 provides *payment policies* governing CFIs appointed for indigent parties and paid by the state.
- Appointment of counsel for respondents in an extreme risk protection order case, pursuant to Article 14.5 of Title 13.

This policy does not cover:

- Appointments of counsel made in criminal matters pursuant to Titles 16 and 18, C.R.S., or juvenile delinquency matters pursuant to Title 19, C.R.S. For information concerning criminal and juvenile delinquency appointments refer to Chief Justice Directives 04-04 and 14-01.
- Appointments of counsel for respondent parents in dependency and neglect (D&N) matters pursuant to Title 19, C.R.S. (Office of the Respondent Parents' Counsel (ORPC) appointments). For information concerning appointments of counsel for respondent parents in D&N matters refer to Chief Justice Directive 16-02.
- Appointments of guardians *ad litem* for minors and child's legal representatives (Office of the Child's Representative (OCR) appointments). For information concerning appointments of state-paid attorneys in the best interest of children refer to Chief Justice Directive 04-06.

I. STATUTORY AUTHORITY

- A. The United States Constitution, Colorado Constitution and state law provide authority for the appointment of counsel, guardians *ad litem* (GAL), child and family investigators, and court visitors in certain legal proceedings.

- B. State funds are appropriated to the Judicial Department to provide for the compensation of certain court-appointees as described in this directive, in which the party represented or provided an appointment, or the party's parent or legal guardian, is determined to be indigent.
- C. State funds are appropriated to the Judicial Department to provide for the compensation of court appointed counsel for respondents, regardless of indigency status, pursuant to section 13-14.5-104, C.R.S.

II. ELIGIBILITY DETERMINATION

- A. The person for whom representation or appointment is requested or, in the case of children, the responsible party, must be indigent to qualify for court-appointed representation at state expense pursuant to Titles 14, 15, 19, (adoption and special respondents in dependency and neglect only), 22, 25.5, and 27. Such person(s) must also be indigent for the court to authorize payment of certain costs and expenses.
- B. An indigent person is one whose financial circumstances fall within the fiscal standards set forth in Attachment A.
- C. Except as provided below, all persons requesting court-appointed representation or other appointments under this CJD to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF208 (*Application for Public Defender, Court-Appointed Counsel or Guardian ad litem*), signed under oath, before an appointment of counsel at state expense may be considered. The determination of indigence does not apply, however, to mental health cases under Titles 25.5 and 27, C.R.S., guardianship and protective proceeding cases under Title 15, C.R.S., in which the respondent refuses to or is unable to supply the necessary information, in cases in which a minor is requesting counsel for judicial bypass proceedings pursuant to section 13-22-707, C.R.S., or to respondents entitled to appointed counsel under Article 14.5 of Title 13. In addition, a person who is deaf or hard of hearing may also have access to counsel, regardless of indigence, for advice on whether to execute a waiver of state-funded interpreter services pursuant to section 13-90-208, C.R.S.
- D. For appointments under Title 15, C.R.S., and some appointments under Titles 25.5 and 27, C.R.S., where the court believes that the person needs the assistance of counsel and is unable to obtain counsel, the person for whom representation is requested or, in the case of children, the responsible party, need not be indigent to qualify for court-appointed representation at state expense. If it is later determined that the person's estate has sufficient resources to pay attorney fees, those fees shall be assessed to the respondent's estate.
- E. If, in the interest of justice, a tentative appointment of legal counsel or a guardian *ad litem* for the party is necessary, such appointment may be made pending a final decision regarding indigency. If a review of a person's application shows that the person is not indigent and the person is not qualified to have court-appointed representation at state expense, the court may order the person to reimburse the state for any justifiable fees and expenses as a result of representation provided from a tentative appointment of legal counsel or a guardian *ad litem*.

- F. An attorney or other person appointed by the court on the basis of one or more party's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the party's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of section V of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or a portion of the costs incurred or to be incurred, or continue the appointment in its current pay status.

III. GUIDELINES FOR APPOINTMENT OF COUNSEL, GUARDIANS *AD LITEM* (FOR ADULTS), CHILD AND FAMILY INVESTIGATORS, AND COURT VISITORS

The Clerk of Court or the Court Executive shall maintain a list of qualified persons from which appointments will be made under this section. The order of appointment shall specify:

- The authority under which the appointment is made;
- Reason(s) for the appointment;
- Scope of the duties to be performed; and
- Terms and method of compensation (including indigency status).

See Forms JDF209 JDF210, and JDF 579 For guidelines concerning the appointment of child and family investigators, see Chief Justice Directive 04-08.

A. Appointments of Counsel

Appointments may be made under flat fee or hourly contracts developed by the Judicial Department, or if necessary to meet the jurisdiction's needs or legislation, on a non-contract hourly fee basis. Any attorney not under contract with the Department who requests appointments must submit to the Chief Judge of the judicial district, through the Court Executive, a request with an affidavit of qualifications or application for such appointments. The Chief Judge, in his or her discretion, may approve additions to the list of non-contract attorneys at any time. An attorney not under contract with the Judicial Department must submit an updated affidavit or application to the Chief Judge every three years to ensure that he or she is maintaining his or her qualifications for such appointments. The appointing judge or magistrate shall consider the number of an attorney's active cases, the qualifications of the attorney, and the needs of the party to be represented when making appointments.

1. Appointment of Counsel for Involuntary or Emergency Alcohol/Drug Commitment Proceedings: Counsel appointments to provide legal representation to eligible persons shall be in accordance with the provisions under Title 27, Articles 81 and 82, C.R.S.
2. Appointment of Counsel for Care and Treatment of Mentally Ill: Counsel appointments to provide legal representation to eligible persons shall be in accordance with the provisions under Title 25.5, Article 10, and Title 27, Article 65, C.R.S.

3. Appointment of Counsel for Probate, Trusts, and Fiduciaries: Counsel appointments to provide legal representation to eligible persons shall be in accordance with provisions under Title 15, Article 14, C.R.S.
4. Appointment of Counsel for a Juvenile or Parent in Truancy Proceedings: Counsel may be appointed for a child, or the parent/guardian of said child, in a truancy matter under Title 22, C.R.S., if adjudication is previously entered and the child and/or parent/guardian is served with a contempt citation or if the court deems representation by counsel necessary to protect the interests of the child or other parties. All parties requesting counsel must complete form JDF208, and a finding of indigence is required for the appointment of counsel at state expense. If the party is not qualified to have court-appointed representation at state expense, the court may order the responsible party(ies) to reimburse the state for any justifiable fees and expenses as a result of representation provided from a tentative appointment of legal counsel.
5. Appointment of Counsel for Special Respondents in Dependency and Neglect Proceedings: Pursuant to section 19-3-502(6), C.R.S., a person may be named as a special respondent on the grounds that he resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child. A special respondent shall be afforded an opportunity for a hearing to contest his joinder and the appropriateness of any orders that affect him and shall have the right to be represented by counsel at such hearing. At any other stage of the proceedings, a special respondent may be represented by counsel at his own expense.
6. Appointment of Counsel in Judicial Bypass Proceedings: Counsel may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act pursuant to section 13-22-707, C.R.S. and Chapter 23.5 of the Colorado Rules of Civil Procedure (“Rules of Procedure for Judicial Bypass of Parental Notification Requirements”).
7. Appointment of Counsel for Appeals: The trial court shall determine the need and statutory requirement for appointment of counsel on appeal. The court shall be under no obligation to appoint counsel in appeals where the sole issue for determination is the individual allocation of parental responsibilities between and among two parents. Where applicable, determinations of indigence should be in accordance with the procedure described in section II of this CJD. Requests for payment and maximum total fees on an appeal shall be in accordance with the procedures outlined in section IV of this CJD. An appellate court judge, or designee, shall carefully review all requests for payment submitted to the court for approval.
8. Appointment of Counsel for a Person who is Deaf or Hard of Hearing: Pursuant to section 13-90-208, C.R.S., the right of a person who is deaf or hard of hearing to a qualified interpreter or auxiliary service may not be waived except in writing by the person who is deaf or hard of hearing. Prior to executing such a waiver, a person who is deaf or hard of hearing may have access to counsel for advice.

9. Appointment of Counsel for Respondents in Extreme Risk Protection Order Cases: Pursuant to section 13-14.5-104(1), C.R.S., counsel shall be appointed for a respondent in an extreme risk protection order case, regardless of indigency status.
 10. Appointment of Counsel under federal law in domestic relations, adoption and probate “child custody” proceeding cases: “In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child.” “Indian Child Welfare Act”, 25 U.S.C. sec. 1912 (b).
 11. Appointment of Counsel in Other Cases: Indigent parties may request that the court appoint counsel in other cases for which there is not specific statutory authority. *See, In Re C.A.O. for the Adoption of G.M.R.*, 192 P.3d 508 (Colo. App. 2008). The Judicial Department does not budget for non-statutorily required appointments. In an instance where the court finds constitutional authority for the appointment of counsel for an indigent party, a written order of appointment stating the grounds for appointment, citing legal authority, and certifying payment of counsel at the state rate is required.
- B. Appointments of Guardians *ad litem* (for adults), Child and Family Investigators and Court Visitors.

The court may appoint a qualified person other than an attorney as a child and family investigator or court visitor when the appointment of an attorney is not mandated by statute. The court may also appoint a qualified attorney as a child and family investigator. Chief Justice Directive 04-08 sets forth guidelines concerning the eligibility roster from which the court may appoint child and family investigators.

The court shall maintain a list of qualified persons to accept appointments as guardians *ad litem* for adults and court visitors.

1. Appointment of GAL (for adult) in Dependency and Neglect Case: A guardian *ad litem* may be appointed pursuant to Title 19, C.R.S., for a parent or guardian in dependency and neglect proceedings who has been determined to be mentally ill or developmentally disabled unless a conservator has been appointed.
2. Appointment of GAL in Trusts or Estates: In formal proceedings involving trusts or estates of decedents, protected persons, and in judicially supervised settlements pursuant to Title 15, C.R.S., a guardian *ad litem* may be appointed for an incapacitated person, unascertained person, or a person whose identity or address is unknown, if the court determines that a need for such representation exists.
3. Appointment of GAL in a Civil Suit: A guardian *ad litem* may be appointed for an incompetent person who does not have a representative and who is a party to a civil suit, pursuant to C.R.C.P. 17(c).

4. Appointment of GAL for Emergency or Involuntary Commitment of Alcoholics or Drug Abusers: Upon the filing of a petition for involuntary commitment of alcoholics or drug abusers, a guardian *ad litem* may be appointed for the person if the court deems the person's presence in court may be injurious to him or her pursuant to Title 27, C.R.S.
5. Appointment of Child and Family Investigator: A child and family investigator (CFI) may be appointed in a domestic relations case pursuant to section 14-10-116.5, C.R.S. Also refer to Chief Justice Directive 04-08 for applicable guidelines. Pursuant to section 14-10-116.5(3)(b), C.R.S., in cases where the appointment is made prior to the entry of a decree of dissolution or legal separation, the court shall consider the combined income and assets of both parties for purposes of determining indigence and whether the state shall bear the costs, fees, or disbursements related to the appointment of a CFI. The court shall enter an order for costs, fees, and disbursements against any or all of the parties and, as provided in section 14-10-116.5(3)(c), C.R.S., in cases involving unmarried parties, 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 CFI at the rates established in sections IV.C. and IV.D. of this CJD for the portion of authorized fees and expenses for which the indigent party is responsible.
6. Appointment of Court Visitor: A court visitor shall be appointed for a respondent pursuant to Title 15, C.R.S.

IV. GUIDELINES FOR PAYMENT OF COUNSEL, GUARDIANS *AD LITEM*, CHILD AND FAMILY INVESTIGATORS, AND COURT VISITORS

- A. The fees and costs associated with those appointments billable to the courts and State Court Administrator's Office under this directive shall be paid as follows:
 1. Online Appointee Billing: Appointees shall invoice the Judicial Department for fees and certain authorized expenses (e.g., mileage, copies, postage) using the Department's Internet-based system (CACS) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee may request an exception to this requirement (i.e., use of CACS) by contacting the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances preventing the use of CACS for invoicing. The person overseeing the Court-Appointed Counsel system or his/her designee shall review such requests. The decision concerning the granting or denial of the request shall be final. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.
 2. Fees and Expenses
 - i. Appointments may be made under contracts developed by the Judicial Department or on a non-contract hourly fee basis. Upon appointment of counsel or other appointee, court staff shall enter the appointment in the Department's case management system

and complete the appointment in CACS, as required, for payment and tracking purposes.

- ii. Claims for payment in hourly appointments shall be entered by the appointee in CACS; or, if the the State Court Administrator’s Office has granted the appointee an exception to the requirement of using CACS, claims for payment shall be filed with the Court Executive in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). All requests must be in compliance with Attachment E of this directive, “Payment Procedures: Judicial-Paid Appointments Only”, and shall be reviewed by the Court Executive or his/her designee to ensure that all charges are appropriate and conform to the requirements outlined in this directive and applicable fiscal policies and procedures.
 - iii. Claims for payment in flat-fee, contractual appointments shall also be entered in CACS; or, if the the State Court Administrator’s Office has granted the appointee an exception to the requirement of using CACS, such claims for payment shall be sent to the State Court Administrator’s Office, , using the process and format required by that office.
 - iv. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. Appointees requesting payment shall be notified concerning issues identified that result in a denial, suspension, or reduction in payment.
3. Court Costs, Expert Witness Fees, and Related Expenses
- i. Costs under this section that are incurred by counsel shall be pre-approved and paid by the appointing court (not invoiced using CACS). Such costs include: expert witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment shall be in accordance with applicable statutes, Chief Justice Directives/Orders, and other policies and procedures of the Judicial Department.
 - ii. A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The court shall authorize such appointments or payments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. Maximum rates for payment of expert witnesses are found in CJD 12-03, as amended.
4. To maintain the security and integrity of CACS, appointees shall immediately notify the State Court Administrator’s Office, in writing, of any changes in the appointee’s staffing or practice that may require cancellation or other changes to the login authority of the appointee or appointee’s staff.
5. Failure of an appointee or appointee’s staff to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.

B. Appointee Compensation Structures

1. A contractual, flat-fee compensation structure is available to the Judicial Districts to use in appointing and compensating attorneys in certain appointment types. The Department contracts with individual attorneys for this purpose on a three-year basis (July 1 through June 30) at rates established by the Department.
 2. The flat-fee compensation amounts for the following court-appointed counsel contracts in effect as of July 1, 2023, are increased as specified below. All other terms and conditions remain as established in the respective contract documents.
 - a. For any Colorado Judicial Department Agreement for Legal Representation as Counsel in Mental Health Cases in effect as of July 1, 2023, the flat fee compensation amount pursuant to paragraph 8.A. of such Agreement shall be increased from \$309 to \$364, and the Additional Flat Fee pursuant to paragraph 8.C. shall be increased from \$210 to \$247.
 - b. For any Colorado Judicial Department Agreement for Legal Representation as Counsel in Truancy Proceedings currently in effect, the flat fee compensation amount pursuant to paragraph 7.A. of such Agreement shall be increased from \$190 to \$224.
 3. Claims for payment by attorneys for appointments made under flat-fee contracts shall be submitted by appointees in compliance with the procedures specified in the contract and set forth by the State Court Administrator's Office, and shall adhere to any applicable requirements under this CJD and attachments.
 4. Hourly compensation is available for appointments not made under flat-fee contracts. Requests for payment for services performed in hourly appointments shall be submitted in accordance with any contract executed with the Department as well as the policies and procedures described in this CJD and attachments.
 5. Judicial districts shall make every effort to appoint flat-fee contractors who have been placed on the district's appointment list if the flat-fee compensation method was selected by the district. For each appointment type in which flat-fee or hourly contracts with private counsel may be established, either a flat-fee compensation method or an hourly compensation method should be adopted by the district for the given fiscal year, not both, unless specified otherwise within the contract.
- C. The following maximum hourly rates are established for any hourly invoicing. No payment shall be authorized for hourly rates that exceed those shown.

MAXIMUM HOURLY RATES
For services performed on and after the effective Dates

Court-appointed Counsel	\$100 per hour (effective July 1, 2023)
Guardian <i>ad litem</i> (for adult)	\$100 per hour (effective July 1, 2023)
Attorney Child and Family Investigator	\$100 per hour (effective July 1, 2023)
Non-Attorney Child and Family Investigator	\$100 per hour (effective July 1, 2023)
Court-authorized Investigator	\$55 per hour (effective July 1, 2023)
Paralegal, Legal Assistant, or Law Clerk Time	\$42 per hour (effective July 1, 2023)
Court Visitor	\$40 per hour (effective July 1, 2023)

- D. Maximum total fees that may be paid by the Department for court-appointed counsel, guardians *ad litem*, child and family investigators, or court visitors are as follows:

MAXIMUM TOTAL FEE PER APPOINTMENT

Counsel for Special Respondent in Dependency & Neglect	\$1,935
Guardian <i>ad litem</i> (for adult) under Titles 14, 15, and 19, C.R.S.	\$4,437
Counsel in Paternity/Support (Dom. Relations) or other Title 19 in which a specified maximum is not delineated by a CJD	\$1,546
Child and Family Investigator	\$3,009
Probate Counsel	\$4,437
Court Visitor	\$779
Counsel in Titles 22, 25.5, and 27, C.R.S.	\$1,156
Guardian <i>ad litem</i> (for adult) in Titles 22, 25.5, and 27, C.R.S.	\$1,156
Counsel or Guardian <i>ad litem</i> (for adult) in an Appeal	\$4,437
Counsel for Respondents in Article 14.5 of Title 13	\$1,204

- E. **Under no circumstances shall the total fees exceed the maximums outlined without a detailed, written motion and order describing the specific special circumstances that justify fees in excess of the maximum. (See guidelines in Attachment B, paragraph B.) If a court-appointed attorney chooses to use the support of a paralegal, legal assistant, investigator, or law clerk, the combined fees, inclusive of expenses, of the attorney or non-attorney appointee and other support staff shall not exceed the total maximum outlined.**
- F. To maintain effective representation by court-appointed counsel and to provide basic fairness to attorneys and others so appointed, the State Court Administrator is directed by the Chief Justice to periodically review and make recommendations concerning the fee schedule established in this CJD and/or by separate Chief Justice Order.

- G. Appointees shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Department for inspection, audit, and evaluation in such form and manner as the Department in its discretion may require, subject to any applicable attorney-client privilege.
- H. In instances where fees or expenses for activity such as travel time, waiting time, and mileage were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable. (Example: Traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings.)

V. REIMBURSEMENT TO THE STATE FOR FEES AND COSTS OF COURT APPOINTMENTS

- A. For all appointments requiring a finding of indigence, the court shall review the indigence status of the responsible party(ies) or estate at the time of appointment, during the course of the appointment (at the court's discretion if questions concerning indigence arise) and, if feasible, at the time of case closure. In the case of a court visitor appointment, the petitioner and/or the respondent may be ordered to pay all or a portion of the visitor's fees and expenses if they are not determined to be indigent. If the court determines at any time before or after appointment of counsel, guardian *ad litem*, child and family investigator or court visitor, that the responsible party(ies) or estate has the ability to pay all or part of the costs for representation or other costs, the court shall enter a written order that the person(s) or estate reimburse all or a portion of said costs. Such order shall constitute a final judgment including costs of collection and may be collected by the state in any manner authorized by law.
- B. Collection of fees and costs related to court-appointed representation and other costs may be referred to the judicial district collections investigator or a private collector with whom the Judicial Department has contracted.
- C. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel, at the state-funded counsel contract rate, or at the hourly cost of providing legal representation for the number of hours reported by counsel to the court. Other costs incurred may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as sign language interpreter fees, may not be assessed.

VI. TRAINING OF GUARDIANS AD LITEM AND COURT VISITORS APPOINTED ON BEHALF OF WARDS OR IMPAIRED ADULTS

- A. Attorneys appointed as a guardian *ad litem* shall possess the knowledge, expertise, and training necessary to perform the court appointment, and shall be subject to all of the rules and standards of the legal profession.

- B. In addition, the guardian *ad litem* shall obtain 10 hours of continuing legal education, or other courses relevant to an appointment that enhance the attorney's knowledge of the issues in representation, per legal education reporting period. The court shall require that proof of such education, expertise, or experience is on file with the court at the time of appointment.
- C. In those cases in which a non-attorney is appointed as a court visitor, the non-attorney shall also demonstrate the knowledge, expertise, and training necessary to fulfill the terms of the appointment. The court may determine whether the person's knowledge, expertise, and training are adequate for an appointment and may require the person to demonstrate his or her qualifications.

VII. DUTIES OF GUARDIANS *AD LITEM* AND COURT VISITORS APPOINTED ON BEHALF OF WARDS OR IMPAIRED ADULTS

- A. The person appointed shall diligently take steps that he or she deems necessary to protect the interest of the person for whom he or she was appointed, under the terms and conditions of the order of appointment, including any specific duties set forth in that or any subsequent order. If the appointee finds it necessary and in the best interests of the ward or impaired adult, the appointee may request that the court expand the terms of the appointment and scope of the duties.
- B. Persons appointed shall perform all duties as directed by the court, which may include some or all of the duties described below:
 - 1. Attend all court hearings and provide accurate and current information directly to the court. (*Although another qualified attorney may substitute for some hearings, this should be the exception.*)
 - 2. At the court's direction and in compliance with applicable statutes, provide written or oral report(s) to the court and other parties.
 - 3. Conduct an independent investigation in a timely manner, which shall include, at minimum:
 - i. Personally meeting with and observing the client, as well as proposed custodians, when appropriate;
 - ii. Reviewing court files and relevant records, reports, and documents.
- C. If the ward or impaired person is living or placed more than one-hundred (100) miles from the appointee's principal work location, the requirements to personally meet with and interview the person may be waived by the court unless extraordinary circumstances warrant the expenditure of state funds required for such visits. However, the appointee shall endeavor to meet the person if and when that person is within one-hundred (100) miles.

VIII. DUTIES OF JUDGES AND MAGISTRATES

- A. For any type of court appointment under this Chief Justice Directive, the appointing judge or magistrate shall, to the extent practicable and subject to attorney-client privilege, monitor the

actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.

- B. Judges and magistrates shall ensure that guardians *ad litem* and court visitors involved with cases under their jurisdiction are representing the best interests of adult wards or impaired adults and performing the duties specified in the order. In providing this oversight, judges and magistrates shall:
1. Routinely monitor compliance with this directive;
 2. Encourage local bar associations to develop and implement mentor programs that will enable prospective guardians *ad litem* and court visitors to learn the respective areas of the law;
 3. Meet with guardians *ad litem* and court visitors at the first appointment to provide guidance and clarify the expectations of the court;
 4. Hold periodic meetings with all practicing guardians *ad litem* and court visitors as the court deems necessary to ensure adequate representation of wards or impaired adults.

See Chief Justice Directive 04-08 for the court's authority, role and responsibility related to child and family investigators.

IX. COMPLAINTS

- A. All written complaints and documentation of verbal complaints regarding the performance of any Judicial-paid counsel, guardian *ad litem*, or court visitor appointed pursuant to this directive shall be submitted to the Court Executive. The Court Executive shall forward the complaint to the presiding judge or, if appropriate, the chief judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the Court Executive will forward the complaint to another judge designated for that purpose.
- B. If the complaint involves an attorney and the reviewing judge or Court Executive determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or Court Executive and the State Court Administrator of the final outcome of the investigation.
- C. Copies of all written complaints and documentation of verbal complaints, and the results of the investigation including any action taken with regard to Judicial-paid counsel, guardians *ad litem*, and court visitors shall be forwarded by the Court Executive to the State Court Administrator's Office. The State Court Administrator may conduct an additional investigation and take action he or she believes is necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the appointee, as applicable.

See Chief Justice Directive 04-08 for the complaint process regarding the performance of child and family investigators.

**Attachment A
Amended April 2024**

**PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY
FOR COURT-APPOINTED COUNSEL, GUARDIAN *AD LITEM* (FOR ADULTS)
AND CHILD AND FAMILY INVESTIGATORS
ON THE BASIS OF INDIGENCE**

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigence must complete, or have completed on their behalf, application form JDF208 (*Application for Public Defender, Court-Appointed Counsel or Guardian ad litem*) signed under oath, before such an appointment may be considered by the court. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Titles 25.5 and 27 in which the respondent refuses to or is unable to supply the necessary information and cases in which a minor is requesting counsel for judicial bypass proceedings pursuant to section 12-37.5-107(2)(b), C.R.S. In addition, pursuant to section 13-90-208, C.R.S. a person who is deaf or hard of hearing may also have access to counsel, regardless of indigence, for advice on whether to execute a waiver of state-funded interpreter services.

Procedures for the Determination of Indigency

1. **Completion of Form JDF208 by Applicant.** Persons applying for state-paid representation under this CJD 04-05 must complete, or have completed on their behalf, the *Application for Public Defender, Court-Appointed Counsel or Guardian ad litem*, form JDF208, and submit it to the court.
2. **Review of Financial Information by Court Personnel.** Court personnel shall review the applicant's information on form JDF208 to determine whether or not the applicant is indigent on the basis of three factors:
 - a) Income¹
 - b) Liquid assets²
 - c) Expenses³

Criteria for Indigency

An applicant qualifies on the basis of indigence 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 JDF208, the applicant is indigent and eligible for representation under this CJD 04-05 at state expense.

¹*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, veterans benefits earned from a disability, child support payments or other assistance programs.

²*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.*

³*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 JDF208.*

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 liquid assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF208, the applicant is indigent and eligible for representation under this CJD 04-05 at state expense.

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 indigence.

INCOME ELIGIBILITY GUIDELINES (amended January 17, 2024)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$ 15,060	\$ 1,255	\$ 1,569	\$ 1,961	\$18,825	\$23,531
2	\$ 20,440	\$ 1,703	\$ 2,129	\$ 2,661	\$25,550	\$31,938
3	\$ 25,820	\$ 2,152	\$ 2,690	\$ 3,362	\$32,275	\$40,344
4	\$ 31,200	\$ 2,600	\$ 3,250	\$ 4,063	\$39,000	\$48,750
5	\$ 36,580	\$ 3,048	\$ 3,810	\$ 4,763	\$45,725	\$57,156
6	\$ 41,960	\$ 3,497	\$ 4,371	\$ 5,464	\$52,450	\$65,563
7	\$ 47,340	\$ 3,945	\$ 4,931	\$ 6,164	\$59,175	\$73,969
8	\$ 52,720	\$ 4,393	\$ 5,492	\$ 6,865	\$65,900	\$82,375

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$560 per month to "monthly income" or \$ 6,725 per year to "yearly income" for each additional family member. Poverty guideline is \$ 5,380/year.

Source: Federal Register (89 FR 2961, 01/17/2024)

ATTACHMENT B
Amended April 2024

PAYMENT PROCEDURES:
JUDICIAL-PAID APPOINTMENTS ONLY

**COURT-APPOINTED COUNSEL, GUARDIANS *AD LITEM* (FOR ADULTS),
CHILD AND FAMILY INVESTIGATORS AND COURT VISITORS**

- A. Invoices for fees and certain expenses, as detailed herein, shall be submitted using the Judicial Department’s online CAC System (CACS) and shall be in compliance with these procedures. Upon review and approval by the appointing court, as applicable, the request for payment will be transmitted to the State Court Administrator’s Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B. A schedule of maximum hourly rates for appointees is established by the Supreme Court in this CJD, section IV.C., and/or by Chief Justice Order. No payment shall be authorized for hourly rates in excess of the CJD or Chief Justice Order. The maximum total fee that may be paid to an appointee for representation on a case is also established in this CJD, section IV.D. This maximum includes appointee fees (both flat fees plus hourly fees, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time.
 1. If there are unusual circumstances involved in the case and the appointee determines additional work must be completed that will result in total fees beyond the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a *Motion to Exceed the Maximum* to the presiding judge/magistrate. (While there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval shall be the norm.) If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate may grant such motion. The Court Executive (or designee) shall deny further payment unless accompanied by a *Motion to Exceed the Maximum* and corresponding court order granting the motion.
 2. The *Motion to Exceed the Maximum* must cite the specific special and extraordinary circumstances that justify excess fees. The judge or magistrate, in his or her discretion, may grant approval with an *Order for Fees in Excess* which provides a revised maximum which is up to fifty percent (50%) higher than the established maximum as outlined in section IV.D. of this CJD. A subsequent *Motion to Exceed the Maximum* must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C. **All hourly court appointees and investigators must submit invoices using CACS, or a JDF207, as applicable, to the court within six (6) months of the earliest date of billed activity. All flat-fee appointees must submit invoices within two (2) months of the appointment, or within two months after an event that requires payment of an additional flat fee.** Any court appointee or investigator desiring to request an exception to the

six-month or two-month rule based on unusual circumstances shall make such request in writing to the, State Court Administrator's Office. The decision concerning payment shall be final. Before an exception will be considered, the request must detail the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month or two-month rule.

- D. The Court Executive or his/her designee shall carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys, other appointees and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment, as described herein. Authorization for payment is not automatic, and the Court Executive (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate shall be consulted. If an order for a party to reimburse the state is needed, the Court Executive or his/her designee shall notify the appropriate judge for an *Order for Reimbursement to the State*.
- E. Appointees requesting that authorized expenses be reimbursed to them must provide documentation of the expenditure, as required. When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing legal research. The billable hourly rate for a paralegal or legal assistant time is found in section IV.C. The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are billable to, and paid locally by, the appointing court with prior court approval (not paid through CACS). Counsel, investigators, or other appointees should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement in CACS or on the Request for Payment form (JDF207).

Costs Paid Locally by the Appointing Court (Not Billed using CACS):

- Cost of subpoenas;
 - Fees and expenses of witnesses;
 - Service of process;
 - Language interpreters;
 - Mental Health examinations/evaluations;
 - Transcripts;
 - Discovery Costs (including: LexisNexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The expenses below may be claimed via CACS invoicing, or on form JDF207, as applicable.

Other Reimbursable Expenses (Billed using CACS):

- Copy charges at the rate of \$0.25 per page (specify the number of copies made);
- Mileage at the rate defined by section 24-9-104, C.R.S. (actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted: date, phone number, and charges);
- Postage at cost (regular 1st class mail charges);
- Non-refundable and non-waivable service fees for mailing documents through the Colorado Courts E-filing system
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be provided to court staff.
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using CACS. All appropriate copies of travel receipts shall be provided directly to court staff.

3. The following items are not authorized for payment or reimbursement.

Non-Billable Items:

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
- Fax charges;
- Parking Fees;
- Items purchased for indigent or other persons represented including, but not limited to, meals, books, clothing, and other personal items;
- Administrative activities (as previously discussed);
- Electronic filing fees for which state-funded counsel appointments are exempt;
- Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.

F. In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the CJD and/or Chief Justice Order hourly rate applicable to when the activity occurred.

G. Attorneys shall maintain records of all work performed on court appointments and make all such records available to the Judicial Department for inspection, audit, and evaluation in such form and manner as the Department in its discretion may require, subject to attorney-client privilege.

H. The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning payment requests or related matters, all questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.

I. Billing Process

1. Payment requests shall be submitted using the Department's online CAC System (CACs) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to section IV.A.3. of this CJD, by using the standardized *Colorado Judicial Department Request and Authorization For Payment of Fees*, form JDF207. Completion, including attachments, shall adhere to the procedures described below. Requests for payment that do not include the necessary information will be referred back to the appointee or the court for completion or correction.
2. Payments are issued to whomever the attorney has authorized and approved on the *W-9* and *Authorization to Pay a Law Firm* forms. All appointees, both hourly and flat-fee, who have not yet received payment from the Judicial Department must submit a completed *W-9* form and, if applicable, an *Authorization to Pay a Law Firm* form before a payment can be issued.
3. If an attorney is no longer with the law firm indicated on a prior *W-9* and/or *Authorization to Pay a Law Firm*, he/she must complete new forms and submit them to the State Court Administrator's Office. The forms are available from the court or from the State Court Administrator's Office by emailing the request to CACpayments@judicial.state.co.us.
4. To change only the mailing address, send the address change to the State Court Administrator's Office by email: CACpayments@judicial.state.co.us.
5. Billing for Representation of Client with Multiple Cases
 - a. When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the State Court Administrator's Office to ensure the appointments are designated as "concurrent" for billing purposes.
 - b. Appointees must use the "Concurrent Appointment Notification" form, which is available from the State Court Administrator's Office upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across multiple cases and allows for the activity to be billed once via a "master" case. (Example: Appointee attends a single court hearing during which more than one of the client's cases is discussed.)

- c. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently, and should instead be billed by submitting separate invoices for each respective case.
6. When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contractual flat-fee basis.
7. Invoice Detail and Documentation
- a. Itemized invoice detail must be submitted using CACS. Although, if an exception has been made and the JDF207 form is being used, time sheets must be attached to support the total hours billed. Time must be described in sufficient detail to justify the amount of time spent on the activity and must include, in chronological sequence, all time spent between the beginning and ending dates of the billing. Time sheets must be legible – preferably typed. Ancillary expenses must be described. A sample itemization is shown at the end of this attachment.
 - b. Rates may vary pursuant to CJD or Chief Justice Order. The appointee should contact the local district court or the State Court Administrator's Office, or visit the website at www.courts.state.co.us, if there is a question concerning the current authorized rates.
 - c. The billing detail and itemization needs to include date, distinguish between out-of-court and in-court time, and a description of services performed. Time must be billed in *tenths* of an hour using the decimal system. (For example, six (6) minutes is shown as 0.1 hour, twelve (12) minutes as 0.2 hour, and so forth.)
 - d. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.
 - e. Other Attachments
 - i. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court's order authorizing an investigator, and the total amount authorized for the investigator.
 - ii. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this CJD, a copy of the court's order authorizing fees to exceed of the maximum must be submitted. Submitting this copy once is sufficient.
 - iii. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted.

iv. All receipts for any expenses outside of the guidelines, an explanation for the additional costs, and documentation of the court's approval must be submitted.

8. Completion of the JDF207 Form (only if exception to online billing was granted)

- a. Use of the JDF207 form, *Colorado Judicial Department Request and Authorization For Payment of Fees*, is allowed in limited circumstances for billing by hourly-compensated appointees. The appointee should keep a copy and submit the original plus one copy. (The court keeps a copy and, once approved, sends the original to SCAO.) All applicable sections of the form must be completed as indicated in the instructions. Appointees shall attach all required documents when submitting the request. All incomplete requests will be returned to the appointee for correction or explanation.

Section I.

Enter the case number related to the appointment and invoice. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate representation, include the appeal case number and the original case number being appealed.

Include the name(s) and number of persons represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

Section II.

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. (Please refer also to paragraphs 2-3 under section I. *Billing Process*, in this attachment.)

The Social Security Number or Tax Id Number must be included on each JDF207. (For more information concerning authorized payee changes, please refer to paragraph 2 under section I. *Billing Process*, in this attachment.)

Indicate the appointment date and whether you are the original or substitute appointee, whether the case has or has not gone to trial, and whether the appointment was originally under a flat-fee contract. If originally flat-fee, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

Section III.

Indicate the type of appointment.

Section IV.

Indicate the legal authority allowing for the appointment. This is found on the original appointment form/order.

Section V.

The indigence status of the person represented must be noted. If the person was found indigent, use the date of determination. If the person has not been determined indigent, indicate the reason under section V of the JDF207 and whether reimbursement has been or is to be ordered by the presiding judge. The information concerning indigence is usually included in the order of appointment or may be found in the *Application for Public Defender, Court-Appointed Counsel, or Guardian Ad Litem* (form JDF208).

Section VI.

Under this section all fees and expenses are to be summarized. For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Periods invoiced on a single JDF207 should not overlap changes in rates as established by Chief Justice Directive or Chief Justice Order. If a portion of the period to be billed was at an old rate, use a separate JDF207 to invoice for that portion.

- b. Sum all charges and calculate the total request.
- c. Enter the sum total of *all previously billed amounts* for the appointment in the “Total Amount Previously billed” line, excluding the current request.
- d. Determine the cumulative, grand total amount billed by the appointee for the case by adding the “Total Amount Previously billed” plus the current “Total Request”. If the cumulative total exceeds the authorized maximum, check the box “Total of Requests Exceed Allowed Maximum”. Include the *Motion and Order for Excess Fees*. (If possible, excess amounts should be judge/magistrate pre-approved and not requested after services are performed.)
- e. Appointee signature and date are required.
- f. If this is the final bill, check the “Final Bill” box.

57 miles @ <u>\$0.50</u> per mile/(or rate defined by section 24-9-104, C.R.S.)	\$28.50
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OTHER EXPENSES

Activity	FEES
Copies: Social Services report = 12 pgs @ \$0.25	\$3.00
Postage	\$0.50

TOTAL OTHER EXPENSES \$3.50

TOTAL BILLING \$648.80