

Cultural Competence for Court Appointees The Lay of the Land

I. Chief Justice Directives Expressly Referencing Cultural Understanding

A. Chief Justice Directive 04-05: Practice Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases, Attachment F

Six: AGENCY ADVOCACY

RPC shall, consistent with the interests of their clients, engage in case management planning, advocate for appropriate family or individual services, and, where appropriate, explore placements of the child/ren with kin when return to the parent may not be a viable option.

Commentary: Case management planning is critical to the parents' successful resolution of a dependency and neglect case. Making certain that the treatment plan for the parents and child/ren is client-specific, reasonable, practical, culturally appropriate and that it adequately addresses the issues that resulted in the case being filed is a crucial part of RPC's representation...

Eight: AWARENESS

RPC shall be aware of the client's culture and how that culture may impact the parents' participation in the case.

Commentary: A significant number of respondent parents who enter the child welfare system are from cultures other than the community's dominant culture. There may be language barriers or cultural considerations that affect the client's ability to understand what the court is requiring.

Unless RPC is respectful of the client's culture and sensitive to the impact of these considerations upon the client's participation in the case, the attorney cannot be sure that the client understands the nature of the proceedings or what is required of the client or the possible consequences for failing to comply with court-mandated treatment plans.

B. Chief Justice Directive 04-08: Directive Concerning Court Appointments of Child and Family Investigators pursuant to C.R.S. 14-10-116.5

Standard 1. The CFI shall act professionally. CFIs shall provide their service in a manner consistent with the highest professional standards. 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, CFIs shall respect the rights, the dignity, and the welfare of the parties and the child/ren with whom they work.

COMMENT

...

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 should consider these factors when working with a family. S/he should be sensitive to the separate interests, rights, wishes, and concerns of the parents, child/ren, 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.

...

C. Chief Justice Directive 08-01: Directive concerning Court Appointments of Decision-Makers pursuant to §14-10-128.3, C.R.S., Decision-Maker Guidelines

F. PROFESSIONALISM AND QUALIFICATIONS

§14-10-128.3(8) The decision-maker should comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, or licensing board that regulates the decision-makers.

COMMENT

The DM's primary responsibility is to assist parties to resolve disputes concerning parental responsibilities. In meeting this responsibility, The DM should understand that they are working with high conflict families and should attempt to establish a positive and constructive professional working relationship with family members.

The DM 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. The DM should be sensitive to the separate interests, rights, wishes and concerns of the parents and other parties in a case.

The DM must remember that s/he is in – and is viewed as being in – a position of great influence over a family's future. A DM's decisions are to be based on his or her independent evaluation and assessment of a case. The DM should guard against being unduly influenced by the conclusions of other professionals who are working on or have worked on the case. The DM should strive to maintain neutrality and independence. If the DM becomes aware of an insurmountable bias or prejudice or the appearance of bias or prejudice in dealing with a case s/he should request the court to terminate the appointment with proper notice to the parties.

II. Some Court Appointee Roles Necessitating Cultural Competence

A. Probate (Guardianship)

1. Visitors, Sec. 15-14-305(1), C.R.S.: Appointed to interview the respondent in person; Explain the substance of the guardianship petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian; Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship; Make recommendations to the court regarding appointment of a lawyer or guardian ad litem; Inform the court of the daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage; Make recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian, etc. Visitors must have “such training as the court deems appropriate.”
2. Guardian ad litem, Sec. 15-14-115, C.R.S.: If the court determines that representation of the respondent’s interests would otherwise be inadequate, the court may appoint a GAL.

B. Juvenile Cases

1. Guardian ad litem, Sec. 19-3-203, C.R.S.: Attorney appointed by the court in dependency and neglect matters to represent the child's interests. The GAL conducts investigations to ascertain the facts, talks with or observes the child involved, examines witnesses in hearings, introduces evidence, makes recommendations to the court concerning the child's welfare, etc.
2. Respondent parent counsel, Sec. 19-3-202, C.R.S.: Attorney appointed by the court in dependency and neglect matters to represent a respondent parent.

C. Domestic Relations Cases (Dissolution of Marriage, Legal Separation, Allocation of Parental Responsibilities)

1. Child and Family Investigators, Sec. 14-10-116.5, C.R.S.: Neutral person (attorney, mental health professional or other individual with appropriate training, qualifications, and an independent perspective acceptable to the court) to investigate, report and make recommendations to the court, taking into consideration relevant factors for determining the child’s best interests.
2. Child Legal Representatives, Sec. 14-10-116, C.R.S.: Attorney appointed to serve as the child’s legal representative, representing the child’s best interests.
3. Parental Responsibility Evaluators, Sec. 14-10-127, C.R.S.: Licensed mental health professional appointed to perform an evaluation and file a written report concerning

disputed issues relating to the allocation of parental responsibilities. To testify, PREs must be qualified as competent by training and experience in the areas of the effects of divorce and remarriage on children, adults and families; appropriate parenting techniques; child development; child and adult psychopathology; applicable clinical assessment techniques; and applicable legal and ethical requirements of parental responsibilities evaluation.

4. Decision-Makers, Sec. 14-10-128.3, C.R.S.: Appointed with the consent of all parties to resolve disputes between parties as to implementation or clarification of existing court orders concerning the parties' minor children. DMs must be "qualified" in the court's view. Decisions are binding, but can be appealed.
5. Parenting Coordinators, Sec. 14-10-128.1, C.R.S.: Appointed to assist in the resolution of parental responsibility disputes between the parties. PCs must be neutral, with appropriate training and qualifications and an independent perspective acceptable to the court. Does not make decisions.

D. Any Cases

1. Mediators, Sec. 13-22-302, C.R.S.: Neutral party trained in dispute resolution to assist parties in reaching their own solution. Does not make decisions.
2. Arbitrators, Sec. 14-10-128.5, C.R.S.: Appointed with the consent of all parties to resolve disputes between parties concerning minor or dependent children, including parental decisions. Decisions are binding, but can be appealed.