

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

COURT APPOINTMENTS THROUGH THE OFFICE OF THE CHILD'S REPRESENTATIVE

The following policy is adopted to assist the administration of justice through the appointment and training of Guardians ad Litem (GALs), attorney Child and Family Investigators and Child's Representatives appointed on behalf of minors/children, as well as attorneys appointed as counsel for children subject to dependency and neglect proceedings. Non-attorney Child and Family Investigators, adult GAL appointments, and any other juvenile attorney client appointments fall under the provisions of Chief Justice Directive 04-05.

I. Authorities

- A. Article 91 of Title 13 established the Office of the Child's Representative (OCR) and the various statutory requirements of the OCR.
- B. The OCR shall be responsible for the following:
 - Provision of (GAL) services in dependency and neglect proceedings under Title 19.
 - Provision of GAL services for a respondent parent in dependency and neglect proceedings under Title 19 when that parent is a minor.
 - Provision of counsel services for children subject to dependency and neglect proceedings.
 - Provision of GAL services in delinquency matters under Title 19.
 - Provision of GAL services in adoption proceedings under Title 19 when one or more parties qualify as indigent.
 - Provision of GAL services for a child charged or prosecuted as an adult pursuant to Section 19-2-517, C.R.S. or Section 19-2-518, C.R.S.
 - Provision of GAL services in paternity and support matters brought under Title 19 when one or more parties qualify as indigent.
 - Provision of GAL services to minors in alcohol or drug abuse proceedings under Title 25.
 - Provision of GAL services to minors in mental health proceedings under Title 27.
 - Provision of GAL services to minors in probate proceedings under Title 15 when the parties are indigent.
 - Provision of GAL services to minors involved in truancy proceedings under Titles 19 and 22.

- Provision of Child's Representative services or attorney Child and Family Investigator services in domestic relations cases under Title 14, when one or more parties qualify as indigent.
 - Provision of services in any other GAL, Child's Representative or attorney Child and Family Investigator appointments where authorized, by statute or inherent authority, to act in or in representation of the best interests of a minor.
- C. State funds are appropriated to the OCR to fund all statutorily authorized appointments, costs associated therewith and the various responsibilities that fall under the purview of that office pursuant to Section 13-91-102(2), C.R.S.

II. OCR Authority and Responsibilities

- A. The OCR's authority and responsibilities include, but are not limited to: ensure and enhance competent representation of a child's best interests in a cost effective manner, which includes training and monitoring of services rendered; the exclusive authority and discretion to select and contract with attorneys to provide state-paid GAL, Child's Representative, attorney Child and Family Investigator services, and counsel services for children subject to dependency and neglect proceedings, including the authority to reject attorneys for any reason; the authority to terminate, at will, contracts and existing court appointments as determined by the OCR; and the responsibility to provide oversight of and accountability for state-paid GAL, Child's Representative and attorney Child and Family Investigator services for the benefit of Colorado's children, as well as attorneys appointed as counsel for children subject to dependency and neglect proceedings, including investigation and resolution of complaints regarding attorneys who contract with the OCR.
- B. The OCR shall maintain and provide to the courts, on an ongoing basis, a list of qualified attorneys to whom appointments may be given. The courts shall appoint from this list. It is within the OCR's sole discretion to determine which attorneys are placed on the appointment list. A court is not required to use all attorneys on the list but only those it chooses to appoint. The OCR will not process payment for services of attorneys with whom the OCR does not have a contract and who are not on the OCR list. Should any unusual, exceptional or emergency circumstances present the need for the appointment of an attorney not listed as an OCR-qualified attorney, the court shall contact the OCR for approval prior to the appointment of that attorney. The OCR shall provide a prompt response to the court's request.

III. Authority and Requirement for Appointments through the OCR

- A. A GAL shall be appointed for a child in a dependency and neglect action pursuant to Title 19. The GAL's appointment shall continue until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated either by operation of law or by court order.
- B. Pursuant to Title 19, an attorney may be appointed as counsel for child subject to a dependency and neglect proceeding in addition to the GAL if the court finds that the appointment is in the best interests and welfare of the child.
- C. Pursuant to Title 19, a GAL may be appointed in a delinquency proceeding if: no parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S. appears at the first or subsequent hearing; the Court finds a conflict of interest between the child and the parent, guardian or other adult set forth in Section 19-1-111(2)(a), C.R.S.; or the court finds that a GAL appointment will serve the best interests of a child. Such appointment shall continue if a case is transferred to adult criminal court under Title 19.
- D. Pursuant to Title 19, the court, in its discretion, may appoint a GAL in any direct file of charges against a juvenile in adult criminal court.
- E. Pursuant to Title 19, a GAL may be appointed, unless the child is already represented by defense counsel, in truancy proceedings under Title 22. Pursuant to Title 19, a court may appoint both counsel and a GAL for the child if the court finds that such appointment is in the best interests of the child.
- F. A Child's Representative or attorney Child and Family Investigator may be appointed in a domestic relations case pursuant to Title 14.
- G. A GAL may be appointed for a minor in formal proceedings involving guardianship or conservatorship of a minor; trusts or estates of decedents, minors and protected persons; and in judicially supervised settlements pursuant to Title 15 if the court determines that a need for such representation exists.
- H. A GAL shall be appointed in a mental health proceeding pursuant to Title 27 for any child under age 15 who is a ward of the Department of Human Services or for any minor under 15 who objects to his or her hospitalization.
- I. If necessary to serve a child's best interests, a GAL may be appointed for an infant or other minor who does not have a representative and who is a party to a civil suit.
- J. A GAL may be appointed for a child in a paternity action pursuant to Title 19.
- K. A GAL may be appointed for a minor upon the filing of a petition for involuntary commitment of alcoholics or drug abusers if the court deems the minor's

presence in court may be injurious to him or her pursuant to Title 25.

- L. Pursuant to Title 19, a GAL for a minor may be appointed in an adoption proceeding. Pursuant to Title 19, a GAL for a minor may also be appointed in a proceeding concerning the relinquishment of the minor if the court finds that there is a conflict of interest between the child and the parents, guardian or legal custodian; the court finds that such appointment would be in the best interests of the child; or the court determines that the child is twelve years of age or older and that the welfare of the child mandates the appointment.
- M. Pursuant to Title 12, a GAL may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act pursuant to C.R.S. §12-37.5-107(2)(b) and Chapter 23.5 of the Colorado Rules of Civil Procedure (“Rules of Procedure for Judicial Bypass of Parental Notification Requirements”).

IV. Allocation of Cost and Guidelines for Payment by the OCR

- A. Allocation of Costs—Requirement of Indigency Finding
 - 1. An indigency determination is not required for state payment of GAL services in matters other than these specific cases:
 - a. The State, through the OCR, shall bear the costs for the services of an attorney Child and Family Investigator or a Child’s Representative appointed pursuant to Section 14-10-116.5, C.R.S. or Section 14-10-116, C.R.S., respectively, only if one or more of the parties responsible for the costs are deemed to be indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under either Section 14-10-116.5, C.R.S., or Section 14-10-116, C.R.S., respectively, which specify that the parties are responsible for all costs unless there is a specific finding of indigency.
 - b. The State, through the OCR, shall bear the costs for GAL services in paternity and support matters under Article 4 of Title 19 only if one or more of the parties responsible for the costs are deemed to be indigent. The State is precluded from paying for services and any costs associated with services for non-indigent parties under Section 19-4-117, C.R.S., which specifies that the court shall order reasonable fees of the GAL to be paid by the parties.
 - c. The State, through the OCR, shall bear the costs for GAL services in adoption and relinquishment proceedings only when the party(ies) responsible for the costs is deemed to be indigent. The State is precluded from paying for services and any costs associated with GAL services for non-indigent parties under

Section 19-5-103, C.R.S., which specifies that the Court shall order reasonable fees to be paid by the relinquishing parent(s).

- d. The State, through the OCR, shall bear the costs for GAL services provided to a minor under Title 15 (probate, guardianship and conservatorship) and other civil cases only when the parti(es) ordered to be responsible for the costs or the minor's estate is deemed to be indigent.
2. When indigency is required for court-appointed representation at state expense, the responsible party(ies) must complete, or have completed on their behalf, application form JDF 208 ("Application for Public Defender, Court-Appointed Counsel, or Guardian ad Litem") signed under oath, before an appointment may be considered. An indigent person is one whose financial circumstances fall within the fiscal standards set forth by the Supreme Court through Chief Justice Directive (See Attachment A). A court shall not order representation to be at state expense absent the completion of form JDF 208, a finding of indigency and an order of the court. If one party is indigent, the State, through the OCR, will pay half of the state-set hourly rate.

B. Guidelines for Payment by the OCR

1. Claims for payment of appointee fees and expenses shall be submitted by the appointee directly to the OCR, not the appointing court, in accordance with the OCR's policies and procedures.
2. The maximum total fees per appointment for all OCR appointments and the procedures for approval of excess fees shall be as set forth by the OCR.
3. Attorneys shall maintain records of all work performed relating to court appointments and shall make all such records available to the OCR and/or to the court for inspection, audit and evaluation in such form and manner as the OCR or court may require, subject to the attorney work product doctrine and any other applicable privileges.

V. Duties of Attorneys Appointed as GALs, Child's Representatives, Attorney Child and Family Investigators, and Counsel for Children Subject to Dependency and Neglect Proceedings.

A. Training

1. Attorneys appointed as GALs, Child's Representatives, attorney Child and Family Investigators, or counsel for children subject to dependency and neglect proceedings shall possess the knowledge, expertise and training necessary to perform the court appointment.

2. In addition, GALs, Child's Representatives, attorney Child and Family Investigators, and counsel for children subject to dependency and neglect proceedings shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney's knowledge of the issues in best interest and child client-directed representation. These requirements should be met prior to attorney's first appointment and per legal education reporting period. The attorney shall provide the OCR with proof of compliance with this requirement with his/her application to provide attorney services or contract renewal for the OCR.
- B. All attorneys appointed as GALs or Child's Representatives shall be subject to all of the rules and standards of the legal profession. The unique statutory responsibilities of a GAL and a Child's Representative do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the "client" of a GAL or a Child's Representative is the best interests of the child. The ethical obligations of the GAL or Child's Representative, under the Colorado Rules of Professional Conduct, flow from this unique definition of "client." Because of this unique relationship, an attorney's obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child's best interests. A determination by the GAL or the Child's Representative of a child's best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child's position regarding the disposition of the matter before the court. A GAL or a Child's Representative must also explain to the child the limitations on confidentiality.
- C. The attorney appointed as a GAL or a Child's Representative shall diligently take steps that s/he deems necessary to represent and protect the best interests of the child, under the terms and conditions of the order of appointment, including any specific duties set forth in that the appointment order or in any subsequent order. If the appointee finds it necessary and in the best interests of the child, the appointee may request that the court expand the terms of the appointment and scope of the duties. The attorney appointed as counsel for a child subject to a dependency and neglect proceeding shall provide representation to the child client within the scope of the order of appointment and in accordance with the attorney's professional responsibilities under the Colorado Rules of Professional Conduct.
- D. A GAL in a dependency and neglect case shall specifically:
1. Attend all court hearings and provide accurate and current information directly to the court. *Commentary: In exceptional circumstances another qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court. This shall include a statement of the child's position, when ascertainable*

based on the child's developmental level, regarding the disposition of the matters addressed at the hearing. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.

2. At the court's direction and in compliance with Section 19-3-606(1), C.R.S., file written or oral report(s) with the court and all other parties.
3. Take actions within the scope of his or her statutory authority and follow the ethical obligations necessary to represent the best interests of the child.
Commentary: The GAL has the right to and should actively participate and be included in all aspects of litigation including but not limited to discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals, except as limited by applicable law.
4. Conduct an independent investigation in a timely manner which shall include at a minimum:
 - a. Personally interviewing the child (if appropriate to the child's developmental level) and meeting with and observing the child in his or her placement as soon as is reasonable, but, in no event, later than 30 days following the GAL's appointment;
 - b. Personally meeting with and observe the child's interaction with the parents, proposed custodians or foster parents including kinship care providers;
Commentary: The GAL shall meet with the parents, proposed custodians, foster parents or kinship care providers who are providing ongoing care for the child and observe the child in that home. This requirement neither mandates nor is fulfilled by a GAL's meeting with the care providers and observing the child in a temporary intake placement service, respite care or juvenile detention holding facility, unless that is the only opportunity to observe the child.
 - c. Reviewing court files and relevant records, reports and documents;
 - d. Interviewing the respondent parents, with the consent of counsel;
 - e. Interviewing other people involved in the child's life, including: foster parents; caseworkers; CASA volunteers; relatives; and school personnel, therapists and any other persons or professionals necessary to assess and serve the child's best interests.
 - f. Confirm that the county department's investigation has included a

search for any prospective kinship, placement and/or adoption or potential tribal affiliation, or personally conduct such investigation, in the event these attempts to reunify fail. This part of the investigation should be conducted during the initial stages of the case.

- g. When appropriate, visiting the home from which the child was removed.

Additional Commentary: The GAL's initial investigation sets the groundwork for the entire dependency and neglect case, and an effective initial investigation is critical to serving the child's best interests and advancing permanency for the child. An effective initial investigation allows the GAL to make recommendations early on in a case which will: implement services that will advance the goals of the case and the best interests of the child with the least delay possible; reduce the risk of harm that involvement in the dependency and neglect system may present to the well being of the child; reduce the risk of disruption in the child's placement and potential harm from the child from such disruption; and preserve relationships significant to the child, such as sibling relationships. Hence, it is expected that the initial duties described in this subsection shall be completed within 45 days of the GAL's appointment, with the exception of the in-placement interview/observation, which shall occur within 30 days of the appointment. The duties described in sections V.D.4.e and V.D.4.f may be performed by a qualified person other than the appointee under the supervision of the appointed GAL.

- 5. Continue to perform an ongoing investigation as necessary to represent the best interests of the child for the duration of the case unless relieved of such duty by the court. The GAL's ongoing investigation shall include, but shall not be limited to:

- a. If the child's placement is changed, the GAL shall personally meet with and observe the child in each new home or placement of the child, as soon as practicable after the child's entry into the placement.

Commentary: Continuing contact and ongoing investigation constitute important components of the GAL's role. Additionally, because each disruption in the child's placement presents new risks of harm and is potentially detrimental to the child's emotional and psychological well being, it is critical that the GAL meet with and observe the child in each new placement to assess the appropriateness, risks and potential permanency of that placement, as part of the GAL's ongoing investigation. This in-placement meeting/observation shall ideally occur no later than 30 days after the child's entry into the new placement. When

circumstances make it impracticable for a GAL to visit a child within 30 days of a child's entry into a new placement, the GAL may send a properly trained representative to visit the child in the placement within 30 days of the placement, but the GAL must follow up with his or her own visit within a reasonable time thereafter.

- b. Maintaining contact and ongoing communication with the child, foster parents, caseworker, CASA and any other parties, persons or professionals necessary to ensure that the child's best interests are continually met;
 - c. Other applicable duties listed above in section V.(C.3.
- 6. In cases in which the parents or child are living or placed more than 100 miles outside of the jurisdiction of the court, the requirements to personally meet with and interview the person or child are waived. However, to the extent possible, the appointee shall endeavor to see the child in his or her extended placement and the OCR will pay reasonable costs associated with meeting these obligations.
- 7. All GALs in Dependency and Neglect proceedings shall submit a standard affidavit of compliance to the OCR by May 30 of each year for appointments made in the previous contract year. For any cases in which the GAL has not complied with the above requirements, a standard exception form shall be attached to the affidavit. The standard affidavit of compliance and exception form shall be developed by the OCR and made available to all GALs. The current form is shown in Attachment B.
- E. An individual appointed as an attorney Child and Family Investigator pursuant to Section 14-10-116.5, C.R.S., is an investigative arm of the court and shall follow the specific terms of the order of appointment, which includes filing a written report with the court, but which does not include the duties described in section V.B. Attorney Child and Family Investigators are also subject to the Rules of Professional Conduct, the Child and Family Investigator standards set forth in Chief Justice Directive 04-08, as well as other existing or subsequent Chief Justice Directives or standards applicable to Child and Family Investigators.
- F. An attorney appointed as a GAL or Child's Representative in all other proceedings, including juvenile delinquency, parental responsibility, paternity, relinquishment, probate, mental health and truancy cases, shall perform all duties as directed by the court, as set forth by statute and as required by the Rules of Professional Conduct as described in section V.B.

VI. Duties of Judges and Magistrates

- A. Judges and magistrates shall ensure that GALs, Child's Representatives and attorney Child and Family Investigators involved with cases under their jurisdiction are

representing the best interests of children/minors.

B. In providing this oversight, judges and magistrates shall:

1. Routinely monitor compliance with this directive and promptly notify the OCR of failures of GALs, Child's Representatives, attorney Child and Family Investigators, and counsel for children subject to dependency and neglect proceedings to comply with this Chief Justice Directive and other Chief Justice Directives in existence or subsequently adopted, including Chief Justice Directive 04-08, which sets forth the standards for Child and Family Investigator.;
Commentary: The complaint and notice procedure is set forth in section VII.B, footnote 1. A child whose best interests are being represented by counsel in dependency and neglect and other proceedings is in a particularly vulnerable position s/he will unlikely appear in court regularly and may find it difficult to express concerns or problems that s/he is experiencing with the attorney who has been appointed to represent his or her best interests. For these reasons, judges should take an active role in monitoring the attorneys who represent the best interests of children. Often the judge is the only individual in the position to become aware of less than adequate representation or non-compliance with this Chief Justice Directive. Judges should consider such practices as inquiring at each court date as to the last contact that the GAL or Child's Representative has had with the child, as well as asking any other questions the judge believes is necessary and appropriate to ensure that the child's best interests are receiving quality representation. Similarly, children represented by counsel in dependency and neglect proceedings may lack the resources and knowledge to raise concerns about counsel's representation, and the court should promptly notify the OCR of any inadequacies it has observed with regard to an attorney's performance as counsel for a child in a dependency and neglect proceeding.
2. Provide guidance and clarify the expectations of the court concerning GALs, Child's Representatives attorney Child and Family Investigators, and counsel for children subject to dependency and neglect proceedings upon their appointment, throughout the proceedings and through other appropriate mechanisms;
3. Hold periodic meetings with all practicing GALs, Child's Representatives and attorney Child and Family Investigators the court deems necessary to ensure adequate representation of the best interests of children or minor wards; and
4. As explained in section V.B, hold GALs and Child's Representatives to the same standards and expectations imposed by the Colorado Rules of Professional Conduct on every attorney who is licensed to practice law in Colorado and report any violations. Any report should also include notice to the OCR of such report or concern so that the OCR may use this information to protect existing or other children's best interests from inadequate representation.

- C. Implement procedures and practices that enable GALs and Child's Representatives to comply with this Chief Justice Directive.

Commentary: Examples of such procedures and practices include entering orders authorizing GALs and Child's Representatives to access to all relevant case information and checking the availability of the GAL or Child's Representative when scheduling hearings.

VII. Procedures for Complaints against GALs, Child's Representatives, Attorney Child and Family Investigators, and Counsel for Children Subject to Dependency and Neglect Proceedings through Contracts with the Office of the Child's Representative.

- A. For all court-appointed GALs, attorney Child and Family Investigators, Child's Representatives, and attorneys appointed as counsel for children subject to dependency and neglect proceedings, complaints concerning alleged violations of the Colorado Rules of Professional Conduct shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel and reported, if possible, to the OCR so that OCR may be able to consider this information when deciding whether to continue to contract with the attorney, either at the time of the complaint or in the future.
- B. All complaints regarding the performance of any state-paid GAL, attorney Child and Family Investigator, Child's Representative, or counsel for a child subject to a dependency and neglect proceeding who contracts with the OCR shall be submitted to the OCR in writing, unless the complainant is made by a judicial officer or court staff.¹ The OCR shall investigate the matter and take action necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to: placing the attorney on probationary status with regard to his or her contract with the OCR; suspending or terminating the attorney's contract with the OCR; terminating the attorney's appointment on an active case²; and/or taking remedial action to improve the

¹ If an issue arises concerning an attorney's ability to competently or adequately represent a child's best interest in any particular case, the court shall immediately contact the OCR. The OCR must respond forthwith, giving immediate consideration and resolution regarding the complaint, which may include termination of contract, removal from the case at issue, and/or removal from the OCR approved list. In addressing the complaint, the OCR will give serious consideration to the judicial officer's recommendations as to how the termination of an appointment or any other action taken by the OCR may impact the best interests of the child in the course of a particular case. This complaint process in no way interferes with the court's inherent powers to impose sanctions, exercise its powers of contempt, and/or report any violations of the Rules of Professional Conduct to the Supreme Court Attorney Regulation Office.

² The OCR will remove an attorney from an open case only under extenuating circumstances. With input from the court and only if warranted under the most exceptional circumstances, will the OCR consider removing an attorney from an existing and ongoing appointment. The OCR fully understands and appreciates the serious consequences that may result from removing an attorney from an existing case. It can disrupt the continuity of the case, interrupt and delay the court process, extend the length of the case and ultimately may not be in the best interests of the child. As such, only after serious consideration will the OCR remove an attorney from a case.

quality of the attorney's work. At the conclusion of the investigation, the OCR shall issue a written report of its action to the attorney, the complainant and other parties determined by the OCR to be in need of the complaint information, and the OCR may redact the written report to protect the confidentiality of persons when the OCR deems such redaction advisable. This paragraph does not preclude OCR's authority to terminate a contract at will.

- C. The OCR is required to report any violations of the Colorado Rules of Professional Conduct that it becomes aware of during its investigation of a complaint to the Colorado Supreme Court Office of Attorney Regulation Counsel.

VIII. Sanctions

- A. All contracts with the OCR for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Chief Justice Directive may result in OCR terminating the contract, removing the attorney from the OCR appointment list, and terminating the appointment.
- B. Judges and magistrates shall notify appointees that acceptance of the appointment requires compliance with this Chief Justice Directive, and that failure to comply will result in timely notification to the OCR and may result in the OCR terminating the contract, removing the attorney from the OCR appointment list, and terminating the appointment as set forth section VIII.A.

Effective May 1, 2004, CJD 97-02 is REPEALED and REPLACED by this CJD 04-06 and CJD 04-05.*

CJD 04-06 is revised and adopted effective July 1, 2006.

CJD 04-06 is revised and adopted effective January 1, 2012.

CJD 04-06 is revised and adopted effective March 15, 2013.

Done at Denver, Colorado this 19th day of March, 2013.

/s/
Michael L. Bender, Chief Justice

* Chief Justice Directive 04-05 is titled "Appointing and Payment Procedures for Court Appointed Counsel for Children and Indigent Persons in Titles 14, 15, 19 (Dependency and Neglect Only), 22, 25, 27, and Guardians ad Litem, Non-Attorney Child and Family Investigators and Court Visitors Paid by the State Court Administrator's Office."

PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN AD LITEM REPRESENTATION ON THE BASIS OF INDIGENCY

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF 208 (“Application for Court-Appointed Counsel or Guardian ad Litem”) signed under oath, before such an appointment may be considered by the court. Form JDF 208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and where the court appoints a GAL for a judicial bypass proceeding pursuant to §12-37.5-107(2)(b).

Procedures for the Determination of Indigency

The following procedures are used for applicants in cases addressed in CJD 04-06.

- **Completion of Form JDF 208 by Applicant**

Persons applying for state-paid counsel or guardian ad litem representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF 208, and submit it to the court.

- **Review of Financial Information by Court Personnel**

Court personnel shall review the applicant’s information on form JDF 208 to determine whether or not the applicant is indigent on the basis of three factors:

- Income¹
- Liquid assets²
- Expenses³

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian ad litem on the basis of indigency 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

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, veteran’ 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 JDF 208.

- 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 JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation at state expense.
- 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 assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF 208, the applicant is indigent and eligible for court appointed counsel or guardian ad litem representation.

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 indigency.

INCOME ELIGIBILITY GUIDELINES (amended January 2014)				
Family Size	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$1,216	\$1,520	\$14,588	\$18,234
2	\$1,639	\$2,048	\$19,663	\$24,578
3	\$2,061	\$2,577	\$24,738	\$30,922
4	\$2,484	\$3,105	\$29,813	\$37,266
5	\$2,907	\$3,634	\$34,888	\$43,609
6	\$3,330	\$4,163	\$39,963	\$49,953
7	\$3,753	\$4,691	\$45,038	\$56,297
8	\$4,176	\$5,220	\$50,113	\$62,641
* 125% of poverty level as determined by the Department of Health and Human Services				
For family units with more than eight members, add \$338 per month to "monthly income" or \$4,060 per year to "yearly income" for each additional family member.				
Source: FEDERAL REGISTER (79FR3593, 01/22/2014)				

**GUARDIAN AD LITEM AFFIDAVIT OF COMPLIANCE
FOR DEPENDENCY AND NEGLECT APPOINTMENTS**

The purpose of this affidavit is to provide simple, uniform reporting concerning compliance with section V.D.7 of Chief Justice Directive 04-06.

1. I have attended all court hearings of which I had adequate notice and provided correct information to the court, as current as possible, except that when I could not attend such a hearing because of exceptional circumstances and with the court's permission, a qualified attorney substituted on my behalf.
2. I have submitted oral or written reports with the court and all other parties present at the hearing.
3. I, or qualified appointee, have conducted an independent investigation in a timely manner, which include at least:
 - Personally meeting with and observing the child's interaction with the parents or proposed custodians when appropriate;
 - Personally meeting with and observing the child/ward/impaired adult at home in each placement;
 - Personally interviewing the child/ward/impaired adult;
 - Reviewing court files and relevant records, reports and documents;
 - Interviewing, with consent of counsel, the respondent parents;
 - When appropriate, visiting the home from which the child/ward/impaired adult was removed;
 - Confirming that the county department's investigation has included a search for any prospective kinship placement and/or adoption or potential tribal affiliation;
 - Interviewing other people involved in the child's life when accessing or appropriate to assess and serve the child's best interests.
4. I have continued to perform all duties listed above in order to represent the best interests of the child.
5. I have attached an Affidavit of Compliance Exception Sheet for all cases on which I had an open appointment between March 1st of the previous fiscal year and today's date.
6. I am submitting this affidavit, with attachments to the presiding juvenile judge, probate judge or chief judge. I am also submitting a copy of this affidavit, with attachments, to The Office of the Child's Representative.

Affiant

Date

Subscribed and sworn to before me on _____ by _____, the affiant.
(date) (name)

My commission expires on _____

Notary Public

Affidavit of Compliance Exception Sheet

The purpose of this exception sheet is to list all of my Guardian *ad Litem* Dependency and Neglect appointments on which I had an open appointment between March 1, _____ and today's date for which I am not in compliance with the CJD 04-06. The case number, the case name, the county, and the reason for noncompliance are listed below.

Case Number	Case Name	County	Reason for Noncompliance

Attorney Name: _____

Date: _____