

SUPREME COURT STANDING COMMITTEE ON FAMILY ISSUES

November 12, 2010



FINAL REPORT ON COURT APPOINTED PROFESSIONALS IN DOMESTIC RELATIONS CASES

Supreme Court of Colorado

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February 8, 2011

Honorable Stephen Schapanski
Chief Judge, 8th Judicial District
201 La Porte Avenue, Suite 100
Ft. Collins CO 80521

Dear Chief Judge Schapanski:

I would like to thank you and the Standing Committee on Family Issues for the work you performed over the past year regarding quality assurance and oversight of Child and Family Investigators (CFIs) and Parenting Coordinators in domestic relations cases. The charge and order that was issued in 2010 by Chief Justice Mary Mullarkey required your committee to explore the role these professionals fulfill when appointed and I appreciate the solutions you recommend in your final report.

After reviewing the report, I have a number of thoughts. I approve implementation of recommendation one, that is, to limit the scope of the order of appointment. In that recommendation, the Committee highlighted a problem that concerns me. Initially, CFI was instituted to provide a simple solution when a parental responsibilities evaluation was not necessary. I would like the committee to revisit the issue with these thoughts in mind. I suggest a cap for CFI fees and a uniform hourly rate for both attorneys and non-attorneys who act as CFI in state paid cases. I think by April 1, 2011, your committee should be able to implement these two changes to the current practice by proposing an amendment to CJD 04-08. I believe a CFI should be able to prepare a report to the court for under \$2,000 unless extraordinary circumstances exist. But if your Committee suggests a different amount after getting statewide input, I will, of course, review that suggestion. I realize the suggestions in the body of your report following recommendation one include other issues to be resolved, but I would like to see the order of appointment redrafted by that same deadline of April 1, 2011. If additional changes need to be made after that time, then I will amend the CJD and the form order of appointment as necessary and appropriate.

I will approve recommendation three to standardize the protocol to identify CFI for appointment by the court. Recommendation four to maintain a list of qualified CFIs is also approved. I see those two recommendations as being implemented together. Recommendation six is approved inasmuch as the current CJD establishes much of the policy concerning the

identification, appointment and reports of CFI and so would need to be amended to reflect the recommendations of your Committee.

As for recommendation five, because you have explained that parenting coordinators are not state paid adjuncts and used rarely, I think it unwise for the Committee to spend future resources on this issue.

I do not think that the creation of additional regulatory oversight within the Judicial Department is appropriate at this time. These changes were suggested as part of recommendation two -- to centralize and clarify the complaint process. This level of regulation seems contrary to the original purpose of a CFI -- to report to the court as the investigative arm on issues germane to the court's consideration of assignment of parenting responsibilities in a domestic relations case. The costs associated with expanding regulatory oversight are undefined and the current economic climate limits the availability of resources. I believe that oversight of CFIs can be improved, and this improvement may obviate the need for additional regulation. Let's start by using the court's order of appointment to limit the cost to the party, by appointing CFIs that are trained appropriately with a standard curriculum, and by imposing background checks on people seeking appointment of CFI. Hopefully, this will reduce the number of complaints without resorting to additional regulation. Please consider how best to address complaints about the performance of CFI. I suggest you also consider clarifying that process as part of the amendment of CJD 04-08.

I would also like to build upon the 2010 Charge by continuing to assess the effectiveness of CFIs on a qualitative level. To do so, I need additional information about the appointment and use of CFI in the state. Please report data in following areas:

- How many CFIs are appointed statewide and what percentage of DR cases use CFIs;
- What percent of cases using CFIs settle before hearing on final orders;
- What is the cost to the state of CFIs paid in part or wholly by the state; and
- To the extent you can tell, what is the cost to the parties for a CFI in private pay cases?

As the Family Issues Committee continues to evaluate the role of the CFI and begins to identify strategies for implementing the approved recommendations, the Family Issues Committee should consider the following suggestions:

- Revise the order of appointment to ensure judicial officers clearly define the work to be performed by the CFI and the expected time or expense to be spent in carrying out the court's order. In carrying out this task, please consider at least the following matters:
 - Work with the Office of Child's Representative to establish the same hourly rate for attorneys, mental professionals and other individuals that are state paid (CFIs

- are investigators and should not be practicing law or functioning as mental health professionals nor should they be paid as such when carrying out their duties with state funds);
- Refine the way CFIs are paid by establishing a cap on fees for all CFIs without further order of the court; and
 - Limit the performance of psychological testing to a qualified professional other than the appointed CFI.
- Establish a process that promotes consistency and transparency in the identification of persons who can be appointed by the court as CFIs as well as the process to respond to complaints about the appointment. In carrying out this task, consider the following:
 - Establish protocols that require criminal background checks for all CFIs, identify disqualifying factors and require CFIs to report violations of the law and professional disciplinary actions or lawsuits that are filed against them;
 - Explore how to establish a statewide list and how to work with the local districts to identify and appoint CFIs who are qualified and acceptable to the court;
 - Improve the process by which a complaint is made and considered by the court, the local administrator or the State Court Administrator's Office and clearly state the authority for consideration of a complaint;
 - Examine the role of the Family Court Facilitator in the assignment of CFI, the order of appointment, the facilitation of the CFI's work and the complaint process; and
 - Examine and consider with the Office of Child's Representative the most effective, efficient and economical process for qualification, assignment, training, and reporting by CFIs.

As I have set some very quick deadlines for making changes to the payment issues for CFI, I understand other work will be secondary. However, I would like the Committee's work on CFI to be completed by September 1, 2011 if at all possible. If that deadline is too ambitious, please report back to me on that date as to what remains to be done.

Thank you for engaging in these important tasks.

Sincerely,



Michael L. Bender

MLB

cc: Justice Allison H. Eid
Carol Haller

Executive Summary

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

Final recommendations are summarized as follows:

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

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

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

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

Recommendation #5: Formal Adoption of PC Standards: Establish standards of practice for Parenting Coordinators and adopt standard oversight mechanisms.

Recommendation #6: Modify Chief Justice Directives and Statutes pursuant to Recommendations: The Standing Committee on Family Issues will establish task groups to implement recommendations.

I. BACKGROUND

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

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

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

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

The charge of the two multi-disciplinary subcommittees was to study the questions contained in the Chief Justice's Charge and prepare recommendations for the Executive Committee to consider. Additionally, State Court Administrator's Office (SCAO) staff was tasked with studying and researching the questions contained in the charge and reviewing public complaints provided to the Judicial Department. At the time of the June 24, 2010 Interim Report, only five documented CFI complaints (all mental health CFIs) had been received by the SCAO. However, during a meeting among representatives from SCAO, Department of Regulatory Agencies (DORA) and the Attorney General's Office on May 25, 2010, DORA representatives reported that they dismiss approximately sixty CFI complaints annually for lack of jurisdiction.

In late August, the Interim Report and an online comment form was distributed to the Chief Justice, District Judges, District Administrators, Magistrates, Family Court Facilitators, Office of the Attorney General, DORA, Office of the Child's Representative (OCR), Colorado Bar Association Section Chairs, Association of Family and Conciliation Courts, Colorado Coalition Against Domestic Violence, members of the public, and other complainants. The Interim Report and comment form were posted on the judicial web-site and comments were accepted through September 30, 2010.

In addition to comments received from members of the Committee, subcommittees, and a representative of the Colorado Bar Association Family Law Section, SCAO received 144 comments on the online comment form. Comments totaled 91 pages. General agreement was indicated for most of the recommendations. For example approximately:

- Sixty-one percent (61%) of comments on Recommendation #1 indicated support and agreement with the recommendation. Themes included:
 - Support for the concept of limiting scope of appointment. Some mentioned, for example, Larimer County, that limits investigations to \$1400;
 - Concern that a limit would arbitrarily limit information that would otherwise be helpful to the court;
 - Requiring licensure of all CFIs;
 - Utilizing sliding fees;
 - Limiting the CFI's ability to pose recommendations to the court due to the diversity of qualifications for CFIs;
 - Eliminating the ability of CFIs to conduct psychological testing; and
 - Completely eliminating the CFI role.

- Sixty-nine percent (69 %) of comments on Recommendation #2 indicated support and agreement with the recommendation. Themes included:
 - The need for centralized complaint office or "super board" as opposed to districts and other various agencies investigating due to the importance of uniformity in investigation and potential sanctions;
 - The need for districts to maintain independent investigations;
 - A desire to include a retroactive complaint process;
 - Advocacy for DORA involvement; and
 - The need for parties to be informed of a complaint process upon appointment of a CFI.

- Fifty percent (50%) of comments on Recommendation #3 indicated support and agreement with the recommendation. Themes included:
 - The need to require CFIs to annually submit to background checks as opposed to only initially;
 - Requests to grandfather-in CFIs who already perform the function;
 - Changing the training requirements based on the potential change in scope of the investigation;
 - The need to have more comprehensive requirements for domestic violence training; and

- The need to utilize multi-disciplinary professionals as opposed to one CFI given the diverse qualifications necessary.
- Seventy-five percent (75%) of comments on Recommendation #4 indicated support and agreement with the recommendation. Themes included:
 - Random selection of a CFI from the statewide list;
 - Removing CFIs from a list based on complaints while investigations are conducted; and
 - In addition to removing CFIs for founded complaints also allow removal from statewide list based on recommendations from districts or judicial officers.
- Fourteen percent (14%) of comments on Recommendation #5 indicated support and agreement with the recommendation. Themes included:
 - All the CFI recommendations should be applicable to PCs;
 - That the recommendations are not slated to extend to other court appointed professionals;
 - To focus on CFIs over PCs;
 - Replace PCs with a Post Decrees monitor; and
 - PCs should also have arbitrational or meditational authority.

This overview of comments indicates percentages of agreement. It is important to note that while some of the remaining comments sometime disagree, others only illustrate a personal story or provide an overview of pertinent research studies and thereby they do not indicate agreement or disagreement with specific recommendations.

Comments received were provided to the Standing Committee on Family Issues in their entirety and were reviewed and considered in the preparation of this report. The comments received will continue to be referenced as the recommendations are implemented.

II. Recommendations

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

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

¹ 14-10-116.5, C.R.S. (2009)

² 14-10-127, C.R.S. (2009)

The standard order of appointment, as it is currently crafted, contributes to the issuance of orders that do not always limit or define the scope or cost of the CFI's investigation and creates an avenue for a CFI to obtain orders to conduct psychological testing.³ Additionally, current policy regulating CFIs does not prescribe the type of evaluations and tests to be used to conduct the investigation.⁴ For example, when psychological testing is appropriate, the Court may authorize the mental health CFI to perform the testing but current Chief Justice Directive or statute does not prescribe the particular methodology to be used. The CFI statute allows for any individual with appropriate training, qualifications, and an independent perspective acceptable to the court to fulfill the role of CFI.⁵ The PRE statute requires probation or social services departments or a licensed mental health professional to perform the evaluation. Some members of the Committee are hesitant to recommend a legislative change requiring a CFI to be licensed because it could change the original intent of the CFI statute.

Recognizing that the testing and evaluations, such as psychological testing, that are sometimes authorized by the Court in the course of a CFI investigation may be necessary, requires us to ask if CFIs are actually performing PREs. Setting aside the fact that psychological, domestic violence and parental alienation evaluations and testing may exceed the original intent of the CFI statute, the lack of an objective standard to evaluate the work of a CFI makes it difficult for the Court, parties, and oversight bodies to scrutinize their work and determine if the recommendations they issue are based on validated scientific tools.

Performance of psychological testing also raises the question; is it appropriate for the same CFI that recommended the psychological testing to perform the testing without DORA oversight or licensure requirement?⁶ Current policy only requires that the CFI disclose the underlying data resulting for psychological testing to a qualified psychologist, a requirement that presumes the underlying data can only be examined and interpreted by a qualified psychologist.⁷ When the order of appointment includes psychological testing, SCAO or a district administrator does not have the expertise to evaluate the testing conducted and DORA does not have jurisdiction to investigate a complaint.⁸

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

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

³ JDF 1318, Order Appointing Child and Family Investigator

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

⁵ 14-10-116.5 *supra* note 1 at Section (2).

⁶ 12-43-215(7), C.R.S. (2009)

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

⁸ 12-43-215(7), C.R.S. (2009)

SCAO has set maximum limits for non-attorney CFI appointments as follows:⁹

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

When examining the limits set by the Judicial Department for non-attorney CFIs, the maximum number of hours a non-attorney CFI can bill in a Title 14 or Title 19 action is 50 hours. Research also revealed that the Eighth Judicial District caps the cost of all CFI investigations at \$1,400. In comparison, the results of a review of two counties qualified CFI lists revealed that CFIs charge \$20 - \$350 per hour and request retainers of \$500 - \$10,000. The difference is related to whether the case is a state-paid or a private-pay case.

The adoption of maximum cost and hours limits for private paid CFI appointments combined with steps to define the scope of the work that should be performed by the CFI, will likely eliminate CFI investigations that are indistinguishable from PREs. To support the achievement of these goals specific educational programming for judicial officers should be devised and implemented.

The specific changes to the Chief Justice Directives required for system improvement include:

- Establishing a cap either on number of hours or total cost, without further order;
- Limiting psychological testing to a qualified professional who is not the CFI and upon court order; and
- Establishing decision points to consider prior to an appointment or establishing a requirement for the court to enter a finding prior to an appointment.

Recommendation #2: Centralize and Clarify Complaint Process: Create a central “clearinghouse” for complaints/grievances and a clear definition of which complaints should be addressed to the district administrator, DORA, Office of Attorney Regulation, OCR, and SCAO.

The current system provides for meaningful regulatory oversight of attorney CFIs. Attorneys are overseen by the appointing court,¹⁰ district administrator,¹¹ OCR (state paid cases only),¹² and the Office of Attorney Regulation.¹³ The SCAO also retains the authority to investigate complaints against privately-paid attorney CFIs but does not have an affirmative duty to investigate complaints.¹⁴ The current framework of regulation for attorney CFIs provides several

⁹ CJD 04-05 Section IV (D), Guidelines for Payment

¹⁰ CJD 04-08, Court’s authority, role and responsibilities related to child and family investigators appointed pursuant to 14-10-116.5

¹¹ CJD 04-05 Section IX (A)(B)(C), Complaint Process

¹² CJD 04-06 Section I (B), Authority

¹³ CJD 04-05 *supra* note 10; CJD 04-06 Section V (B), Duties of Attorney

¹⁴ CJD 04-05 *supra* note 10 at Section (C)

checks and balances to ensure that the attorney CFI is held accountable for any violations of the CFI standards or codes of professional conduct.

Conversely, the non-attorney CFIs are overseen solely by the appointing court¹⁵ and the district administrator.¹⁶ SCAO continues to retain its authority to investigate but has no affirmative duty to investigate complaints, nor is there any oversight by other regulatory agencies.¹⁷ In fact, 12-43-215(7), C.R.S. (2009), strips DORA of jurisdiction to investigate mental health professionals who are performing duties and acting within the scope of a court appointment. The current regulatory scheme ensures that mental health professionals functioning as CFIs are unlikely to be held accountable for any violation of a code of professional conduct in the administration of duties they fulfill as a CFI, which may include administering psychological, domestic violence and parental alienation evaluations.

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

The dialogue during a May 25th meeting with DORA indicated a willingness on the part of DORA to support a clarification of the existing statute in a manner that would grant them jurisdiction over CFI complaints without negatively impacting the court process.¹⁸ DORA also indicated that a management board, similar to the Sex Offender Management Board, could be created to oversee CFIs.

Representatives from DORA explained that, in order for a CFI board to exist, the Judicial Department would need to set up a process for approving providers and maintaining a centralized online list of approved providers, reviewing initial complaints, responding to complaints and/or forwarding to the appropriate Board at DORA if there appears to be a violation of the CFI standards established by Judicial or the Colorado Mental Health Practice Act.¹⁹ If a violation were substantiated, the Judicial Department could take action by removing the CFI from the Judicial Department's list in addition to any sanctions that the Board would impose (i.e. removal from the list, suspension from the list, requirement for additional CEUs, limitation of the number of CFI cases, limitation of the type of family situations the CFI may be presented with, etc).

¹⁵ CJD 04-08, *supra* note 9

¹⁶ CJD 04-05 *supra* note 10

¹⁷ CJD 04-05 *supra* note 13

¹⁸ 12-43-215(7), C.R.S. (2009)

¹⁹ 12-43-101, C.R.S (2009) et seq.

DORA could also provide Judicial with the names of approved providers who have received professional disciplinary notices unrelated to their CFI work.

DORA also suggested that Judicial may not need a Board but could, instead, create a committee or some other body to carry out the review. DORA advised that such a process would require dedicated administrative staff (at least some portion of an FTE) and that the task of reviewing complaints can become burdensome.

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

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

Finally, protocols supporting ongoing communication among the district administrators, SCAO, OCR, Office of Attorney Regulation, and DORA will improve the oversight of all CFIs. Since the system of CFIs include attorneys, non-attorneys, state-paid cases and private-paid cases, a CFI is often subject to the jurisdiction of multiple agencies and currently these agencies have not implemented standard procedures for information sharing. As part of standardized protocols, defining the scope of work to be performed in the order of appointment will assist the agency responsible for conducting the evaluation.

The specific changes to the Chief Justice Directives required for system improvement include:

- Establishing a statewide complaint investigation protocol for districts that includes timeframes and outcomes reporting;
- Establishing a standard information form for parties as to their rights and responsibilities, responsibilities of the CFI, and complaint process;
- Establishing centralized complaint form and submission;
- Setting forth contents of CFI file and requirements/timeframes for disclosure of file;
- Standardizing CFI billing protocol and format;
- Standardizing CFI report format;
- Providing graduated sanctions for CFI misconduct or violation of standards; and
- Establishing timeframes for filing CFI reports, objections and/or supplemental information.

The specific changes recommended to the statutes for system improvement include:

- Provide clarification to DORA's authority to review complaints pertaining to the Colorado Mental Health Practice Act.

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

Individuals seeking non-attorney CFI appointments and private paid attorney appointments are required to submit an application to the district administrator for placement on a qualified list.²⁰ Several judicial districts do not maintain a qualified list and do not have a standardized protocol for determining the competence and continued qualifications of CFIs. Since the availability of CFIs varies across the state, it is important that any standardized protocol designed to determine competence is not overly burdensome and does not limit the potential pool of CFIs available to the Court.

To serve as a CFI in Colorado, an individual must demonstrate that they have completed forty hours of child related training and fifteen hours of continuing education in a three year period.²¹ This requirement does not prescribe a standardized training curriculum that must be completed and, therefore, requires the district administrator to examine a diverse range of qualifications before qualifying an applicant. The introduction of a standardized training curriculum for CFIs would allow for consistency in training qualifications and would provide a common standard for determining competence and continued qualifications across judicial districts. The utilization of distance learning would likely need to be implemented to ensure that standard training is accessible to CFIs in rural and remote jurisdictions.

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

The training and qualifications for attorney CFIs applying for placement on the OCR qualified list have some standardization in qualifications due to the fact that the same statewide agency reviews and approves the applications. These attorneys are also subject to the forty hours of child related training and fifteen hours of continuing education in a three year period, but their performance could benefit from a standard training curriculum. Finally, the background check

²⁰ CJD 04-05Section III, Guidelines for Appointment

²¹ CJD 04-08 Standard 6, The CFI Shall Maintain Competence Through Training

issue does not exist with the attorney CFIs because they are licensed and are under an affirmative duty to report any law violations.

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

The specific changes to the Chief Justice Directives required for system improvement include:

- Requiring that SCAO performs criminal background checks for all CFIs except for Colorado licensed attorney-CFIs and identifies associated disqualifying factors;
- Establishing that a CFI has an affirmative duty to report any violations related to the disqualifying factors;
- Requiring that CFI attends SCAO approved/provided training;
- Establishing that SCAO verifies training completion and continuing education requirements; and
- Establishing a CFI mentoring program.

Recommendation #4: Maintain a List of Qualified CFIs: *Create a statewide list of CFIs eligible for appointment, maintain the list at SCAO, and publish the list on the judicial department website.*

Some judicial districts maintain qualified lists of CFIs for non-attorney and private-paid attorney CFI appointments; however, a statewide list of CFIs (non-attorney and private-paid attorneys) is not maintained currently.²² The creation of a statewide qualified list would ensure standard screening of CFIs in every judicial district and would facilitate a removal sanction from the approved CFI list when a complaint is founded. Currently, a CFI may be removed from a local list but this local sanction does not preclude the CFI from receiving appointment in another judicial district because this information is not routinely shared.

In order to create a statewide list of qualified CFIs, SCAO could adopt a model similar to the one that is currently used to award contracts to state paid attorneys (e.g. respondent parents' and MH attorneys) thereby permitting the local jurisdiction to accept CFI applications while simultaneously requiring the CFI to be qualified by SCAO after passing a background check.

A second option to consider would be the model utilized by OCR. OCR maintains a qualified list of state-paid attorney CFIs and they provide that list to judicial districts; only attorneys on their list can be appointed.²³ OCR's qualified list appears to be an effective mechanism for the oversight and quality assurance of the attorney CFIs. A hybrid of these models as described above could easily be adopted by SCAO but may require additional resources.

²² CJD 04-05 *supra* note 18

²³ CJD 04-06 Section II (B), OCR Responsibility and Authority

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

The specific changes to the Chief Justice Directives required for system improvement include:

- Establishing a statewide list of qualified CFIs for districts to appoint CFIs.

Recommendation #5: Formal Adoption of PC Standards: *Establish standards of practice for Parenting Coordinators and adopt standard oversight mechanisms.*

As the Standing Committee discussed the role of the PC, the committee considered expanding the role and authority of the PC. However, the Standing Committee concluded the current statutory scheme was appropriate and declined to recommend any changes to the PC's authority until practice standards and policy addressing qualifications, fees, training and complaint process are implemented.

Therefore, the committee recommends adoption of the standards set forth in the Standing Committee White Paper titled, *Court Appointments of Parenting Coordinators: A Resource for Courts and Professionals*, in addition to the identification and implementation of a statewide policy that addresses such things as qualifications, fees, training and complaint process.

Recommendation #6: Modify Chief Justice Directives consistent with Recommendations: *The Standing Committee on Family Issues will establish task groups to implement recommendations.*

The Standing Committee on Family Issues recommends that the Chief Justice charge the committee to convene task groups to achieve the implementation of the recommendations contained in this report. The subcommittee should be multi-disciplinary and include rural and urban representatives.

III. Conclusion

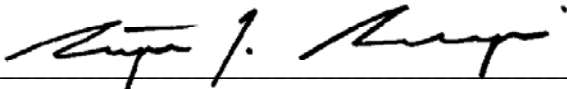
The work of the Family Issues Committee over the past eleven months has fostered dialogue about the quality assurance and oversight of court appointed professionals as a first step in the process of identifying system improvements and potential action steps towards those improvements.

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

Committee members overwhelmingly agree that these gaps and abuses can be addressed through the implementation of changes that more clearly define the work to be performed by the CFI, centralization and clarification of the complaint process, standardization of qualifications, and

maintenance of a statewide list of qualified professionals. Committee dialogue also underscored the importance of communication and coordination among local courts, SCAO, OCR, and DORA in order to provide better quality assurance and oversight of CFIs and PCs.

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

A handwritten signature in black ink, appearing to read "Stephen J. Schapanski". The signature is written in a cursive style with a horizontal line underneath it.

Chief Judge Stephen Schapanski (Committee Chair)