

MEMORANDUM

TO: Joint Budget Committee

FROM: Carolyn Kampman, JBC Staff

SUBJECT: Request for Information Concerning Appointments in Domestic Relations Cases

DATE: March 13, 2014

Staff recommends including the following request for information in the Committee's letter to the Chief Justice of the Colorado Supreme Court:

2 JUDICIAL DEPARTMENT, TRIAL COURTS, COURT COSTS, JURY COSTS, AND COURT-APPOINTED COUNSEL; OFFICE OF THE CHILD'S REPRESENTATIVE, COURT-APPOINTED COUNSEL – THE STATE COURT ADMINISTRATOR'S OFFICE (SCAO) IS REQUESTED TO PROVIDE BY NOVEMBER 1, 2014, A REPORT CONCERNING PRACTICES RELATED TO COURT APPOINTMENTS IN DOMESTIC RELATIONS CASES, INCLUDING THE FOLLOWING INFORMATION: (1) THE NUMBER OF STATE-PAID APPOINTMENTS IN EACH JUDICIAL DISTRICT FOR FY 2013-14 AND THE ASSOCIATED STATE EXPENDITURES FOR ATTORNEYS SERVING AS A CHILD AND FAMILY INVESTIGATOR (CFI), FOR NON-ATTORNEYS SERVING AS A CFI, AND FOR ATTORNEYS SERVING AS A CHILD'S LEGAL REPRESENTATIVE (CLR); (2) A DESCRIPTION OF THE SCAO'S ROLE IN OVERSEEING PRIVATELY-PAID APPOINTMENTS OF CFIS AND CLRS; (3) THE MERITS OF ALLOWING JUDGES THE DISCRETION TO APPOINT AN ATTORNEY OR A NON-ATTORNEY AS A CFI; (4) THE MERITS OF HAVING TWO DIFFERENT JUDICIAL AGENCIES OVERSEEING STATE-PAID APPOINTMENTS IN DOMESTIC RELATIONS CASES; AND (5) THE MERITS OF PAYING ATTORNEYS AND NON-ATTORNEYS WHO SERVE AS CFIS DIFFERENT HOURLY RATES. THE SCAO IS REQUESTED TO PREPARE THE REPORT WITH THE INPUT OF THE OFFICE OF THE CHILD'S REPRESENTATIVE (OCR), AND THE OCR IS REQUESTED TO COOPERATE WITH THE SCAO AS NECESSARY TO PREPARE THE REQUESTED REPORT.

The purpose of this recommendation is to ask the two judicial agencies that currently share responsibility for overseeing state-paid appointments in domestic relations cases involving the allocation of parental responsibilities to work together to evaluate current court and administrative practices to determine if changes are warranted. Staff believes that this issue requires attention for the following reasons:

- State expenditures for CFI and CLR appointments have ranged from \$424,493 to \$891,261 in the last seven years, but the expenditure fluctuations do not correspond to caseload changes.
- The State currently pays significantly different hourly rates for attorney and non-attorney CFIs (\$65 and \$25, respectively), but the average expenditure per case for each type of CFI does not differ significantly.
- Practices in individual judicial districts related to the appointment of a CFI versus a CLR appear to differ significantly.

Staff has discussed this issue and shared the above proposed language with staff from both the SCAO and the OCR, and they are supportive of the recommendation.

Background Information – Domestic Relations Cases

In FY 2012-13, 34,629 domestic relations (DR) cases were filed in state district courts, representing 15 percent of all district court case filings. About three-quarters of DR cases involve dissolutions of marriage or a civil union; the remaining cases involve allocation of parental responsibility, legal separation, administrative support orders, or marriage invalidity. In FY 2012-13, 76 percent of parties in DR cases did not have legal representation (called "*pro se*" parties). Further, unlike other county and district court civil cases, the percent of *pro se* litigants in DR cases was just as high for the parties who filed the case as for the respondent parties.

Background Information – Court Appointments in Domestic Relations Cases

Under current law, the court may make two types of appointments in a DR case that involves the allocation of parental responsibilities:

- The court may appoint an attorney, a mental health professional, or any other individual with appropriate training and qualifications to serve as a child and family investigator (CFI)¹. The role of the CFI is to investigate, report, and make recommendations to the court on issues outlined in the court's order of appointment that affect the best interests of children involved in the DR case. The CFI is required to file a written report with the court and may be called to testify as a witness regarding his/her recommendations.
- The court may appoint an attorney to serve as a child's legal representative (CLR)². The role of the CLR is to serve as the legal representative of the minor or dependent child, representing the best interests of the child with respect to the child's custody, the allocation of parental responsibilities, support for the child, the child's property, parenting time, or any other issue related to the child that is identified by the CLR or the appointing court. The CLR may not be called as a witness. An attorney may not serve as both the child's CLR and as the CFI.

When the court appoints an attorney to act as a CFI or a CLR, and the parties to the case are determined to be indigent, the Office of the Child's Representative (OCR) oversees and pays for appointment. When the court appoints a non-attorney to act as a CFI and the parties to the case are determined to be indigent, the State Court Administrator's Office (SCAO) oversees and pays for the appointment. In addition, the SCAO oversees the eligibility of individuals to be appointed as a CFI when the parties to the case are not determined to be indigent (and thus the costs of the CFI appointment are paid by the parties).

The table on the following page provides three sets of data concerning domestic relations cases for the last seven fiscal years: (1) the number of cases filed; (2) the number of appointments paid

¹ See Section 14-10-116.5, C.R.S.

² See Section 14-10-116, C.R.S.

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and the associated expenditures incurred by the OCR; and (3) the number of appointments paid and the associated expenditures incurred by the SCAO.

Selected Data Concerning Domestic Relations Cases							
Description	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
<u>District Court Data</u>							
Number of DR Cases Filed	32,230	33,025	33,190	35,624	36,009	35,434	34,629
<u>OCR Data (Attorney CFIs and CLR)</u>							
Number of Appointments Paid in DR Cases	624	606	760	690	450	494	631
Expenditures for DR Appointments	\$525,290	\$546,087	\$801,945	\$402,210	\$352,768	\$408,037	\$478,766
Average Cost per Appointment	\$842	\$901	\$1,055	\$583	\$784	\$826	\$759
<u>SCAO Data (Non-attorney CFIs)</u>							
Number of Appointments Paid in DR Cases	n/a	n/a	n/a	n/a	101	87	81
Expenditures for DR Appointments	\$41,031	\$37,969	\$89,316	\$79,161	\$71,725	\$64,012	\$72,737
Average Cost per Appointment	n/a	n/a	n/a	n/a	\$710	\$736	\$898
Totals							
Total Appointments Paid in DR Cases	n/a	n/a	n/a	n/a	551	581	712
Total Expenditures for DR Appointments	\$566,321	\$584,056	\$891,261	\$481,371	\$424,493	\$472,049	\$551,503
Average Cost per Appointment	n/a	n/a	n/a	n/a	\$710	\$736	\$898

The data indicates that the number of appointments and the associated expenditures fluctuate significantly, and do not appear to correspond to the total number of DR cases filed. In addition, nearly 90 percent of the appointments in DR cases involve attorneys and are thus overseen and paid by the OCR. Staff notes that the hourly rates paid by the OCR and the SCAO differ significantly: OCR currently pays \$65 per hour and the SCAO pays \$25 per hour. As a result, staff would have expected to see a lower average cost per appointment paid by the SCAO. However, the data available for the last three fiscal years indicates that the average cost per appointment does not significantly differ as one would expect given the difference in hourly rates.

Finally, staff has seen data that indicates that practices may differ significantly among judicial districts. Specifically, for most judicial districts, most or all of the appointments in DR cases are for a CFI; however, for a few judicial districts, most or all of the appointments in DR cases are for a CLR.