



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Family Law: Child Custody Information Sheets	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve form FL-313-INFO and revise form FL-314-INFO	January 1, 2012
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 6, 2011
Hon. Kimberly J. Nystrom-Geist, Cochair	Contact
Hon. Dean Stout, Cochair	Julia Weber, 415-865-7693 julia.weber@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council approve form FL-313-INFO and revise form FL-314-INFO to reflect changes in Family Code section 3183(a). The amended code states that if a child custody mediator is authorized to submit a recommendation to the court, the process must be referred to as “child custody recommending counseling” and the mediator who makes those recommendations must be referred to as a “child custody recommending counselor,” effective January 1, 2012. The new form would allow the courts to inform the public about the particular child custody services ordered, whether providing confidential mediation or making a recommendation regarding child custody and parenting time (visitation) after mediation.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

- Approve *Child Custody Information Sheet—Recommending Counseling* (form FL-313-INFO) to help courts fulfill the mandate in Family Code section 3183(a) that by January 1, 2012, “all court communications and information regarding the child custody recommending counseling process reflect the change in the name of the process and the name of the providers”; and
- Revise *Child Custody Information Sheet—Child Custody Mediation* (form FL-314-INFO) to reflect changes to Family Code Section 3183(a) and to incorporate recommendations accepted by the Judicial Council from the Elkins Family Law Task Force at its April 2010 meeting regarding references to parents and parenting time.

Copies of the forms are attached at pages 6–9.

Previous Council Action

The Judicial Council adopted form FL-314-INFO in 2008 in response to Assembly Bill 402 (Stats. 2006, ch. 496, effective January 1, 2007)¹, which required the Judicial Council to create an information sheet for parties involved in child custody and visitation matters. The information sheet must inform the parties that they have the right to agree to a custody or visitation arrangement; that if they do not agree, they will be required to participate in child custody mediation; and that if mediation does not result in an agreement, the court will be required to make a determination on the custody issues. It must also provide information regarding obtaining assistance and finding an attorney. The Judicial Council is directed by the bill to take “reasonable steps to ensure that it is distributed statewide and made available to litigants in custody matters.” The form has been distributed throughout the state, made available on the branch website, and translated into Chinese, Korean, Spanish, and Vietnamese.

Rationale for Recommendation

The Family and Juvenile Law Advisory Committee recommends approving FL-313-INFO and revising FL-314-INFO in response to requests from the courts and to reflect legislative changes and recommendations from the Elkins Family Law Task Force. Courts have indicated that they would benefit from assistance with implementing the name change mandated by Family Code section 3183(a) (Assem. Bill 939; Stats. 2010, ch. 352)² to “child custody recommending counseling” and “child custody recommending counselor.” By providing two different optional forms, courts can decide which form best reflects their local practice and procedure. Courts may also choose to use language on the forms to update local information sheets, publications, and signs. By offering statewide optional forms, the Judicial Council would be increasing consistency in how courts communicate about child custody mediation and child custody recommending counseling. FL-314-INFO has been translated into multiple languages and therefore provides increased access to a broad range of litigants coming into California’s family

¹ http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0401-0450/ab_402_bill_20060927_chaptered.html

² http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_939_bill_20100927_chaptered.html

courts. Similarly, FL-313-INFO, if approved, would be translated into Chinese, Korean, Spanish, and Vietnamese as resources permit.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 21, 2011, through June 20, 2011, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Included on the lists were judges, court administrators, attorneys, mediators, family dispute resolution directors, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff.

Of a total of 20 commentators, 5 commentators agreed with the proposal as circulated and 11 agreed with the proposal if modified. Three commentators did not indicate whether they agreed or disagreed but provided comments. One commentator disagreed with the proposal, indicating that the name change to “child custody recommending counseling” would cause confusion. The name change was not proposed by this committee but was mandated by AB 939, and by January 1, 2012, all official information must reflect that change.

Two commentators suggested modifications to the sections on both forms that describe separate sessions, noting that parties are entitled to separate sessions only if domestic violence is an issue. As adopted by the Judicial Council in 2008, FL-314-INFO includes information about the possibility of meeting alone with the mediator in cases involving domestic violence and in other types of cases as well. When a separate session is not mandated by law because of domestic violence, the committee believes mediators and child custody recommending counselors should retain the discretion to meet with parties separately. The committee does not recommend changes to the section because it is important that in cases involving mental health or substance abuse concerns, for example, parties know they may let the mediator or child custody recommending counselor know of their interest in meeting separately.

Several commentators noted the importance of more consistently referring to visitation as “parenting time” on both forms, as recommended by the Elkins Family Law Task Force in its recommendations. The committee proposes making those changes on both forms.

One commentator requested that “mediation” and “mediator” be removed completely from FL-313-INFO, given the name change. The committee, however, recommends that references be provided on the form to both “mediation” and “child custody recommending counseling,” where appropriate, because the statutory scheme supporting mandatory child custody mediation still uses “mediation” to refer to this process. Litigants may be confused if the connection between child custody recommending counseling and mandatory mediation is not noted.

One commentator wanted a specific time frame identified for the child custody recommending counselor to provide the written recommendation to the parties and the court. Currently, Family Code section 3183 requires that it be provided “prior to the hearing.” The committee does not

currently recommend setting a more specific time than the statute indicates on the form or in rules of court, given the various practices existing throughout the state.

One commentator requested that the legal definitions of “custody” be used on the forms. The committee does not recommend making those changes, given the interest in making these forms understandable in plain language and the fact that FL-314-INFO has been in circulation since 2008 with the current language.

One commentator noted the importance of including the word “written” before “recommendation” where appropriate. The committee recommends making that change in order to provide the public with accurate information about the format the child custody recommending counselor is required to use.

Other commentators suggested specific changes that reflect some local practices and not others, such as contacting family court services about setting a hearing or identifying mediators as mental health practitioners. The committee does not recommend making these changes, given that not all mediators are mental health practitioners and not all family court services offices participate in setting hearings.

Several commentators made suggestions for reworking sections to improve clarity. The committee recommends making those changes to improve the section on both forms regarding referrals so as not to suggest that nonattorney services would be able to provide legal advice and to use a more consistent voice throughout the documents. These proposed changes are noted on the comment chart. The committee also proposes clarifying changes to the information provided on legal custody and physical custody indicating that “legal custody” addresses how parents make major decisions and “physical custody” refers to where children live.

As an alternative, FL-314-INFO could continue being used as is. However, the statutory requirement that the terms “child custody recommending counseling” and “child custody recommending counselor” be used would mean that courts providing those services could no longer provide this optional form to litigants. Therefore, the committee proposes that the existing form be updated and that a new form be developed to reflect the statutory changes. The legislative intent behind amending Family Code section 3183 was to provide the public with information about the processes and procedures being used in different courts. The proposal is designed to make it easier for courts to inform the public and comply with the legislative mandate by providing an optional form for courts to distribute and for the public to access through the self-help website.

Implementation Requirements, Costs, and Operational Impacts

Both forms are optional and can be used as proposed or specific language could be adapted for use by individual courts on local forms and publications. Since the forms are optional, the only costs associated with their use would be for duplication. The committee anticipates that the impact on the courts would be to make the statutorily required name change process easier and less costly by providing an optional form explaining the process.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed approval of form FL-313-INFO and revision of form FL-314-INFO support the policies underlying Goal I, Access, Fairness, and Diversity, because they help court users understand child custody mediation and child custody recommending counseling procedures. The information sheets also improve access by providing information about the change in nomenclature and different approaches in different courts.

Attachments

1. Forms FL-313-INFO and FL-314-INFO, at pages 6–9
2. Chart of Comments, at pages 10–28

Parents who come to court about child custody and parenting time (visitation) face decisions about parenting plans for their children. This information sheet provides general information about child custody and parenting time matters, how to get help resolving a custody dispute or making a parenting plan, where to find an attorney, and where to find other resources.

What is a parenting plan?

A parenting plan describes how the parents will divide their responsibilities for taking care of their child.

The plan may include a general or specific schedule of days, times, weekends, holidays, vacations, transportation, pick-up/drop-off, limits on travel, counseling, and treatment services, and other details.

What are legal and physical custody?

A parenting plan usually includes:

- **Legal custody:** how parents make major decisions about the child's health, education, and welfare;
- **Physical custody:** where the child lives; and
- **Parenting time, time-share, or visitation:** when the child spends time with each parent.

Legal custody and *physical custody* may each be specified as *joint* (both parents have certain responsibilities) or *sole* (one parent has the responsibility alone).

Can we make our own parenting plan?

Yes. You have a right to make a parenting plan agreement on your own. This agreement may be called a *stipulation*, *time-share plan*, or *parenting plan*.

If both parents can agree on a parenting plan, the judge will probably approve it. The agreement becomes a court order after it is signed by both parents and the judge, and filed with the court.

What if there is domestic violence or a protective order?

If there is domestic violence or a protective order, talk with an attorney, counselor, or child custody recommending counselor before making a parenting plan.

For domestic violence help, call the National Domestic Violence Hotline at 1-800-799-7233 (TDD:1-800-787-3224) or call 211 if available in your area.

What if we don't have a parenting plan?

If you can't reach an agreement, the court will refer you to family court services (FCS) for child custody mediation also called "child custody recommending counseling." At the appointment, you will meet with an FCS professional also called a "child custody recommending counselor." He or she will help you and the other parent reach an agreement about a parenting plan.

What is child custody recommending counseling with family court services?

Family court services (FCS) provides child custody recommending counseling (sometimes referred to as child custody mediation) to help parents resolve disagreements about the care of their child. The child custody recommending counselor will meet with you and the other parent to try to help you both make a parenting plan. There may be an orientation provided that offers additional information about the process.

If you are unable to reach an agreement after meeting with family court services, the child custody recommending counselor will make a written recommendation to the court about a parenting plan. You and the other parent and the attorneys (if any) will get a copy of the recommendation before the court hearing.

If you are concerned about meeting with the other parent, or there is a domestic violence issue or a protective order involving the other parent, you may

ask to meet alone with the child custody recommending counselor without the other parent. You may also request to have a support person with you. The support person may not speak for you.

Do we have to agree to a parenting plan when we meet?

No. You do not have to come to an agreement. When the parents can't agree, the judge will decide. For legal advice, contact an attorney. For other information, ask the self-help center or family court services about how the process works in your court.

Are there other ways to resolve our dispute?

Yes. You may try other alternative dispute resolution (ADR) options, including:

- 1. Meet and Confer:** Parents and their attorneys (if any) may meet at any time and as often as necessary to work out a parenting plan without a court hearing. If there is a protective order limiting the contact between the parents, then the “meet and confer” can be through attorneys or a mediator in separate sessions.
- 2. Settlement Conference:** In some courts, parents may meet with a judge, neutral evaluators, or family law attorneys not involved in the case to discuss settlement. Check with the local court to find out if this is an option. If there is a protective order, the settlement discussion can be through attorneys or a mediator in separate sessions.
- 3. Private Mediation:** Parents may hire a private mediator to help them resolve their dispute.
- 4. Collaborative Law Process:** Each parent hires a lawyer and agrees to resolve the dispute without going to court. The parents may also hire other experts.

Court Hearing

When the parents cannot agree to a parenting plan on their own, in child custody recommending

counseling, or in any other ADR process, the judge will decide.

If there is domestic violence or a protective order, a parent may be able to bring a support person with him or her to the court hearing, but the support person may not speak for that person.

Where can I get help?

This information sheet gives only basic information on the child custody process and is not legal advice. If you want legal advice, ask an attorney for assistance. For other information, you may want to:

1. Contact family court services.
2. Contact the family law facilitator or self-help center for information, local rules and court forms, and referrals to local legal services providers.
3. Find an attorney through your local bar association, the State Bar of California at <http://calbar.ca.gov>, or the Lawyer Referral Service at 1-866-442-2529.
4. Hire a private mediator for help with your parenting agreement. A mediator may be an attorney or counselor. Contact your local bar association, court ADR program, or family court services for a referral to local resources.
5. Find information on the Online Self-Help Center website at www.courts.ca.gov/selfhelp.
6. For free and low-cost legal help (if you qualify), go to www.lawhelpcalifornia.org.
7. Find information at your local law library or ask at your public library.
8. Ask for a court hearing and let the judge decide what is best for your child.



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Response (form MC-410). (Civil Code, § 54.8.)

FL-314-INFO Child Custody Information Sheet—Child Custody Mediation

Parents who come to court about child custody and parenting time (visitation) face decisions about parenting plans for their children. This information sheet provides general information about child custody and parenting time matters, how to get help resolving a custody dispute or making a parenting plan, where to find an attorney, and where to find other resources.

What is a parenting plan?

A parenting plan describes how the parents will divide their responsibilities for taking care of their child.

The plan may include a general or specific schedule of days, times, weekends, holidays, vacations, transportation, pick-up/drop-off, limits on travel, counseling and treatment services, and other details.

What are legal and physical custody?

A parenting plan usually includes:

- **Legal custody:** how parents make major decisions about the child's health, education, and welfare;
- **Physical custody:** where the child lives; and
- **Parenting time, time-share, or visitation:** when the child spends time with each parent.

Legal custody and *physical custody* may each be specified as *joint* (both parents have certain responsibilities) or *sole* (one parent has the responsibility alone).

Can we make our own parenting plan?

Yes. You have a right to make a parenting plan agreement on your own. This agreement may be called a *stipulation*, *time-share plan*, or *parenting plan*.

If both parents can agree on a parenting plan, the judge will probably approve it. The agreement becomes a court order after it is signed by both parents and the judge, and filed with the court.

What if there is domestic violence or a protective order?

If there is domestic violence or a protective order, talk with an attorney, counselor, or mediator before making a parenting plan.

For domestic violence help, call the National Domestic Violence Hotline at 1-800-799-7233 (TDD:1-800-787-3224) or call 211 if available in your area.

What if we don't have a parenting plan?

If you can't reach an agreement, the court will refer you to mediation with family court services (FCS) to try to work out a parenting plan.

What is mediation with family court services?

Family court services (FCS) provides mediation to help parents resolve disagreements about the care of their child. The mediator will meet with you and the other parent to try to help you both make a parenting plan. An orientation may be provided that offers additional information about the process.

If you are concerned about meeting with the other parent in mediation, or there is a domestic violence issue or a protective order involving the other parent, you may ask to meet alone with the mediator without the other parent. You may also request to have a support person with you at mediation. The support person may not speak for you.

Do we have to agree to a parenting plan in mediation?

No. You do not have to come to an agreement in mediation. When the parents can't agree, the judge will decide. For legal advice, contact an attorney. For other information, ask the self-help center or family court services about how the process works in your court.



FL-314-INFO Child Custody Information Sheet—Child Custody Mediation

Are there other ways to resolve our dispute?

Yes. You may try other alternative dispute resolution (ADR) options, including:

- 1. Meet and Confer:** Parents and their attorneys (if any) may meet at any time and as often as necessary to work out a parenting plan without a court hearing. If there is a protective order limiting the contact between the parents, then the “meet and confer” can be through attorneys or a mediator in separate sessions.
- 2. Settlement Conference:** In some courts, parents may meet with a judge, neutral evaluators, or family law attorneys not involved in the case to discuss settlement. Check with the local court to find out if this is an option. If there is a protective order, the settlement discussion can be through attorneys or a mediator in separate sessions.
- 3. Private Mediation:** Parents may hire a private mediator to help them resolve their dispute.
- 4. Collaborative Law Process:** Each parent hires a lawyer and agrees to resolve the dispute without going to court. The parents may also hire other experts.

Court Hearing

When the parents cannot agree to a parenting plan on their own, in mediation, or in any other ADR process, the judge will decide.

If there is domestic violence or a protective order, a parent may be able to bring a support person with him or her to the court hearing, but the support person may not speak for that person.

Where can I get help?

This information sheet gives only basic information on the child custody process and is not legal advice. If you want legal advice, ask an attorney for assistance. For other information, you may want to:

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2. Contact the family law facilitator or self-help center for information, local rules and court forms, and referrals to local legal services providers.
3. Find an attorney through your local bar association, the State Bar of California at <http://calbar.ca.gov>, or the Lawyer Referral Service at 1-866-442-2529.
4. Hire a private mediator for help with your parenting agreement. A mediator may be an attorney or counselor. Contact your local bar association, court ADR program, or family court services for a referral to local resources.
5. Find information on the Online Self-Help Center website at www.courts.ca.gov/selfhelp.
6. For free and low-cost legal help (if you qualify), go to www.lawhelpcalifornia.org.
7. Find information at your local law library or ask at your public library.
8. Ask for a court hearing and let the judge decide what is best for your child.



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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Association of Family and Conciliation Courts (AFCC) - CA Diane Wasznicky President, AFCC-CA Chapter Thousand Oaks	AM	<p>Rule 39: This Rule primarily deals with the information sheet on custody mediation given to parties. We SUPPORT IF AMENDED as follows:</p> <p>FL313, Page 1 – First sentence in last paragraph is incorrect regarding law and misleading. Parents are entitled to separate mediation if there is DV but not otherwise. The second line should be revised as: “parent because there is” or “parent due to domestic violence.”</p> <p>FL313, Page 2 – Partial paragraph at top left, again is incorrect as to law. Next to the last sentence, add “if there is domestic violence.”</p> <p>Page 2 – “Do We Have to Agree...” – Parties should not be seeking advice on how the legal</p>	<p>This section indicates that litigants may ask to meet alone with a mediator or the child custody recommending counselor. While those with a history of domestic violence or a restraining order have a legal right to meet separately with the mediator, anyone may ask to meet separately. Additionally, under California Rules of Court, rule 5.215(f)(3), in domestic violence cases in which neither party has requested separate sessions, mediators or custody recommending counselors are required to confer with the parties separately and privately to determine whether joint or separate sessions are appropriate. Parties may or may not identify themselves as part of a “domestic violence case” but in many instances, it may still be appropriate for the professional to meet separately at least initially. The form is designed to let parties and the public know separate sessions may be an option in a variety of situations.</p> <p>Mediators and child custody recommending counselors may and do meet with parties separately for reasons other than domestic violence, for example, when there are safety, mental health, or substance abuse concerns.</p> <p>The committee proposes changing the language in</p>

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	Commentator	Position	Comment	Committee Response
			<p>process works from Family Court Services. It should refer to the Self Help Center, not FCS. Page 2 – “Where Can I Get Help...” – #1 should be changed to the Self Help Center. FCS should NOT be giving legal advice or even information on where to get it.</p>	<p>section to indicate that for legal advice, contact an attorney and for additional information you may also...and include information on self-help centers as suggested.</p>
2.	<p>Lisa Auer Attorney San Francisco</p>	AM	<p>The new form FL-313-INFO should discuss only child custody recommending counseling and counselors and references to mediations and mediators should be removed completely to avoid confusion. If courts offer both options, both form FL-313-INFO and the revised FL-314 INFO can be provided to parents.</p> <p>Text in FL-313-INFO is repetitive now. Paragraph under “What if we don't have a parenting plan?” should be revised to make it simpler and parallel to the same section in FL-314-INFO as follows:</p> <p>What if we don't have a parenting plan? If you can't reach an agreement on your own, the court will refer you to family court services</p>	<p>The committee recommends references be provided on FL-313-INFO to both mediation and child custody recommending counseling because the statutes regarding mandatory mediation for child custody still use “mediation” to refer to the mandatory process to which litigants are referred. Litigants may be confused if the connection between child custody recommending counseling and mandatory mediation are not noted.</p> <p>The committee proposes removing “on your own” so as to make the sections on each of the two forms more similar. However, on FL-313-INFO, information about the new name for the process (child custody recommending counseling) as well as the new name for the professional (child custody recommending counselor) needs to be provided, unlike FL-314-INFO.</p> <p>The committee recommends references be provided on FL-313-INFO to both mediation and child custody recommending counseling because</p>

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	Commentator	Position	Comment	Committee Response
			(FCS) for child custody recommending counseling to try to work out a parenting plan. In the next section, delete “mediation or” in the heading and the third paragraph and delete “mediation and” in the first paragraph.	the statutes regarding mandatory mediation for child custody still use “mediation” to refer to the mandatory process to which litigants are referred. Litigants may be confused if the connection between child custody recommending counseling and mandatory mediation are not noted.
3.	Bay Area Legal Aid, Central Office, Santa Clara County Office Nicole Ford, Staff Attorney San Jose	NI	<p>Like many of the changes, this new proposal simply changes the name of the mediators, but not their role. I still have concerns about the recommendations being adopted outright but I suppose it’s up to each jurisdiction to set its own rules about being a recommending county or not (I think that’s a whole other discussion for the AOC to deal with for uniformity in the courts).</p> <p>The only criticism I would have is that it says now recommendations must be given to the parties in advance of the hearing before any recommendations may be adopted. It doesn’t say how far in advance the recommendations must be given. I worry that if they’re not given the recommendations until say, the day of the hearing, that’s not sufficient time to read, consider and object to recommendations. Especially if they’re not English speakers or literate.</p> <p>I would like to see a set timeline (like 10 court days prior to hearing) for recommendations to be given to the parties. Further, what are the consequences if the recommendations are not handed out in sufficient time for review? There should be some built in rule that if the</p>	<p>The proposal seeks to provide an optional form for courts to offer litigants with information about the child custody mediation or recommending counseling process. Family Code section 3183(a) was amended effective January 1, 2011, providing both for the name change and the requirement that recommendations be in writing and provided to the parties prior to the hearing. The legislature did not define how far in advance the recommendation must be provided and those timeframes are different throughout the state depending on local court procedures.</p>

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			<p>recommendations are given in less than X time, there will be an automatic continuance.</p> <p>I realize this may clog the courts; but people are entitled to sufficient time to review (or get assistance to review) the recommendations especially as it concerns their children.</p>	
4.	Christine N. Donovan, CFLS Senior Staff Attorney Superior Court of Solano County Fairfield	A	No narrative response.	No response required.
5.	Harriett Buhai Center Erin Dabbs Senior Staff Attorney Los Angeles	AM	<p>Agree with proposed changes with slight modification.</p> <p>It is unclear why the word “parent” is underlined on the FL-314 INFO, but not on the FL-313-INFO.</p> <p>As some counties are recommending and some are not, perhaps the form should give some guidance to litigants on how they can find out whether they are in a recommending county. Otherwise, litigants might take the incorrect Info Sheet and become very confused about what to expect from conciliation court.</p>	<p>FL-314 INFO is an existing form with proposed amendments shown with underlining during circulation for public comment only; FL 313-INFO is a proposed new form so no underlining was provided.</p> <p>The committee proposes that courts make the appropriate form available depending on what type of service they provide. References are made to asking family court about the process. The committee also proposes that as information becomes available on which form each court is using, that information be made available on the judicial branch website and in local information.</p>
6.	Los Angeles Center For Law And Justice (LACLJ) Suma Mathai Supervising Family Law Attorney Los Angeles	AM	<p>Form FL-313-INFO</p> <p>Under the section entitled “What is mediation or child custody recommending counseling with family court services?” there should be a special notation, as follows:</p>	<p>FL-313-INFO is designed to be provided in those courts that provide recommending child custody counseling. The committee proposes that as information becomes available on which form each court is using, that information be made</p>

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			<p>“Not every county in California is a recommending county that provides this service. Please check with your local Family Court Services office or self-help center to determine if your case is in a recommending county.”</p>	<p>available on the judicial branch website.</p>
7.	<p>Neighborhood Legal Services of Los Angeles County Carmen Goldberg, Esq. Pacoima</p>	AM	<p>FORM FL-314 INFO Child Custody Information Sheet-Child Custody Mediation: We like the proposed form however we do have one change and one addition that will hopefully help complete the information of this form. We propose that another paragraph is added in regard to court interpreters. We ask that the form include a statement making it clear that a court interpreter will be available at the “Child custody recommending counseling “ and at the hearing to make sure the litigant understands exactly what they are signing.</p>	<p>Access to interpreters varies by county and, under the current budget situation, providing accurate information statewide on this form would be difficult and could result in inaccurate information being communicated regarding the availability of interpreters in child custody recommending counseling or mediation. California Rules of Court, rule 5.215 provides guidance for child custody mediation and child custody recommending counseling services regarding the accessibility of services as follows: “Whenever possible, Family Court Services programs should be conducted in the languages of all participants, including those who are deaf. When the participants use only a language other than spoken English and the Family Court Services staff person does not speak their language, an interpreter-certified whenever possible-should be assigned to interpret at the session. A minor child of the parties must not be used as an interpreter. An adult family member may act as an interpreter only when appropriate interpreters are not available. When a family member is acting as an interpreter, Family Court Services staff should attempt to establish, away from the presence of the potential interpreter and the other party, whether the person alleging domestic violence is comfortable with having that family member interpret for the parties.”</p>

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			We also suggest that the committee change the following names “child custody recommending counseling” and “child custody recommending counselor.” We feel that these names are too long and can be confusing. Perhaps referring to the mediation services as “Custody Counseling” and to the Mediator as “Custody Counselor” would be sufficient as opposed to using the longer version.	The name change was implemented by AB 939 which amended Family Code section 3183(a) and requires the use of the terms “child custody recommending counseling” and “child custody recommending counselor.”
8.	Orange County Bar Association John Hueston, President Newport Beach	A	No narrative comment.	No response required.
9.	Sonoma County Bar Association Joyce MacLaury Family Law Facilitator, Sonoma Court Santa Rosa	AM	FLF-313 INFO: Page 1, left hand side, 4th paragraph. The description of physical custody appears to be a definition but it is inconsistent with the legal definitions as contained in the Family Code Sections 3003 and 3007. Physical Custody should be not described simply in terms of residency. Either remove the bold "legal custody" and “physical custody” so it doesn't appear to be a definition, or change the Physical Custody language to include the definition as follows: <p style="margin-left: 40px;">“A parenting plan usually includes: Legal Custody: Joint - either parent makes the major decisions about the child’s health, education and welfare, or Sole - only one parent may decide. Physical Custody: Joint - Whether the child shall have frequent and</p>	FL-314-INFO has included information about legal and physical custody since its adoption and that information is being proposed to be included on FL-313-INFO. The information is not designed to cover the statutory definitions in their entirety but to provide general information about the terms. The committee is proposing some changes to the language, however, to further clarify the definitions of legal and physical custody as used on the forms.

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			<p>continuing contact with both parents; or Sole to One Parent - that a child shall reside with and be under the supervision of one parent and have visitation with the other parent.</p> <p style="padding-left: 40px;">Time Share or Visitation: When the child spends time with each parent.</p> <p>FL-313 INFO: Page 1, right hand side, second paragraph from the bottom: Insert the word “written” in the first sentence, so as to comply with the statute that will require written recommendations be given to parties.</p> <p style="padding-left: 40px;">“If you are unable to reach an agreement after meeting with family court services, the child custody recommending counselor will make a written recommendation to the court about a parenting plan.”</p>	<p>The committee agrees and proposes to add “written” before “recommendation to the court about a parenting plan” in this section.</p>
10.	<p>The State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) Office of Legal Services Sharon Ngim Program Developer and Staff Liaison, San Francisco</p> <p>[This position is only that of the State Bar of California’s Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of</p>	A	<p>To assess this recommendation, it is important to understand whether your county is a recommending county or non-recommending county for custody mediation purposes. If a recommending county, the name of the process will be changed to “child custody recommending counseling” and the mediator will now be referred to as a “child custody recommending counselor”. This is important for the parties to understand and also the rule makes clear that all recommendations made must be discussed and shown to the parties and their lawyers before the court hearing. The judge is also instructed to specifically ask the parties and counsel if they have seen the recommendation before proceeding. This is a</p>	No response required.

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	California. Committee activities relating to this position are funded from voluntary sources.]		<p>good process and protection of due process. FL-313 explains this process and provides information to the litigants about the process.</p> <p>If the county is a non-recommending county, the mediation is not re-named and remains Child Custody Mediation. FORM FL-314 provides information about the process to litigants and also refers litigants to other sources for information if questions persist.</p>	
11.	Superior Court of Contra Costa Kathleen Shambaugh Business Operations Administrator Martinez	NI	<p>Please consider adding the text in bold below to the second paragraph under “What is a parenting plan?” on both FL-313 and FL-314 forms:</p> <p>The plan may include a general or specific schedule of days, times, weekends, holidays, vacations, transportation, pick-up/drop-off, limits on travel, counseling and treatment services, and other details.</p>	The committee proposes making this change to the forms.
12.	Superior Court of Monterey County Minnie Monarque, Director Civil & Family Law Division	AM	<p>Form FL-314, on page 1, the form states under “What are legal and physical custody?” that a “parenting plan <i>usually</i> includes:...” It is proposed that the word “<i>usually</i>” be removed. A parenting plan includes orders for custody, whether legal or physical, whether stipulated by the parties or decreed by the court.</p> <p>“Additionally, with regard to Form FL-313, on page 1 of the form, second column, there is concern regarding stating that “If you are unable to reach an agreement after meeting with family</p>	<p>The committee recommends retaining the language currently on the form and including it on the new proposed form given that custody orders vary and some may not include everything listed.</p> <p>Family Code section 3183 allows for recommendations on child custody and visitation (parenting time) and recommendations regarding investigations and other services for the parties.</p>

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			<p>court services, the child custody recommending counselor will make a recommendation to the court about a parenting plan.” This language implies that the global parenting plan would be recommended to the court, when, as a general matter the child custody recommending counselor more accurately makes recommendations regarding issues presented by the parties during the course of their meeting rather than recommending a parenting plan entirely. It is thought that this language may be confusing to self represented parties in particular. It is proposed that this language be modified to read “If you are unable to reach an agreement after meeting with family court services, the child custody recommending counselor will make a recommendation to the court based on the information and circumstances before then available about the issues you have presented and cannot agree on.”</p>	
13.	<p>Superior Court of Orange County Family Law Operations Santa Ana</p>	AM	<p>“Visitation” should be replaced with “Parenting Time” throughout forms FL-314-INFO</p>	<p>The committee proposes making this change.</p>
14.	<p>Superior Court of Riverside County- Staff Michael Capelli, General Counsel Riverside</p>	AM	<p><i>Recommending changes to FL-313-INFO and FL-314-INFO. See attached.pdf Form FL-313, page 1 (the commentator provided comments as shown below):</i></p>	

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			<p>What if we don't have a parenting plan? If you can't reach an agreement on your own, the court will refer you to family court services (FCS) for child custody mediation also called "child custody recommending counseling." At the appointment, you will meet with an FCS professional also called a "child custody recommending counselor." He or she will help you and the other parent reach an agreement about a parenting plan. ^{Try to work out}</p> <p>Title → Domestic Violence. If you are concerned about meeting with the other parent, or there is domestic violence or a protective order involving the other parent, you may ask to meet</p> <p><i>Form FL-313, page 2:</i> alone ^{separately} with the mediator or the child custody recommending counselor without the other parent. You may also have a support person with you. The support person may not speak for you.</p> <p>2. Settlement Conference: In some courts, parents may meet with a judge, neutral evaluator, ^{mediator} or family law lawyers not involved in your case to discuss settlement. Check with your local court to find out if this is an option. If there is a protective order, the settlement discussion can be through lawyers or a mediator in separate sessions.</p>	<p>The committee proposes keeping the language as it was circulated but will consider the suggestions for future changes.</p> <p>The best practice in mediation includes providing opportunities for people to meet separately with the mediator or child custody recommending counselor in a variety of situations, not limited to domestic violence cases. Given that not all those who have concerns about safety or meeting jointly will identify with the term "domestic violence," and that the language has been in use since 2008 and was not proposed for changes in this cycle, the committee does not suggest making these changes.</p> <p>The reference to evaluator has been in place since 2008 and changing it to mediator may cause some confusion.</p>

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			<p>Where can I get help?</p> <p>This information sheet gives only basic information on the child custody process and is not legal advice. If you want legal advice, ask a lawyer for assistance. You may also:</p> <p>1. Contact family court services.</p> <p>1. Contact the family law facilitator or self-help center for information, court forms, and referrals to local legal services providers.</p> <p>2. Find a lawyer through your local bar association, the State Bar of California at http://calbar.ca.gov, or the Lawyer Referral Service at 1-866-442-2529 or 415-538-2250.</p> <p>3. Hire a private mediator for help with your parenting agreement. A mediator may be a lawyer or counselor. Contact your local bar association, court ADR program, or family court services for a referral to local resources.</p> <p>4. Find information on the Online Self-Help Center web site at www.courts.ca.gov/selfhelp.</p> <p>5. For free and low-cost legal help (if you qualify), go to www.lawhelpcalifornia.org.</p> <p>6. Find information at your local law library or ask at your public library.</p> <p>7. Ask for a court hearing and let the judge decide what is best for your child. Contact Family Court Services about setting a hearing to address child custody & visitation.</p> <p><i>Form FL-314, pages 1-2: *Eliminate underlining under parent, parents,</i></p>	<p>The committee proposes to change this section to indicate as follows: if you want legal advice, ask a lawyer for assistance. For other information, you may want to:</p> <p>The committee proposes retaining the list with family court services listed first.</p> <p>Not every court has family court services involved with setting hearings.</p> <p>Underlining is provided to identify changes proposed to existing form. Will not appear in</p>

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			<i>and FCS.</i>	final version.
15.	Superior Court of Sacramento County Robert Turner, ASO II, Finance Division Sacramento	NI	<p>On proposed form FL-313-INFO, pg 1, insert “or mediator” in the sentence that reads, “the child custody recommending counselor will meet with you and the other parent...”Some counties do not have child custody recommending counselors.</p> <p>This whole section is poorly written and confusing. It should reflect that some courts have only mediators who do not recommend, while other courts have CCRC's who do.</p> <p>FL-313-INFO, page 1: Family Court Services (FCS) should be capitalized throughout.</p> <p>Last paragraph: No need to reference DV if it’s called out in the box above.</p> <p>FL-313-INFO, page 2: Family Court Services (FCS) should be capitalized throughout.</p> <p>Column 2, paragraph 2: No need to reference DV if it’s noted in the box on the first page.</p> <p>FL-314-INFO, page 1: Family Court Services (FCS) should be capitalized throughout.</p> <p>Column 2, DV text box:</p>	<p>FL-313-INFO is only for courts that provide child custody recommending counseling; FL-314-INFO is for courts providing mediation.</p> <p>FL-314-INFO is an existing form and FL-313-INFO is proposed as an additional form to provide two alternative options depending on which service a court provides.</p> <p>When written out, “family court services” should be lower case.</p> <p>FL-314-INFO has been in circulation as an approved Judicial Council form with domestic violence noted both in the text box to highlight important safety-related information and to provide information on the option of separate sessions and support persons.</p> <p>The best practice includes providing specific</p>

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			<p>Why set DV apart and yet still make reference to DV examples throughout form. See paragraph below and second page. Either remove this box or remove the references below.</p> <p>Column 2, paragraph after DV text box: Can't - should not use contractions. Change to cannot.</p> <p>Column 2, last paragraph: Can't - should not use contractions. Change to cannot.</p> <p>FL-314-INFO, page 2: Lawyer Referral Service at 1-866-442-2529 Remove 415 number and just list toll free.</p>	<p>information about relevant resources and the process for those concerned about safety and domestic violence in multiple locations to increase the likelihood that good information will be communicated.</p> <p>Contractions have previously been included and approved by the council.</p> <p>The committee proposes removing the 415 number.</p>
16.	Superior Court of San Diego County Mike Roddy Court Executive Officer San Diego	A	No additional comments.	No response needed.
17.	Superior Court of Santa Clara County Superior Court Judges: Hon. Mary Ann Grilli Hon. Mary E. Arand Hon. L. Michael Clark Hon. Neal Cabrinha San Jose	AM	<p>FL314 INFO, CHILD CUSTODY INFORMATION SHEETS This form and FL-313 INFO for recommending counseling counties should prominently state that FCS staff are experienced mental health professionals who assist parents in reaching agreements for the best interest of their children.</p> <p>In each form, it would be helpful to tell parents that joint custody is not defined in terms of time spent with each parent, and there is no reference</p>	<p>Not all family court services staff are mental health professionals; some are attorneys.</p> <p>The form has been designed to provide limited information and the definitions have been updated to provide some additional clarity.</p>

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			<p>in the definition to the percentage of time children spent with each parent. Joint legal custody does not require that the parents agree on each decision.</p> <p>Family Court Services should be capitalized at the beginning of each word.</p> <p>Mediation should be clearly defined in FL-314 Info. An example: “mediation is a confidential process where Family Court Services helps parents to reach agreements about parenting plans.” For confidential mediation counties, it is important to reference that mediation is confidential.</p> <p>The forms should also refer the parties to the local rules for more details on the custody process in the county where the case is pending.</p>	<p>When spelled out, “family court services” should be in lower case.</p> <p>Family court services is required to provide written information to parties on the limitation on confidentiality. The committee believes this is best left to the local courts.</p> <p>The committee recommends noting local rules in #2 on page 2.</p>
18.	<p>Superior Court of Shasta County Stacy Larson Family Law Facilitator Redding</p>	AM	<p>I agree that in recommending courts, all recommendations made by the mediator/child custody recommending counselor should be in writing and provided to the litigants/parties and/or their attorneys prior to the hearing. To ensure this is done, I agree that the Court should inquire whether the written recommendations have been provided prior to the hearing. However, although I realize the horse has already left the barn on this issue, I do not agree with the nomenclature change from “mediator” to “child custody recommending counselor.” This change appears to be one of form rather than substance. I believe that absent some</p>	<p>The change in terminology was a statutory change made through amendments to Family Code section 3183(a). These forms are being proposed to provide ways for courts to offer information to parties given the change in the name and related requirements.</p>

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			<p>substantive reason for this change, the change of name will needlessly create confusion for the litigants and other persons involved in this process. The existing terms of “mediator” and “mediation” have been in existence long enough that they are commonly understood by the litigants and other persons involved in the process. These are terms that are used in relevant statutes (such as FC § 3160 et seq.) and in the existing process. The proposed term “child custody recommending counselor” and “child custody recommending counseling” are cumbersome and unwieldy. Courts individually determine whether to accept recommendations from their mediators. Since custody issues remain with a single court until transferred, litigants quickly become familiar with their courts’ practices and understand the mediation process in their individual counties, recommending or not. Their understanding of the mediation process is based upon the practices in their counties, recommending or not.</p> <ul style="list-style-type: none"> • Pertaining to FL-313-INFO, the title “Child Custody Information Sheet—Recommending Counseling” is unclear. It should be titled more clearly to distinguish it from FL-314-INFO entitled “Child Custody Information Sheet—Child Custody Mediation.” • Pertaining to FL-313-INFO, in the box entitled “What if there is domestic violence or a protective order?” should the new term “child custody recommending counselor” be adopted, it should replace the term “mediator” for the 	<p>The committee agrees that the term child custody recommending counselor should be used and proposes to retain the title.</p> <p>Change made; proposal now includes mediator or child custody recommending counselor in the box “What if there is domestic violence?” The Committee recommends references be provided on FL-313-INFO to both mediation and</p>

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			<p>sake of consistency.</p> <ul style="list-style-type: none"> • Pertaining to FL-313-INFO, should the new terms of “child custody recommending counselors” and “child custody recommending counseling” be adopted, we should entirely eliminate the term “mediator” and/or “mediation” from the section entitled “What is mediation or child custody recommending counseling with family court services?” The interchangeability of the terms is described in the section above and is unnecessary here. Furthermore, the statement that “FCS provides mediation and child custody recommending counseling” indicates that these are two separate and distinct activities when they are one and the same thing. • Pertaining to FL-313-INFO and FL-314-INFO, the second paragraph under “What is a parenting plan?” reads awkwardly. I suggest the following wording: “The plan may include orders pertaining to transportation to or from the visits; places or times for picking up or dropping off the child or children; a general or specific schedule of days, weekends, holidays, vacations, or times for visitation; and/or other details.” • Pertaining to the second page of FL-313-INFO and FL-314-INFO, subsection (2) of “Are there other ways to resolve our dispute?” should be reworked. It starts off in the third person “In some courts, parents may meet . . .” then switches to second person “family law 	<p>child custody recommending counseling because the statutes regarding mandatory mediation for child custody still use “mediation” to refer to the mandatory process to which litigants are referred. Litigants may be confused if the connection between child custody recommending counseling and mandatory mediation are not noted.</p> <p>This section has been reworked to address the concerns.</p> <p>The committee proposes reworking this section to reflect these comments (on both forms) and make the voice consistent.</p>

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			<p>attorneys not involved in your case to discuss settlement. Check with your local court . . .” It should be reworked to be entirely third person (e.g., “parties”) or second person (e.g., “you/your”). Additionally, if the new term of “child custody recommending counselor” is adopted, it should replace “mediator” in the last line of subsection (2) of FL-313-INFO.</p> <ul style="list-style-type: none"> • Pertaining to the second page of FL-313-INFO and FL-314-INFO, subsection (4) of “Are there other ways to resolve our dispute?” should be reworked to read more consistently as a possible option in the manner of the former sections. A suggested revision would be “In this process, each parent hires a . . .” • Pertaining to the second page of FL-313-INFO, subsection (2) of “Court Hearing,” the term “mediation” should be replaced with “child custody recommending counseling” if this new term is adopted. • Pertaining to the second page of FL-313-INFO and FL-314-INFO, subsection (2) of “Court Hearing,” the voice shifts from third person “parents” to second-person “you.” It should be rewritten either entirely in second person or third person. • Pertaining to FL-314-INFO, the term “Family Court Services” should be spelled out before the acronym “FCS” is used. It is overly optimistic to think that 	<p>The language in this section was changed to use “attorney” consistently and to, where appropriate, provide greater clarity.</p> <p>The committee recommends this change.</p> <p>The committee recommends this change.</p> <p>The committee proposes making the change to family court services.</p>

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			<p>parents are going to read the section/paragraph before to decipher who FCS is.</p> <ul style="list-style-type: none"> Pertaining to FL-314-INFO, should the new terms of “child custody recommending counselors” and “child custody recommending counseling” be adopted, we should entirely eliminate the term “mediator” and/or “mediation” from the section entitled “What is mediation with family court services?” <p>Furthermore, there is a shift from third-person “parents” to second-person “you” between the first and second sentences. This should be reworked to be consistently third person or second person. Finally, it should be made clear that if parties do not come to an agreement, the mediation/child custody recommending counseling process is mandatory absent a contrary order by the court.</p>	<p>The committee recommends references be provided on FL-313-INFO to both mediation and child custody recommending counseling because the statutes regarding mandatory mediation for child custody still use “mediation” to refer to the mandatory process to which litigants are referred. Litigants may be confused if the connection between child custody recommending counseling and mandatory mediation are not noted.</p> <p>Where appropriate, the committee recommends making changes to make the voice more consistent.</p> <p>The forms refer to the fact that if parents cannot agree, they will be referred to family court services.</p>
19.	Hon. B. Scott Thomsen, Judge Superior Court of Nevada County Nevada City	A	No narrative comment.	No response required.
20.	Shelly Troop Child Custody Mediator Superior Court of San Joaquin County Stockton	N	There are many problems with this proposal. The term child custody recommending counselor could be construed by clients as meaning that the mediator is a “counselor”, as in a licensed counselor. My professional organization NASW (National Association of	This proposal does not seek to change terminology. Effective January 1, 2011, Family Code section 3183(a) was amended to require that the terms “child custody recommending counselor” and “child custody recommending counseling” be used to refer to those courts that

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			Social Workers) is very concerned about title protection. I do not want to have a title which could be misconstrued by a client, and the wording of this title could do that. It is also quite cumbersome and a mouthful to say. "Recommending mediator", "non recommending mediator" (or something similar) serves the same purpose.	allow child custody mediators to provide a recommendation to the court. The courts have until January 1, 2012 to make changes to information provided to parties and the public.

