

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-20

| | |
|--|---|
| Title | Action Requested |
| Family Law: Changes to Child Custody Evaluations Rule and Form | Review and submit comments by June 10, 2020 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Amend Cal. Rules of Court, rule 5.220; adopt form FL-329 | January 1, 2021 |
| Proposed by | Contact |
| Family and Juvenile Law Advisory Committee | Gabrielle D. Selden, 415-865-8085 gabrielle.selden@jud.ca.gov |
| Hon. Jerilyn L. Borack, Cochair | Gregory Tanaka, 415-865-7671 |
| Hon. Mark A. Juhas, Cochair | gregory.tanaka@jud.ca.gov |

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending one rule of court and adopting a new mandatory form to comply with recent statutory changes to Family Code section 3118. The recent amendments enacted by Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127) create new requirements for the confidential written report that is filed with the court and served on the parties following a child custody evaluation, assessment, or investigation in which the court has determined that there is a serious allegation of child sexual abuse or an allegation of child abuse in any other circumstance.

Background

In contested proceedings in family court involving child custody or visitation rights, a judicial officer may appoint a court-connected or private evaluator under Family Code section 3111 to provide recommendations to the court if the judicial officer determines the appointment is in the best interests of the child. Under section 3118, in cases involving serious allegations of child sexual abuse, the court *must* appoint an evaluator to conduct an evaluation, investigation, or assessment. For serious allegations of child abuse that arise in a proceeding for child custody and visitation rights, the court is not required to, but may appoint an evaluator or investigator to conduct an evaluation, investigation, or assessment under section 3118.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Section 3118(b)(5) and (6)(A)–(H) lists the minimum information that the evaluator or investigator must cover in the confidential written report. They are summarized as follows:

1. A written statement explaining why a forensic examination is not needed if the evaluator did not request a forensic medical examination of the child;
2. Documentation of material interviews of the child, parents, and other witnesses;
3. A summary of any law enforcement investigator’s investigation;
4. Relevant background material, including, but not limited to a summary of written reports from any therapist treating the child for suspected child sexual abuse;
5. The written recommendations of the evaluator or investigator about the therapeutic needs of the child and how to ensure the child’s safety;
6. A summary of other child abuse investigations, if any, and disposition and any relevant dependency court orders or findings;
7. Any information from a child protective agency or law enforcement agency about the presence of domestic violence or substance abuse in the family;
8. If any family members are known to be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence; and
9. Any other information believed to be helpful for the court in determining what is in the best interests of the child.

Effective January 1, 2021, subdivision (b)(6) requires that the report on the above topics be made on a form adopted by the Judicial Council. To comply with the legislation, the Judicial Council must adopt one new form and amend rule 5.220 as described in the following section.

The Proposal

Rule 5.220

Rule 5.220 would be reorganized to differentiate the requirements for confidential evaluation reports written to comply with Family Code section 3111 and those that must comply with Family Code section 3118. Specifically, the rule would include a new subdivision (g) titled *Confidential written report; requirements*, in which (g)(1) would list the requirements for section 3111 reports and (g)(2) would list the requirements for section 3118 reports. Subdivision (g)(2) would reference the name and number of the proposed new Judicial Council form FL-329 among other requirements. In addition, because both new subdivisions would include the language in current subdivision (i) relating to another required form, subdivision (i) would be deleted to avoid redundancy in the rule.

Other technical changes would include relettering affected subdivisions in the rule and updating (b) by deleting the reference to section 2032 in the Code of Civil Procedure and updating it to section 2032.010.

Confidential Child Custody Evaluation Report (form FL-329)

This form would comply with section 3118 by serving as the standardized template for all information necessary to provide a full and complete analysis of the allegations raised in the proceeding. The proposed new mandatory form would include the previously listed categories of

information (subdivisions (b)(6)(A)–(H)) at items 3–7 and 9–11. In addition, the form would include the required contents of an evaluation specified in rule 5.220, at items 8 and 12.

Alternatives Considered

Because section 3118(i) requires the Judicial Council to adopt a mandatory form on or before January 1, 2021, the committee did not consider any alternative methods to implement the statutory mandate. The committee did consider whether form FL-329 should be drafted as a mandatory form for child custody evaluations, assessments, or investigations conducted under Family Code section 3111 as well as section 3118. The committee, however, concluded that this would be beyond the scope of legislation, as AB 1179 did not amend Family Code section 3111. Absent clear direction from the Legislature, the committee proposes a mandatory form that would apply only to reports drafted in response to a section 3118 evaluation, assessment, or report.

The committee did consider whether to propose revisions to two additional forms: *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) and *Child Custody Evaluation Information Sheet* (form FL-329-INFO), as the forms include information about the child custody evaluation process. However, because both forms refer to the child custody evaluation report in very general terms, the committee decided that revisions to the forms were not essential to comply with the legislative mandate.

Fiscal and Operational Impacts

The impact to the courts includes costs to copy the new and revised forms, as well as the cost to educate court-connected child custody evaluators on the new procedures for completing a child custody evaluation, investigation, or assessment. However, these costs would be outweighed by the benefit of producing reports that satisfy the requirements of Family Code section 3118.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.220, at pages 5–7
2. Form FL-329, at pages 8–10
3. Link A: Assem. Bill 1179,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1179

Rule 5.220 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 5.220. Court-ordered child custody evaluations**

2
3 **(a) Authority**

4
5 This rule of court is adopted under Family Code sections 211 and 3117.

6
7 **(b) Purpose**

8
9 Courts order child custody evaluations, investigations, and assessments to assist
10 them in determining the health, safety, welfare, and best interests of children with
11 regard to disputed custody and visitation issues. This rule governs both court-
12 connected and private child custody evaluators appointed under Family Code
13 section 3111, Family Code section 3118, Evidence Code section 730, or ~~Code of~~
14 ~~Civil Procedure section 2032.~~ chapter 15 (commencing with section 2032.010) of
15 title 4, part 4 of the Code of Civil Procedure.

16
17 **(c)–(d) * * ***

18
19 **(e) Scope of evaluations**

20
21 All evaluations must include:

22
23 (1)–(2) * * *

24
25 ~~(3) A written or oral presentation of findings that is consistent with Family Code~~
26 ~~section 3111, Family Code section 3118, or Evidence Code section 730. In~~
27 ~~any presentation of findings, the evaluator must:~~

28
29 ~~(A) Summarize the data gathering procedures, information sources, and~~
30 ~~time spent, and present all relevant information, including information~~
31 ~~that does not support the conclusions reached;~~

32
33 ~~(B) Describe any limitations in the evaluation that result from unobtainable~~
34 ~~information, failure of a party to cooperate, or the circumstances of~~
35 ~~particular interviews;~~

36
37 ~~(C) Only make a custody or visitation recommendation for a party who has~~
38 ~~been evaluated. This requirement does not preclude the evaluator from~~
39 ~~making an interim recommendation that is in the best interest of the~~
40 ~~child; and~~

1 ~~(D) Provide clear, detailed recommendations that are consistent with the~~
2 ~~health, safety, welfare, and best interest of the child if making any~~
3 ~~recommendations to the court regarding a parenting plan.~~
4

5 **(f) Presentation of findings**

6
7 All evaluations must include a written or oral presentation of findings that is
8 consistent with Family Code section 3111, Family Code section 3118, or Evidence
9 Code section 730. In any presentation of findings, the evaluator must:
10

- 11 (1) Summarize the data-gathering procedures, information sources, and time
12 spent, and present all relevant information, including information that does
13 not support the conclusions reached.
14
15 (2) Describe any limitations in the evaluation that result from unobtainable
16 information, failure of a party to cooperate, or the circumstances of particular
17 interviews.
18
19 (3) Only make a custody or visitation recommendation for a party who has been
20 evaluated. This requirement does not preclude the evaluator from making an
21 interim recommendation that is in the best interests of the child.
22
23 (4) Provide clear, detailed recommendations that are consistent with the health,
24 safety, welfare, and best interests of the child if making any
25 recommendations to the court regarding a parenting plan.
26

27 **(g) Confidential written report; requirements**

- 28
29 (1) Family Code section 3111 evaluations. An evaluator appointed under Family
30 Code section 3111 must:
31
32 (A) File and serve a report on the parties or their attorneys as required by
33 Family Code section 3111.
34
35 (B) Attach a Notice Regarding Confidentiality of Child Custody Evaluation
36 Report (form FL-328) as the first page of the child custody evaluation
37 report when a court-ordered child custody evaluation report is filed
38 with the clerk of the court and served on the parties or their attorneys,
39 and any counsel appointed for the child, to inform them of the
40 confidential nature of the report and the potential consequences for the
41 unwarranted disclosure of the report.
42

1 (2) Family Code section 3118 evaluations. An evaluator appointed to conduct a
2 child custody evaluation, investigation, or assessment based on (1) serious
3 allegations of child sexual abuse; or (2) allegations of child abuse under
4 Family Code section 3118 must:

5
6 (A) Provide a full and complete analysis of the allegations raised in the
7 proceeding and address the health, safety, welfare, and best interests of
8 the child.

9
10 (B) Comply with (A) by filing and serving *Confidential Child Custody*
11 *Evaluation Report* (form FL-329) on the parties or their attorneys as
12 required by section 3118.

13
14 (C) Attach *Notice Regarding Confidentiality of Child Custody Evaluation*
15 *Report* (form FL-328) as the first page of the child custody evaluation
16 report in (B) to inform the parties or their attorneys of the confidential
17 nature of the report and the potential consequences for the unwarranted
18 disclosure of the report.

19
20 **(i) — ~~Service of the evaluation report~~**

21
22 ~~A *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-~~
23 ~~328) must be attached as the first page of the child custody evaluation report when~~
24 ~~a court-ordered child custody evaluation report is filed with the clerk of the court~~
25 ~~and served on the parties or their attorneys, and any counsel appointed for the child,~~
26 ~~to inform them of the confidential nature of the report and the potential~~
27 ~~consequences for the unwarranted disclosure of the report.~~

28
29 **~~(f)-(j)-(h)-(k)~~ * * ***

| | |
|--|---|
| EVALUATOR: _____ LICENSE NO. (if applicable): _____ NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ | FOR COURT USE ONLY CONFIDENTIAL DRAFT NOT APPROVED BY JUDICIAL COUNCIL 4.02.20 GST/GS |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/PARTY: _____ | |
| CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT | CASE NUMBER: _____ |

NOTICE: (1) This form must be used for a child custody evaluation, investigation, or assessment based on serious allegations of child sexual abuse or allegations of child abuse under Family Code section 3118.

(2) Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328) must be attached as the cover page of this report.

1. The *Order Appointing Child Custody Evaluator* (form FL-327) filed on (date) _____ is attached.
2. The names and dates of birth of the children are (specify): Additional children are listed on Attachment 2.

| | |
|---------------------|----------------------|
| <u>Child's name</u> | <u>Date of birth</u> |
|---------------------|----------------------|

3. **Dependency court orders** that might affect custody (if any): Below: Attached
Court (county, state) Case number Date order filed

4. Summary of child welfare agency investigation and recommendations

- a. The children in 2 and the children's parents are or have been the subject of a child abuse investigation (select one):
 Yes No (skip b-c)
- b. Social worker contact information:
 Name: _____
 Telephone No.: _____
 Address: _____
 Email address: _____
- c. The status or disposition of the investigation and recommendations made regarding the child's safety, including information regarding child abuse, domestic violence, or substance abuse, is as follows:
 Below: See Attachment 4c.

5. Summary of law enforcement investigation and recommendations

(Summarize information obtained related to any recommendations made, criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.)

Below: See Attachment 5.

| | |
|---|--------------|
| PETITIONER: RESPONDENT: OTHER PARENT/PARTY: | CASE NUMBER: |
|---|--------------|

6. **Forensic medical examination of the child.**

Did you request a forensic medical examination of the child? yes no (If you answered "no," explain why the examination is not needed) See Attachment 6.

7. **Relevant background material.** (Provide a summary, including any written report from a therapist treating the child for suspected child sexual abuse (excluding any privileged communication), a multidisciplinary child interview team, or reports from other professionals, and results of any forensic medical examination and any other medical examination or treatment.)

Below: See Attachment 7.

8. **Documentation of material interviews.** (Summarize any interviews of the parents, children, and other witnesses who provided relevant information.)

Below: See Attachment 8.

9. **Limitations in the evaluation.** (Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews.)

Below: See Attachment 9.

10. **Other.** Additional information the evaluator believes would be helpful to the court in determining the best interests of the child (specify):

Below: See Attachment 10.

| | |
|---|--------------|
| PETITIONER: RESPONDENT: OTHER PARENT/PARTY: | CASE NUMBER: |
|---|--------------|

11. **Evaluator recommendations** regarding the therapeutic needs of the child and how to ensure the safety of the child (*specify*):

Below: See Attachment 11.

12. **Victims of Crime Program.** Recommendations for known family members who may be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence (*specify, if any*):

Below: See Attachment 12.

13. **Summary of procedures**

(Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached.)

Below: See Attachment 13.

14. Number of pages attached: _____

Date:

(NAME OF EVALUATOR)


SIGNATURE OF EVALUATOR