

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR22-09

Title

Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony

Proposed Rules, Forms, Standards, or Statutes

Amend rules 5.210, 5.225, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341

Proposed by

Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulseley, Cochair
Hon. Amy M. Pellman, Cochair

Action Requested

Review and submit comments by May 13, 2022

Proposed Effective Date

January 1, 2023

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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending four rules of court and revising three forms to comply with Senate Bill 654 (Stats. 2021, ch. 768). The bill amended Family Code section 3011 by extending the requirement that a court state its reasons when granting sole or joint custody to someone despite allegations of abuse or substance abuse against that person to orders granting unsupervised visitation to someone against whom there are allegations of abuse or substance abuse. The bill also amended Family Code section 3042 regarding child testimony to prohibit allowing the child to testify in front of the parties unless specific findings are made and to require that certain court professionals provide notice if a child changed their choice about addressing the court.

Background

Effective January 1, 2022, SB 654 amended Family Code section 3011(a)(5)(A) and (B) to require the court to follow specific procedures when it makes an order for child custody to a parent who is alleged to have a history of abuse or substance abuse. Before the amendment, absent a stipulation, the court was required to state its reasons in writing or on the record if it ordered sole or joint custody to a parent alleged to have a history of abuse

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

or substance abuse. The legislation extended that requirement to include orders for unsupervised visitation for a parent alleged to have a history of abuse or substance abuse.

To help courts comply with these changes, the committee proposes revising two forms, *Child Custody and Visitation (Parenting Time) Application Attachment* (form FL-311) and *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341).

SB 654 also amended Family Code section 3042, relating to a child’s testimony in court, in two significant ways. The first major change prohibits the court from permitting a child addressing the court regarding child custody or visitation to do so in the presence of the parties, unless the court determines that doing so is in the best interest of the child and states its reasons for that finding on the record. It also requires the court to provide an alternative to having the child address the court in the presence of the parties to obtain input directly from the child.

The second major change is to require the attorney appointed to represent the child, a child custody evaluator or investigator, or a child custody recommending counselor to inform the judge, the parties or their attorneys, and other professionals serving on the case, if the child informs them that they have changed their choice with respect to addressing the court.

Family Code section 3042(j) specifically requires that the Judicial Council, “no later than January 1, 2023, develop or amend rules as necessary to implement this section.” The committee proposes amending rules 5.210, 5.224, 5.242, and 5.250 and revising form FL-323 to implement the requirements of the statute.

The Proposal

Family Code section 3011

Forms FL-311 and FL-341) would be revised to incorporate the requirements of Family Code section 3011(a)(5)(A).

Section 3011(a)(5)(A) provides:

When allegations about a parent pursuant to paragraphs (2)^[1] or (4)^[2] have been brought to the attention of the court in the current proceeding, and the

¹ Paragraph (2) relates to a history of abuse by one parent or any other person seeking custody against: (a) a child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary; (b) the other parent; or (c) a parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

² Paragraph (4) relates to the habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent.

court makes an order for sole or joint custody or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Section 6323.

The statute describes the requirements for *court orders* in cases in which a party is alleged to have a history of abuse or substance abuse. Therefore, the committee initially only considered revising the custody order attachment (form FL-341). After further consideration, the committee decided that it was important to also propose revisions to form FL-311, the form for requesting court orders relating to child custody and visitation.

Child Custody and Visitation (Parenting Time) Application Attachment (form FL-311)
Form FL-311 may be used by the parties to request court orders relating to child custody and visitation. It is attached to a petition for divorce or legal separation, a response to a petition, a request for order form, or responsive declaration to request for order.

The proposed revisions to form FL-311 would give the parent the opportunity to state the reasons why they believe the court should grant child custody or unsupervised visitation to a parent alleged to have a history of abuse or substance abuse. The parent requesting the order would either write the reasons (their declaration) in the blank space provided on the form or attach a separate declaration.

The above proposed revision would allow the court to assess whether the reasons that the parent specified are sufficient to grant the parent's request for an interim order, a default judgment, or a judgment for child custody and visitation. In the case of a petitioner's request to enter a default judgment against a nonresponding party, the proposed new content would further allow the judicial officer to better assess whether the judgment could be entered based exclusively on the declarations of the petitioner or whether the matter should be set for a hearing so that the court can consider evidence about the allegations of abuse or substance abuse before ruling on the request.

The specific proposed changes in form FL-311 would be to include two new sections on the form; the first, on page 1 (item 1b), would be titled "Custody with allegations of a history of abuse or substance abuse," the other, on page 2 (item 3), would be titled "Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns."

In proposed new item 1b, the party requesting custody orders would:

- Specify that the case involves allegations of a history of abuse or substance abuse against parent(s) of the minor children;
- Ask the court to order sole or joint custody of the minor children to a parent or parents who are alleged to have a history of abuse or substance abuse; and

- Specify the reasons why the court should grant the request for sole or joint custody to the person(s) alleged to have a history of abuse or substance abuse.

Similarly, in proposed new item 3, the party requesting visitation orders could ask the court to order:

- Supervised visitation for cases involving abuse, domestic violence, child abuse or neglect;
- Supervised visitation for reasons other than abuse, domestic violence, child abuse or neglect; or
- Unsupervised visitation to the person(s) alleged to have a history of abuse or substance abuse.

The proposed new second bullet point would apply to cases in which a party seeks supervised visitation for reasons such as to help introduce a parent and a child when there has been no existing relationship between them or to help reintroduce a parent and a child after a long absence.

Finally, the form would:

- Include the following statutory language under the request for unsupervised visitation: “The orders for visitation (parenting time) that you request must be specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires”;
- Require the party to indicate the reasons why the court should make the orders in each of the situations in item 3 (Note: instead of requiring the party to respond by attaching a separate declaration in response to the item, the revised form would allow the party to choose to use the blank space on the form to write a declaration or attach a declaration.); and
- Include a general note under item 5 (Transportation for visitation (parenting time) and place of exchange) to indicate that, “In cases of domestic violence, the court must have enough information to make orders that are specific as to time, place, and manner of transfer (exchange) of the child for custody and visitation under Family Code section 6323(c).” The new language mirrors the note in item 3b(3) regarding the need for specificity in the transportation or exchange of the child.

Formatting changes

The form would need to include additional changes to accommodate the proposed new content. Specifically, form FL-311 would be expanded to four pages, and additional rows would be added to list up to six children in item 1a. Visitation (parenting time), item 2e, would be moved to the second page, the request for supervised visitation would be moved under the new item 3, a separate item 4 would be created to provide the details for the

supervised visitation provider, and additional blank space would be provided to allow a party to complete items 7 through 10 directly on the form instead of having to attach a separate form to complete these items.

Further, in the proposed new item 4 about the provider of supervised visitation, the committee proposes deleting the reference and hyperlink to repealed *Declaration of Supervised Visitation Provider* (form FL-324) and replacing it with references to the forms completed by the professional or nonprofessional supervised visitation provider (form FL-324(P) and FL-324(NP)), which were adopted effective January 1, 2021. Other changes that would appear in both forms FL-311 and FL-341 are described in the following section.

Child Custody and Visitation (Parenting Time) Order Attachment (form FL-341)

As indicated by the title, form FL-341 may be used by the court to write its orders relating to requests for child custody and visitation orders.

Form FL-341 would reflect the substantive changes to form FL-311 by including a new item 7 titled “Child custody orders with allegations of a history of abuse or substance abuse” and a new item 9 titled “Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns.”

Additional changes would include the following: expanding the form to four pages, changing the sequence of the orders regarding child abduction from item 7 to item 5, moving the orders regarding visitation to page 2, and increasing the blank space made available to complete orders on page 4.

The committee proposes minor changes in the language in various parts of the order. For example, instead of stating that a party “will have visitation” in item 9a and 9b, the form would provide that the party “has visitation.” And, instead of a statement to the judicial officer, such as “You must attach form FL-341(A)” in 9a, the committee proposes better highlighting the fact that additional orders apply with respect to the visitation orders made in this item. To this end, item 9a would be divided into subitems (1) and (2), with item (2) providing: “In addition, *Supervised Visitation Order* (form FL-341(A)) is attached.”

Miscellaneous changes

In addition to the statutory changes and formatting changes, the committee proposes revisions to other items in both forms FL-311 and FL-341.

Two of the proposed changes would align content with the changes currently being proposed to domestic violence forms in the same cycle. For example, the definition of physical custody on the first page of the forms would be changed to “person the child regularly lives with.” The definition of legal custody would be changed to “person who decides about the child’s health, education, and welfare.”

The final change proposed to both forms would be to the item about transportation for visitation (parenting time). Item 5a on form FL-311 and item 10a on form FL-341 would be changed as follows:

The children must be driven only by a licensed and insured driver. The ~~car or truck~~ vehicle must be legally registered with the Department of Motor Vehicles, and must have child restraint devices properly installed, as required by law.

The proposed new language would more accurately reflect the orders made in family court on the issue of transportation for child visitation (parenting time).

Family Code section 3042

Section 3042(g) provides:

To assist the court in determining whether the child wishes to express a preference or to provide other input regarding custody or visitation to the court, a minor's counsel, an evaluator, an investigator, or a child custody recommending counselor shall indicate to the judge that the child wishes to address the court, or the judge may make that inquiry in the absence of that request. A party or a party's attorney may also indicate to the judge that the child wishes to address the court or judge.

In addition, section 3042(h) provides:

If a child informs the minor's counsel, an evaluator, an investigator, or a child custody recommending counselor at any point that the child has changed their choice with respect to addressing the court, the minor's counsel, evaluator, investigator, or child custody recommending counselor shall, as soon as feasible, indicate to the judge, the parties or their attorneys, and other professionals serving on the case that the child has changed their preference.

The committee proposes that the Judicial Council amend rules 5.210, 5.225, 5.242, and 5.250 to reflect the duties of child custody recommending counselors, child custody evaluators and investigators, and attorney's appointed to represent the child under both sections 3042(g) and (h).

It should be noted that the committee considered using other terms instead of "child's choice" in the rules and forms, including "child's position," "child's preference," or "child's desire," but decided to recommend that the rules reflect the actual language in section 3042(h), which is "child's choice."

Rule 5.210, Court-connected child custody mediation

The rule would be amended to include new subdivision (d)(3) under “Responsibility for mediation services.” Because the obligation to notify under section 3042 affects child custody recommending counselors³ and not confidential mediators, the committee proposes the following language:

- (3) If so informed by the child at any point, each child custody recommending counselor must notify the parties, other professionals serving on the case, and then the judicial officer:
 - (A) About the child’s desire to provide input and address the court; and
 - (B) As soon as feasible, that the child has changed their choice about addressing the court.

Rule 5.225, Appointment requirements for child custody evaluators

This rule would be amended by adding subdivisions (l)(7) and (8) to provide that a person appointed as a child custody evaluator must:

- (7) Inform the parties, other professionals serving on the case, and then the judicial officer about the child’s desire to provide input and address the court;
- (8) If so informed by the child at any point, provide notice that the child has changed their choice about addressing the court. Notice must be provided as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.

The committee notes that the duty of child custody recommending counselors and child custody investigators to inform the parties and court about the child’s desire to testify was incorporated into the rules of court with the adoption of rule 5.250, Children’s participation and testimony in family court proceedings, effective January 1, 2012. By revising rules 5.210 and 5.225 as proposed, they would be more consistent with rule 5.250, and avoid confusion if the mediator and child custody evaluator only consult the rules that are specific to their professions to find information about their duties with respect to children testifying in family court.

³ Under Family Code section 3183, mediators who make those recommendations (also known as child custody recommending counselors) are considered mediators for purposes of Chapter 11 of the Family Code (commencing with Section 3160) and are subject to all requirements for mediators for all purposes under the Family Code and the California Rules of Court.

Rule 5.242, Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

The rule would be amended at subdivision (j)(4)(D). Currently, the subdivision includes counsel’s obligation under section 3042(g) to inform about the child’s desire to provide input. The amendment would provide that the obligation extends to “other professionals serving on the case” and replace “court” with “judicial officer.”

In addition, subdivision (j)(4)(E) would be added to provide that, in any case in which counsel is representing a child who is called to testify in the proceedings, counsel must:

If so informed by the child at any point, provide notice that the child has changed their choice about addressing the court. Notice must be provided as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.

Rule 5.250, Children’s participation and testimony in family court proceedings

The rule would be amended in several areas to comply with section 3042, as follows:

- A new subdivision (b) would be added to reflect the statutory prohibition against permitting a child to address the court about child custody or visitation in the presence of the parties, and the exceptions that are included in the statute.
- Former subdivision (b) would be relettered as (c) and retitled “Determining if the child wishes to address, or has changed their choice about addressing, the court.”
- Subdivision (c)(2) would be added to the rule to include the responsibility for an evaluator, investigator, minor’s counsel, or child custody recommending counselor to provide notice if the child informs them, or changes their choice, about addressing the court.
- Other technical changes would be made to the rule to avoid redundancy and make the rule internally consistent. These would include renaming subdivision (a) “Authority and overview” and transferring most of the language in (a) to subdivision (b) as it relates to the court’s responsibilities in these matters, as well as adjusting the lettering of the subdivisions following (b).

Order Appointing Counsel for a Child (form FL-323)

Finally, the committee proposes revising *Order Appointing Counsel for a Child* (form FL-323). Specifically, item 8a(6) would be added under “Duties of Counsel for a Child” so that the form reflects counsel’s obligation in rule 5.242(j)(4)(D) to “Inform the parties, other professionals serving on the case, and then the court about the child’s desire to provide input and address the court.” This duty was inadvertently left out of the form when it was initially adopted. In addition, item 8a(7) would be added to specify counsel’s duty to provide prompt notice when a child changes their choice about addressing the court under Family Code section 3042(h).

To make space for the proposed new language in the form, the committee also proposes technical and organizational changes to form FL-323. Specifically, the section titled “Determination of Fees and Payment” would appear on the form as item 5 on page 1. In addition, the sections titled “Duties of Counsel for a Child” and “Counsel for a Child Has the Following Rights” would be grouped on the final page of the order. The items on the form would be renumbered to reflect the reorganized content.

Alternatives Considered

Along with amending rule 5.225, the committee considered revising *Order Appointing Child Custody Evaluator* (form FL-327) to include the evaluator’s duty to inform others if the child has indicated a change in choice about addressing the court. However, the committee decided not to include form FL-327, as it does not specify each of the child custody evaluator’s duties in the same way as form FL-323 lists the specific duties of counsel appointed to represent a child. Thus, the committee decided that revising form FL-327 would not be necessary to implement AB 654.

The committee also considered proposing only the mandatory changes to the rules to comply with the mandate of Family Code section 3042. The Legislature did not specify that the Judicial Council must adopt a rule of court or form to implement the amendments to section 3011. Therefore, the committee considered not revising forms FL-311 and FL-341 to reflect the amendments to section 3011.

However, as previously noted, the committee believes that revising forms FL-311 and FL-341 would help parties ask for orders and judicial officers comply with the requirements of Family Code section 3011, respectively, in child custody and visitation cases involving allegations of abuse or substance abuse. The committee decided to ask for specific comments from the public and the courts to determine if they find the revisions to forms FL-311 and FL-341 helpful in cases involving requests for child custody and visitation under Family Code section 3011(a)(5)(A). Feedback about the proposed changes would help inform the committee’s recommendations to the Judicial Council about the forms.

Fiscal and Operational Impacts

The impact to the courts includes costs to copy the revised forms, as well as the cost to educate judicial officers about the new procedure for specific orders made under section 3011 and to educate the court and court professionals about their expanded duties under section 3042(h).

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?
- Would it be helpful to the parties and attorneys to provide space on form FL-311 to state the reasons why sole or joint custody, or unsupervised visitation, should be granted if Family Code section 3011(a)(5)(A) applies to the case, especially in a potential default situation?
- What is the impact of these changes to the forms on low-income people?

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

1. Would the proposed changes to form FL-341 be helpful to judicial officers in providing space to indicate the reasons for ordering child custody and visitation if Family Code section 3011(a)(5)(A) applies to the case?
 2. Are the proposed changes to forms FL-311 and FL-341 helpful in reminding judicial officers about the requirements of Family Code section 3011(a)(5)(A) when reviewing requests and proposed orders and judgments relating to child custody and visitation?
 3. Would the proposed changes in (1) and (2) be best handled by judicial education?
- 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 three 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. Rules 5.210, 5.225, 5.242, and 5.250, at pages 11–16
2. Forms FL-311, FL-323, and FL-341, at pages 17–26
3. Link to SB 654,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB654

Rules 5.210, 5.225, 5.242, and 5.250 of the California Rules of Court would be amended, effective January 1, 2023, to read:

1 **Rule 5.210. Court-connected child custody mediation**

2
3 **(a)–(c) *****

4
5 **(d) Responsibility for mediation services**

6
7 (1) ***

8
9 (2) Each court-connected mediator must:

10
11 (A)–(C) ***

12
13 (3) If so informed by the child at any point, each child custody recommending
14 counselor must notify the parties, other professionals serving on the case, and
15 then the judicial officer:

16
17 (A) About child’s desire to provide input and address the court; and

18
19 (B) As soon as feasible, that the child has changed their choice about
20 addressing the court.

21
22 **(e)–(h) *****

23
24
25 **Rule 5.225. Appointment requirements for child custody evaluators**

26
27 **(a)–(k) *****

28
29 **(l) Child custody evaluator**

30
31 A person appointed as a child custody evaluator must:

32
33 (1)–(6) ***

34
35 (7) Inform the parties, other professionals serving on the case, and then the
36 judicial officer or the court about the child’s desire to provide input and
37 address the court;

38
39 (8) If so informed by the child at any point, provide notice that the child has
40 changed their choice about addressing the court. Notice must be provided as
41 soon as feasible to the parties or their attorneys, other professionals serving
42 on the case, and then to the judicial officer.

1
2 (m)–(o) ***

3
4
5 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
6 **represent a child in family law proceedings**

7
8 (a)–(i) ***

9
10 **(j) Responsibilities of counsel for a child**

11
12 Counsel is charged with the representation of the child’s best interest. The role of
13 the child’s counsel is to gather evidence that bears on the best interest of the child
14 and present that admissible evidence to the court in any manner appropriate for the
15 counsel of a party. If the child so desires, the child’s counsel must present the
16 child’s wishes to the court.

17
18 (1)–(3) ***

19
20 (4) In any case in which counsel is representing a child who is called to testify in
21 the proceeding, counsel must:

22
23 (A)–(B) ***

24
25 (C) Provide procedures relevant to the child’s participation and, if
26 appropriate, provide an orientation to the courtroom where the child
27 will be testifying; ~~and~~

28
29 (D) Inform the parties, other professionals serving on the case, and then the
30 ~~court~~ judicial officer about the client’s desire to provide input and
31 address the court; and

32
33 (E) If so informed by the child at any point, provide notice that the child
34 has changed their choice about addressing the court. Notice must be
35 provided as soon as feasible to the parties or their attorneys, other
36 professionals serving on the case, and then to the judicial officer.

37
38 (k) ***

1 **Rule 5.250. Children’s participation and testimony in family court proceedings**

2
3 **(a) Children’s participation Authority and overview**

4
5 This rule is intended to implement Family Code section 3042. ~~Children’s~~
6 ~~participation in family law matters must be considered on a case-by-case basis.~~ No
7 statutory mandate, rule, or practice requires children to participate in court or
8 prohibits them from doing so. ~~When a child wishes to participate, the court should~~
9 ~~find a balance between protecting the child, the statutory duty to consider the~~
10 ~~wishes of and input from the child, and the probative value of the child’s input~~
11 ~~while ensuring all parties’ due process rights to challenge evidence relied upon by~~
12 ~~the court in making custody decisions.~~

13
14 **(b) Children’s participation**

15
16 When a child wishes to participate in a court proceeding involving child custody
17 and visitation (parenting time):

18
19 (1) The court should find a balance between protecting the child, the statutory
20 duty to consider the wishes of and input from the child, and the probative
21 value of the child’s input while ensuring all parties’ due process rights to be
22 aware of and to challenge evidence relied on by the court in making custody
23 decisions.

24
25 (2) The court must:

26
27 (A) Consider a child’s participation in family law matters on a case-by-case
28 basis; and

29
30 (B) Not permit a child addressing the court about child custody or visitation
31 (parenting time) to do so in the presence of the parties. The court must
32 provide an alternative to having the child address the court in the
33 presence of the parties to obtain input directly from the child.

34
35 (3) Notwithstanding the prohibition in (b)(2)(B), the court:

36
37 (A) May permit the child addressing the court about child custody or
38 visitation (parenting time) to do so in the presence of the parties if the
39 court determines that doing so is in the child’s best interests and states
40 its reasons for that finding on the record; and

41
42 (B) Must, in determining best interests of the child under (b)(2)(A),
43 consider whether addressing the court regarding child custody or

1 visitation (parenting time) in the presence of the parties is likely to be
2 detrimental to the child.

3
4 **(b)(c) Determining if the child wishes to address, or has changed their choice about**
5 **addressing, the court**

6
7 (1) The following persons must ~~inform the court~~ notify the persons in (c)(2) if
8 they have information indicating that a child in a custody or visitation
9 (parenting time) matter either wishes to address the court or has changed their
10 choice about addressing the court:

11
12 (A) ~~An minor's counsel~~ attorney appointed to represent the child in the
13 case;

14
15 (B) An evaluator;

16
17 (C) An investigator; ~~and~~

18
19 (D) A child custody recommending counselor who provides
20 recommendations to the judge under Family Code section 3183; and

21
22 (E) Other professionals serving on the case.

23
24 (2) The notice described in (c)(1) must be given, as soon as feasible, to the
25 following:

26
27 (A) The parties or their attorneys;

28
29 (B) The attorney appointed to represent the child;

30
31 (C) Other professionals serving on the case; and then

32
33 (D) The judicial officer.

34
35 ~~(2)~~(3) The following persons may inform the court if they have information
36 indicating that a child wishes to address the court:

37
38 (A)–(B) ***

39
40 ~~(3)~~(4) In the absence of information indicating a child wishes to address the court,
41 the judicial officer may inquire whether the child wishes to do so.

42
43 **(e)(d) *****

1
2 **~~(d)~~(e) Guidelines for receiving testimony and other input**

3
4 (1)–(4) ***

5
6 (5) In any case in which a child will be called to testify, the court may consider
7 the appointment of minor’s counsel for that child. The court may consider
8 whether such appointment will cause unnecessary delay or otherwise
9 interfere with the child’s ability to participate in the process. In addition to
10 adhering to the requirements for minor’s counsel under Family Code section
11 3151 and rules 5.240, 5.241, and 5.242, and subdivision (c) of this rule,
12 minor’s counsel must:

13
14 (A)–(C) ***

15
16 ~~(D)–Inform the parties and then the court about the client’s desire to provide~~
17 ~~input~~

18
19 (6) ***

20
21 **~~(e)~~(f) Additional responsibilities of court-connected or appointed professionals**

22
23 In addition to the duties in (c), a child custody evaluator, a child custody
24 recommending counselor, or ~~a mediator~~ an investigator assigned to meet with a
25 child in a family court proceeding must:

26
27 (1)–(3) ***

28
29 ~~(f)~~(g) ***

30
31 ~~(g)~~(h) ***

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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CHILD CUSTODY AND VISITATION (PARENTING TIME) APPLICATION ATTACHMENT

—This is not a court order—

TO Petition Response Request for Order Responsive Declaration to Request for Order
 Other (specify):

1. a. **Custody.** Custody of the minor children of the parties is requested as follows: [Attachment 1a.](#)

Child's Name	Date of Birth	Legal Custody to (person who decides about the child's health, education, and welfare)	Physical Custody to (person the child regularly lives with)

b. **Custody with allegations of a history of abuse or substance abuse**

(This item does not apply if the parties stipulate (agree) in writing or on the record about child custody or visitation.)

- (1) I ask the court to make the custody orders in item 1a, even though there are allegations of a history of abuse or the habitual or continual use of controlled substances, alcohol, or prescribed substances against the following persons (specify): petitioner respondent other parent/party
- (2) The reasons why the court should make the orders in item 1a are (specify): as follows: [Attachment 1b.](#)
(Write the reasons why you think it would be good for the children that the person(s) be granted custody, even though there are allegations against them of a history of abuse or substance abuse.)

2. **Visitation (Parenting Time).**

Note: Unless specifically ordered, a child's holiday schedule order has priority over the regular parenting time.

- a. Reasonable right of parenting time (visitation) to the party without physical custody (**not appropriate in cases involving domestic violence**).
- b. See the attached _____-page document dated (specify date):
- c. The parties will go to child custody mediation or child custody recommending counseling at (specify date, time, and location):

- d. No visitation (parenting time).

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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e. Visitation (parenting time). (Specify start and ending date and time. If applicable, check "start of" OR "after school.")

Petitioner's **Respondent's** **Other Parent's/Party's** parenting time (visitation) will be as follows:

(1) **Weekends starting (date):**

(Note: The first weekend of the month is the first weekend with a Saturday.)

1st 2nd 3rd 4th 5th weekend of the month

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(a) The parties will alternate the fifth weekends, with the petitioner respondent other parent/party having the initial fifth weekend, which starts (date):

(b) The petitioner respondent other parent/party will have the fifth weekend in odd even numbered months.

(2) **Alternate weekends starting (date):**

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(3) **Weekdays starting (date):**

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(4) Other visitation (parenting time) days and restrictions are: [listed in Attachment 2e\(4\)](#)
 as follows:

3. **Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns**

(This item does not apply if the parties stipulate (agree) in writing or on the record about child custody or visitation.)

a. **Supervised visitation (parenting time)**

I ask that petitioner respondent other parent/party have supervised visitation with the minor children according to the schedule in item 2 because of (specify):

(1) Domestic violence, child abuse, or neglect.

(2) Other parenting concerns (specify):

(3) The reasons why the court should make the orders are (specify): as follows: [in Attachment 3a.](#)
 (Write the reasons why you think unsupervised visitation (parenting time) would be bad for the children.)

(4) I ask that the court approve my requests about the supervised visitation provider specified in item 4 on page 3.

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b. Unsupervised visitation (parenting time)

- (1) Even though there are allegations of a history of abuse or substance abuse, I request that the court grant unsupervised visitation to (specify): Petitioner Respondent Other parent/party
- (2) The reasons why the court should make the orders are (specify): as follows: [in Attachment 3b.](#)
(Write the reasons why you think it would be good for the children that the person(s) be granted unsupervised visitation (parenting time) even though there are allegations against them of a history of abuse or substance abuse.)

(3) *Note: The orders for visitation (parenting time) that you request must be specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.*

4. Supervised visitation provider

- a. I request that the visitation (parenting time) be monitored by (name, if known):
 - (1) The person or agency is a professional provider. A professional provider must meet the requirements listed in *Declaration of Supervised Visitation Provider (Professional)* ([form FL-324\(P\)](#)) and sign the declaration.
 - (2) The person is a nonprofessional provider. That person must meet the requirements listed in *Declaration of Supervised Visitation Provider (Nonprofessional)* ([form FL-324\(NP\)](#)) and sign a declaration.
- b. The provider's phone number is (specify):
- c. I request that any costs of supervision be paid as follows: petitioner: _____ percent; respondent: _____ percent; other parent/party: _____ percent.

5. Transportation for visitation (parenting time) and place of exchange

Note: In cases of domestic violence, the court must have enough information to make orders that are specific as to the time, place, and manner of transfer (exchange) of the child for custody and visitation under Family Code section 6323(c).

- a. The children must be driven only by a licensed and insured driver. The vehicle must be legally registered with the Department of Motor Vehicles and must have child restraint devices properly installed, as required by law.
- b. Transportation **to** begin the visits will be provided by (name):
- c. Transportation **from** the visits will be provided by (name):
- d. The exchange point at the beginning of the visit will be (address):
- e. The exchange point at the end of the visit will be (address):
- f. During the exchanges, the party driving the children will wait in the car and the other party will wait in the home (or exchange location) while the children go between the car and the home (or exchange location).
- g. Other (specify):

6. Child abduction prevention. There is a risk that one of the parties will take the children out of California without the other party's permission. I request the orders set out on attached [form FL-312](#).

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7. **Children's holiday schedule.** I request the holiday and vacation schedule set out below [on form FL-341\(C\)](#)

8. **Additional custody provisions.** I request the additional orders for custody set out below [on form FL-341\(D\)](#)

9. **Joint legal custody provisions.** I request joint legal custody and want the additional orders set out below [on form FL-341\(E\)](#)

10. **Other.** I request the following additional orders (*specify*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL v. 3/22/2022
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
ORDER APPOINTING COUNSEL FOR A CHILD	CASE NUMBER:

1. The proceeding was heard:

On *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____
 Judge *(name)*: _____ Temporary Judge
 Petitioner/Plaintiff present Attorney present *(name)*: _____
 Respondent/Defendant present Attorney present *(name)*: _____
 Other parent/party present Attorney present *(name)*: _____
 On the request for order, order to show cause, or motion filed *(date)*: _____ by *(name)*: _____

2. **THE COURT FINDS** it is in the best interest of the child to appoint counsel to represent the child under Family Code section 3150(a).

a. Counsel appointed for the child <i>(name of counsel)</i> : _____ b. Address: _____ c. Phone number: _____ d. E-mail address (optional): _____
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3. **CHILD OR CHILDREN FOR WHOM COUNSEL IS APPOINTED**

<u>Name</u>	<u>Date of birth</u>	<u>Address(es) (if appropriate)</u>
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4. **REASON FOR APPOINTMENT** *(specify)*:

5. **DETERMINATION OF FEES AND PAYMENT**

a. Counsel for the child will be compensated as follows:

(1) *(Specify amount or rate and terms)*:

(2) The court reserves jurisdiction to determine compensation payable to counsel for the child.

(3) The court reserves jurisdiction to modify the compensation payable to counsel for the child retroactively.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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5. b. The court finds that the parties are able to pay the compensation and expenses for the child's counsel.

The parties are ordered to pay counsel for the child as follows:

- (1) Petitioner/Plaintiff % Respondent/Defendant: % Other parent/party: %
- (a) Petitioner/Plaintiff must make installment payments of \$ per month until paid or modified by court order.
- (b) Respondent/Defendant must make installment payments of \$ per month until paid or modified by court order.
- (c) Other parent/party must make installment payments of \$ per month until paid or modified by court order.

(2) The court reserves jurisdiction to reallocate attorney's fees and costs between the parties.

c. The court finds that the parties are unable to pay all a portion of the costs for child's counsel.

The child's counsel must be paid as follows:

- (1) The court will pay all the fees and expenses for the child's attorney.
- (2) Petitioner/Plaintiff % Respondent/Defendant: % Other parent/party: %
- Payable by court: %
- (a) Petitioner/Plaintiff must make installment payments of \$ per month until paid or modified by court order.
- (b) Respondent/Defendant must make installment payments of \$ per month until paid or modified by court order.
- (c) Other parent/party must make installment payments of \$ per month until paid or modified by court order.

(3) The court reserves jurisdiction to reallocate attorney fees and costs between the parties.

(4) The court may seek reimbursement from the parties if the court pays all or a portion of the compensation for the child's counsel.

d. Other:

6. ADDITIONAL ORDERS

- a. No later than 10 court days after being appointed by the court and before beginning work on the case, counsel for a child must file a declaration with the court indicating compliance with the requirements of rule 5.242 of the California Rules of Court. *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) or other local court forms may be used for this purpose.
- b. The parties and their counsel are ordered to cooperate with counsel for the child to permit the performance of his or her duties.
- c. Counsel for the child must be provided with complete copies of all relevant documents and records filed in the proceeding within 10 days of the appointment.
- d. The parties must provide complete information concerning the child's school, medical, psychological, psychiatric, and other pertinent records to the child's counsel on request. The parties must execute such waivers and releases necessary to facilitate the child's counsel in securing access to records for the child.
- e. The parties and/or their counsel must not compromise, settle, dismiss, or otherwise remove from the court's calendar all or any portion of the issues, claims, or proceedings concerning which the child's counsel has been appointed, without participation of the child's counsel or advance notice to the child's counsel.
- f. Counsel must continue to represent the child until the appointment terminates, as provided in rule 5.240(f) of the California Rules of Court, or as stated below in item 9.

7. OTHER ORDERS:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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8. **DUTIES OF COUNSEL FOR A CHILD**

- a. Counsel for a child must:
 - (1) Represent the child’s best interests.
 - (2) Gather evidence that bears on the best interest of the child and present that admissible evidence to the court in any manner appropriate for the counsel of a party.
 - (3) Present the child’s wishes to the court if the child so desires.
 - (4) Serve notices and pleadings on all parties consistent with rules and laws applicable to parties.
 - (5) Unless under the circumstances it is inappropriate to exercise the duty:
 - (A) Interview the child;
 - (B) Review the court files and all accessible relevant records available to both parties; and
 - (C) Make any further investigations child’s counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.
 - (6) If so informed by the child at any point, provide notice that the child:
 - (A) Wishes to address the court; or
 - (B) Has changed their choice about addressing the court.
 - (7) Provide the notice in (6) as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.
- b. Counsel may introduce and examine witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

9. **COUNSEL FOR A CHILD HAS THE FOLLOWING RIGHTS:**

- a. To have reasonable access to the child;
- b. To have standing to seek affirmative relief on behalf of the child;
- c. To receive notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child;
- d. To be heard in the proceeding and take any action available to a party in the proceeding;
- e. To have access to the child's medical, dental, mental health, and other health-care records;
- f. To have access to the child's school and educational records;
- g. To have access to the child's school and educational records; To interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child;
- h. To interview mediators subject to the provisions of Family Code sections 3177 and 3182;
- i. To assert or waive any privilege on behalf of the child;
- j. To receive reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation that has not been ordered by the court;
- k. On approval of the court, to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding;
- l. On noticed motion to all parties and the local child protective services agency, to request the court to authorize the relevant local child protective services agency to release relevant reports or files concerning the child represented by the counsel as provided by Family Code section 3152; and
- m. Not to be called as a witness in the proceeding. (Fam. Code, §§ 3151(b), 3151.5.)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER

NOTICE

Any party required to pay court-ordered attorney fees or reimburse the court for attorney fees paid on a party’s behalf must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year. Failure to pay court-ordered attorney fees or reimburse the court for fees paid on a party’s behalf may result in a legal action being initiated to collect overdue payments and interest on overdue amounts.

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CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT

- TO **Findings and Order After Hearing (form FL-340)** **Judgment (form FL-180)** **Judgment (form FL-250)**
 Stipulation and Order for Custody and/or Visitation of Children (form FL-355)
 Other (specify):

1. **Jurisdiction.** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400–3465).
2. **Notice and opportunity to be heard.** The responding party was given notice and an opportunity to be heard, as provided by the laws of the State of California.
3. **Country of habitual residence.** The country of habitual residence of the child or children in this case is
 the United States Other (specify):
4. **Penalties for violating this order.** If you violate this order, you may be subject to civil or criminal penalties, or both.
5. **Child abduction prevention.** There is a risk that one of the parties will take the children out of California without the other party's permission. (*Child Abduction Prevention Order Attachment (form FL-341(B))* is attached and must be obeyed.)
6. **Child custody.** Custody of the minor children of the parties is awarded as follows:

<u>Child's Name</u>	<u>Birth Date</u>	Legal custody to: <i>(person who decides about the child's health, education, and welfare)</i>	Physical custody to: <i>(person the child regularly lives with)</i>

7. **Child custody orders with allegations of a history of abuse or substance abuse**
 - a. Allegations have been made that the following person(s) have a history of abuse or the habitual or continual use of controlled substances, alcohol, or prescribed substances: petitioner respondent other parent/party
 - b. Even though there are allegations of a history of abuse or substance abuse, the court grants sole or joint custody of the minor children, as set out in item 6.
 - c. The reasons for making the custody orders to the person(s) alleged to have a history of abuse or substance abuse are:
 - (1) included in [Attachment 7](#).
 - (2) as follows:

THIS IS A COURT ORDER.

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8. Visitation (Parenting Time)

- a. Reasonable right of visitation to the party without physical custody (**not appropriate in cases involving domestic violence**)
- b. See the attached _____-page document
- c. The parties will go to child custody mediation or child custody recommending counseling at (*specify date, time, and location*):
- d. No Visitation (parenting time)
- e. Visitation (parenting time) for the petitioner respondent other (*name*): will be as follows:

(1) **Weekends starting (date):**

(*Note: The first weekend of the month is the first weekend with a Saturday.*)

1st 2nd 3rd 4th 5th weekend of the month

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(a) The parties will alternate the fifth weekends, with the petitioner respondent other parent/party having the initial fifth weekend, which starts (*date*):

(b) The petitioner respondent other parent/party will have the fifth weekend in odd even numbered months.

(2) **Alternate weekends starting (date):**

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(3) **Weekdays starting (date):**

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
 (day of week) (time) after school

(4) **Other visitation (parenting time) days and restrictions are:** listed in Attachment 7e(4) ([form MC-025](#) may be used for this purpose) as follows:

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9. Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns

a. Supervised visitation (parenting time).

- (1) Until further order of the court other (*specify*): _____, the petitioner respondent other parent/party (*name*): _____ will have supervised visitation (parenting time) with the minor children according to the schedule on page 1.
- (2) In addition, **Supervised Visitation Order (form FL-341(A) is attached.**

b. Unsupervised visitation (parenting time)

- (1) Even though there are allegations of a history of abuse or substance abuse, the petitioner respondent other parent/party (*name*): _____ has(have) unsupervised visitation (parenting time) with the minor children as set forth in 8.
- (2) The reasons for granting unsupervised visitation to the person(s) alleged to have a history of abuse or substance abuse are: as follows: Attachment 3b.

- (3) The orders for visitation (parenting time) are specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.

10. Transportation for visitation (parenting time) and place of exchange

- a. The children must be driven only by a licensed and insured driver. The vehicle must be legally registered with the Department of Motor Vehicles, and must have child restraint devices properly installed, as required by law.
- b. Transportation **to** begin the visits will be provided by the petitioner respondent other (*specify*): _____
- c. Transportation **from** the visits will be provided by the petitioner respondent other (*specify*): _____
- d. The exchange point at the beginning of the visit will be at (*address*): _____
- e. The exchange point at the end of the visit will be at (*address*): _____
- f. During the exchanges, the party driving the children will wait in the car and the other party will wait in his or her home (or exchange location) while the children go between the car and the home (or exchange location).
- g. Other (*specify*): _____

11. Travel with children. The petitioner respondent other parent/party(*name*): _____

- must** have written permission from the other parent or a court order to take the children out of
- a. the state of California.
 - b. the following counties (*specify*): _____
 - c. other places (*specify*): _____

THIS IS A COURT ORDER.

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12. **Holiday schedule.** The children will spend holiday time as listed below in the attached schedule. (*Children's Holiday Schedule Attachment (form FL-341(C))* may be used for this purpose.)

13. **Additional custody provisions.** The parties will follow the additional custody provisions listed below in the attached schedule. (*Additional Provisions—Physical Custody Attachment (form FL-341(D))* may be used for this purpose.)

14. **Joint legal custody.** The parties will share joint legal custody as listed below in the attached schedule. (*Joint Legal Custody Attachment (form FL-341(E))* may be used for this purpose.)

15. **Access to children's records.** Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children.

16. **Other (specify):**

THIS IS A COURT ORDER.