



Judicial Council of California

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INVITATION TO COMMENT

LEG25-01

Title

Judicial Council–Sponsored Legislation:
Alternative Methods for Family Courts to
Give Notice of Child Custody Mediation

Proposed Rules, Forms, Standards, or Statutes

Amend Fam. Code, § 3176

Proposed by

Family and Juvenile Law Advisory
Committee

Hon. Tari L. Cody, Cochair

Hon. Stephanie E. Hulse, Cochair

Action Requested

Review and submit comments by May 23,
2025

Proposed Effective Date

January 1, 2027

Contact

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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Family Code section 3176 to allow for alternative methods for the court to give notice to the parties about child custody mediation and require specific content in the notice for cases involving domestic violence. The proposal originates from a group of Family Court Services directors across the state seeking to modernize the procedures for providing notice of child custody mediation by more cost-effective methods, including electronic delivery.

Background

Currently, under Family Code section 3176(b), notice of mediation must be given by certified mail, return receipt requested, postage prepaid, to the last known address. Further, under Code of Civil Procedure section 1010.6(a)(2), if a document is required to be served by certified or registered mail, electronic service of the document is not authorized. Thus, section 3176 does not provide family courts with alternative methods for giving notice of mediation to the parties.

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 It is circulated for comment purposes only.

Section 3176 was last amended, effective 2002. Since that time, the Legislature amended Code of Civil Procedure section 1010.6 to permit parties to file and serve papers electronically and courts to serve documents (such as notices and judgments) electronically (Link A). Further, effective January 1, 2011, the Judicial Council adopted rules of court regarding electronic filing and service of documents and notices (Link B).

The Proposal

Section 3176(b)

The proposal would make a request to the Legislature to delete the requirement in Family Code section 3176(b) that notice of mediation must be given by certified mail, return receipt requested, postage prepaid, to the last known address. Instead, section 3176(b) would specify that notice shall be given by one of the following methods:

- (1) When all parties are present in court for a hearing,
 - (A) In writing;
 - (B) As stated on the record with a court reporter present; or
 - (C) As stated in court and reflected in the minutes.
- (2) In writing from court staff and provided to a party who is present at the courthouse;
- (3) As part of a notice of hearing or court order filed by the court clerk, provided to a party, and required to be served on the other party;
- (4) By mail, express mail, overnight delivery, or facsimile transmission; or
- (5) By electronic notification to parties who are represented by counsel and by the consent of parties who are self-represented as permitted under Code of Civil Procedure section 1010.6 and rule 2.251 of the California Rules of Court.

The proposed five methods would reflect how notice is provided in family court matters unrelated to child custody mediation.

With respect to the proposed amendment in (b)(1), the committee took into consideration that not all family courts have court reporters available to record court hearings and document when notice of mediation is given to court users. (Link C). Because family courts without court reporters do create minutes of the hearings at which the parties are present, the committee proposes an amendment to permit courts three options to give notice of mediation when all parties are present in court for a hearing (in writing, as stated on the record when a court reporter is present, or as stated in court and reflected in

the minutes to document that notice was given when a court reporter is not available). These changes would acknowledge that notice can be given other than just on the record.

Section 3176(c)

In addition, the committee proposes that section 3176(c) be amended to require that the notice of mediation include information about communications involving a mediator be kept confidential and also inform the parties about the right to meet with the mediator separately and at separate times when the case involves domestic violence. The specific language proposed would reference Family Code section 3181 and rule 5.215 of the California Rules of Court.

The proposal:

- Is intended to increase efficiencies in the delivery of the notice of mediation, provide significant cost savings, and reduce reliance on paper.¹ Eliminating the requirement for the mediation notice to be sent exclusively by one costly method would result in considerable savings to the courts.
- Is also intended to increase the parties' access to court services. Eliminating the requirement that the notice of mediation only be served by certified mail, return receipt requested could effectively reduce the waiting period for the parties to participate in mandatory child custody mediation, especially if the parties consent to electronic service of the mediation notice. In turn, this could result in a more timely resolution of the issues, either in mediation or at the court hearing.
- Would help parties understand their right to meet with a mediator separately in cases involving domestic violence, while also helping to ensure that family courts meet their obligation to "...provide information to the parties regarding their options for separate sessions under Family Code section 3181 and rule 5.215 of the California Rules of Court."^{2,3}

¹ In July 2024, the U.S. Postal Service increased the certified mail fee to \$4.85. The PS Form 3811 Return Receipt Green Card increased to \$4.10, and the Electronic Return Receipt increased to \$2.62. See www.usps.com/ship/insurance-extra-services.htm.

² Rule 5.215(d)(6) of the California Rules of Court provides that "[i]n a Family Court Services case in which there has been a history of domestic violence between the parties or in which a protective order as defined in Family Code section 6218 is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the Family Court Services mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with Family Court Services."

³ "Family Court Services must provide information to the parties regarding their options for separate sessions under Family Code sections 3113 and 3181. If domestic violence is discovered after mediation or evaluation has begun, the Family Court Services staff member assigned to the case must confer with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times. Family Court

- Would advance a judicial branch goal of facilitating the use of technology in the courts. (Jud. Council of Cal., *Strategic Plan for Technology 2023–2026* (Sept. 2022) (Link D). Specifically, it promotes objective 5.2 of “[e]nsur[ing] current rules and legislation do not inhibit the use of technology solutions.” (p. 18).
- Would advance Goal III of *The Strategic Plan for California’s Judicial Branch* (Modernization of Management and Administration) to “improve operations through innovation, technology, and the sharing of effective practices” and “...efficient processing and resolution of all cases” (Link E).

Alternatives Considered

The committee considered alternative language to amend section 3176(b) to incorporate various methods that family courts currently use to give notice to parties in the proceedings. For example, the committee considered proposing that notice by certified mail, return receipt requested, postage prepaid, to the last known address be among several other optional methods. However, because a document required to be served by certified or registered mail cannot be served by electronic means under section 1010.6(a)(2), the committee decided to propose that the Legislature strike that requirement from the statute.

Fiscal and Operational Impacts

The proposal increases the options that family courts have to give notice of child custody mediation. It does not require the court to give notice by electronic delivery. Thus, courts and parties that are not able to send and receive the notice electronically, or do not consent, would not be impacted. For courts and parties that have access to the technology to facilitate electronic delivery of the notice of mediation, electronic notification would be more efficient, and less costly, than mailing a paper notice.

Services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the Family Court Services process.” *Id.*, rule 5.215(d)(6).

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?
- Do commenters have alternative or additional language to propose as amendments to Family Code section 3176?

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?
- The proposed amendments do not specify any method for how consent from the self-represented party would be documented. Is this something that courts should address, or already have addressed in other procedures involving giving notice? Should this be addressed in a statute, rule of court, or local rule?
- 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. Fam. Code, § 3176, at page 6
2. Link A: Code Civ. Proc., § 1010.6,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6
3. Link B: Cal. Rules of Court, rules 2.250 to 2.261,
<https://www.courts.ca.gov/cms/rules/index.cfm?title=two>
4. Link C: Fact Sheet: Shortage of Certified Shorthand Reporters in California (June 2024),
5. <https://www4.courts.ca.gov/documents/Fact-Sheet-Shortage-of-Certified-Shorthand-Reporters-June2024.pdf>
6. Link D: *Strategic Plan for Technology 2023–2026* (Sept. 2022),
<https://courts.ca.gov/system/files/file/jctc-court-technology-strategic-plan.pdf>
7. Link E: *The Strategic Plan for California’s Judicial Branch*,
<https://www.courts.ca.gov/3045.htm>

Family Code section 3176 would be amended, effective January 1, 2027, to read:

1 **Family Code section 3176**

2
3 (a) * * *

4
5 (b) ~~Notice shall be given by certified mail, return receipt requested, postage prepaid, to~~
6 ~~the last known address. The notice of mediation shall be given by one of the~~
7 ~~following methods:~~

8
9 (1) When all parties are present in court for a hearing,

10
11 (A) In writing;

12
13 (B) As stated on the record with a court reporter present; or

14
15 (C) As stated in court and reflected in the minutes.

16
17 (2) In writing from court staff and provided to a party who is present at the court
18 house;

19
20 (3) As part of a notice of hearing or court order filed by the court clerk, provided
21 to a party, and served on the other party;

22
23 (4) By mail, express mail, overnight delivery, or facsimile transmission; or

24
25 (5) By electronic service on parties who are represented by counsel and by the
26 consent of parties who are self-represented, as permitted under Code of Civil
27 Procedure section 1010.6 and rule 2.251 of the California Rules of Court.

28
29 (e) ~~Notice of mediation pursuant to Section 3188 shall state that all communications~~
30 ~~involving the mediator shall be kept confidential between the mediator and the~~
31 ~~disputing parties.~~

32
33 (c) The notice of mediation shall state that:

34
35 (1) All communications involving the mediator shall be kept confidential
36 between the mediator and the disputing parties pursuant to Family Code
37 section 3188; and

38
39 (2) Where there has been a history of domestic violence between the parties,
40 including allegations or a finding of domestic violence, or where a protective
41 order is in effect, the mediator appointed shall meet with the parties
42 separately and at separate times as provided by Family Code section 3181
43 and rule 5.215 of the California Rules of Court.