

Title	Family Law: Child Custody Evaluations (amend Cal. Rules of Court, rule 5.220; revise form FL-327; approve form FL-327-INFO; adopt form FL-328)
Summary	The proposed amended rule and new and revised forms would promote compliance with statutory mandates and policies and facilitate judicial consistency relating to the confidentiality of child custody evaluation reports and the order appointing the child custody evaluator.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov
Discussion	<p>Assembly Bill 1877 (Stats. 2008, ch. 215), effective January 1, 2010, amends Family Code section 3111 and authorizes the court to impose a monetary sanction for the unwarranted disclosure of a written, confidential child custody evaluation report. This bill also requires the Judicial Council to adopt a new form and rule by January 1, 2010. The new form will be served with every child custody evaluation report to notify the report recipient of the confidentiality of the child custody evaluation report and the consequences for the unwarranted disclosure of the report. The new rule of court will require that the new form be included with the child custody evaluation report when it is served on the parties.</p> <p>To implement and promote compliance with the statutory mandate of AB 1877, the Family and Juvenile Law Advisory Committee proposes that the Judicial Council, effective January 1, 2010:</p> <ol style="list-style-type: none"> 1. Amend California Rules of Court, rule 5.220 to include the statutory notice to the recipient of the child custody evaluation report; 2. Adopt <i>Notice Regarding Confidentiality of Child Custody Evaluation Report</i> (form FL-328) as the new form mandated by statute; 3. Approve <i>Child Custody Evaluation Information Sheet</i> (form FL-327-INFO) to educate parents about the process and confidential nature of child custody evaluations; and 4. Revise <i>Order Appointing Child Custody Evaluator</i> (form FL-

327) to reference the above information sheet and conform to case law provisions as described below.

Rule 5.220 Court-ordered child custody evaluations

The committee proposes amending this rule to include a new subdivision (i) titled “Service of the evaluation report on the parties,” which will state that when a court-ordered child custody evaluation report is served on the parties, the proposed *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be included as the first page of the child custody evaluation report. This proposed amendment would comply with the mandate of AB 1877.

Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328)

This proposed new, one-page form would serve as the required notice to the parties regarding the confidentiality of the child custody evaluation report. This form would also advise the parties about the potential consequences for the unwarranted disclosure of the child custody evaluation report.

Child Custody Evaluation Information Sheet (form FL-327-INFO)

This proposed optional form would provide information to the parties when a child custody evaluator is appointed to their case. The form would address frequently asked questions, such as, what is a child custody evaluation, what will the evaluator will do, and what do parties need to do after the court orders the evaluation? In addition, this information sheet would be another means of educating the parties about the confidential nature of the child custody evaluation report and informing them that the court can impose monetary fines for the unwarranted disclosure of the report. The proposed information sheet would also provide information about how the parties can get legal advice and access additional information on this subject.

The committee specifically seeks comments on the first bullet point in the section titled “What do I need to do after the court orders the evaluation?” It states, “Contact the evaluator immediately to set the initial appointment date and time.” Setting the initial appointment date and time is an important step in the evaluation process; however, the person who makes the initial contact to set the appointment—the parties or the evaluator—may vary in each case. Thus, the committee seeks comments on how best to rephrase this particular bullet point.

Order Appointing Child Custody Evaluator (form FL-327)

The committee proposes revising this form to include a new item 6. This item would refer the parties to the proposed new *Child Custody Evaluation Information Sheet* (form FL-327-INFO) and include a link to the court's Web site where the parties can access the information online. The reference to the proposed new form on the actual order appointing the evaluator will help educate the parties early in the proceeding so that they have a better understanding about the child custody evaluation process.

In addition, the committee proposes a change to this form to promote greater compliance with California Rules of Court, rule 5.220(d)(1)(B). Under this rule, each court must give the evaluator, before the evaluation begins, a copy of the court order that specifies the appointment of the evaluator and the *purpose and scope* of the evaluation.¹ The current form, item 2 states: "The scope of the evaluation is (*specify*)." This item does not specifically include the term "purpose." Thus, the committee proposes revising this form at item 2, to read "The purpose and scope of the evaluation is (*specify*)." This item would also include a check box for the court to indicate if there are attachments (for example, local court forms) referring to the scope and purpose of the evaluation.

The current form also lacks a section regarding the determination of fees and costs. Under rule 5.220(d)(1)(D), each court must determine and allocate between the parties any fees or costs of the evaluation.² To promote greater compliance with this rule, the committee proposes revising this form to include a new item 3 relating to the order on fees and costs of the evaluation and a new item 4 relating to the allocation of the fees and costs between the parties.

The proposed amended rule and new and revised forms are attached at pages 4–8. A copy of AB 1877 is attached at pages 9–10.

Attachments

¹ *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116 addressed the issue of an inadequate order defining the purpose and scope of a child custody evaluation and referenced the requirements of California Rules of Court, rule 5.220(d)(1)(B).

² *In re Marriage of Laurenti* (2007) 154 Cal.App.4th 395 restates the requirements under California Rules of Court, rule 5.220(d)(1)(D) that the trial court must determine and allocate fees and costs of a child custody evaluation.

Rule 5.220 of the California Rules of Court would be amended, effective January 1, 2010, to read:

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

2
3 **(a)–(h) * * ***

4
5 **(i) Service of the evaluation report on the parties**

6
7 Form FL-328 Notice Regarding Confidentiality of Child Custody Evaluation
8 Report must be attached as the first page of the child custody evaluation
9 report when a court-ordered child custody evaluation report is served on the
10 parties. This notice will inform the parties of the confidential nature of the
11 report and the potential consequences for the unwarranted disclosure of the
12 report.

13
14
15 **(j) Cost-effective procedures for cross-examination of evaluators**

16 ***
17

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO. (Optional): _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft 9 04/15/09 gds Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	
ORDER APPOINTING CHILD CUSTODY EVALUATOR	CASE NUMBER:

THE COURT ORDERS AS FOLLOWS:

1. Name: _____

- a. local court-connected child custody evaluation service (specify):
- b. private child custody evaluator
- c. other (specify):

is appointed in this matter to perform (check one):

- a full child custody evaluation
- a partial child custody evaluation

under the statutory authority of:

- Family Code, section 3111.
- Family Code, section 3118.
- Evidence Code, section 730.
- Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

2. The purpose and scope of the evaluation is (specify):

Number of pages attached: _____

- 3. See attached order on fees and costs.
- The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.

- 4. See attached order on allocation of fees and cost of the evaluation.
- The court reserves jurisdiction to determine the amount each party will pay for the evaluation.

5. Within 10 court days of receipt of this order and before the evaluation, the child custody evaluator must file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) with the court unless the person is a court-connected employee who must annually file the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (FL-325).

6. For more information, the parties may refer to the *Child Custody Evaluation Information Sheet* (form FL-327-INFO). This form is available at the office of the court clerk or online at www.courtinfo.ca.gov/forms.

Additional orders attached. Number of pages attached: _____

Date: _____

JUDGE OF THE SUPERIOR COURT

We can't agree on a parenting plan. So, how will the court make a custody order?

Parents in family court need to have a plan that shows how their child will be cared for after they separate. When parents can't agree on a parenting plan on their own or with the help of a mediator, the judge will make a decision about child custody at a hearing. The judge may order a child custody evaluation to help resolve custody and visitation disputes and appoint a child custody evaluator to recommend a parenting plan. A parent can also ask for an evaluation. This information sheet provides general information in cases where the judge appoints a child custody evaluator.

What is a child custody evaluation?

It is an investigation and analysis of the health, safety, welfare, and best interests of the child. In cases where the court has determined there is an allegation of child sexual abuse, state law requires that the evaluator conduct a detailed investigation if the court is considering permanent child custody or visitation orders. The evaluation is usually completed by a licensed psychiatrist, psychologist, marriage and family therapist, or clinical social worker. The evaluator may be a private professional, a court employee, or a professional under contract with the court.

What kind of evaluation will be done?

The evaluator will follow the court order by investigating and making recommendations that address the issues raised in your case. For example, the court might order the evaluator to make a recommendation about these and other issues:

- *Legal custody*: who makes major decisions about the child's health, education, and welfare;
- *Physical custody*: who the child lives with;
- *Time-share or visitation*: the schedule of when the child spends time with each parent;
- *Supervised visitation*: whether visitation should be supervised, and, if so, by what type of program and for how long;
- *Child custody modification*: whether an existing child custody order should be changed.

What if there is domestic violence or a protective order?

The evaluator must consider any history of domestic violence before interviewing the parents or the child. The parties may request separate interviews with the evaluator. Give the evaluator copies of any restraining or protective orders.

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

- *Safety issues*: the protection needs of the child including cases involving allegations of domestic violence or child sexual abuse.
- *Counseling*: whether, and for how long, either parent will be required to attend parenting, coparenting, domestic violence, substance abuse, rehabilitation, or other programs.

What will the evaluator do?

The evaluator will conduct an investigation. He or she may do all the following as part of the investigation: review documents related to custody, including local police reports and juvenile court records; review the child's medical, dental, mental health, and other health-care records and school and educational records; interview professionals who provided care for the child; observe parent-child interaction; interview parents, interview the child, the child's family members and others who have had contact with the child; and consult with other experts.

What do I need to do after the court orders

- *Contact the evaluator immediately to set the initial appointment date and time;*
- *Promptly provide documents and information to the evaluator and to the other party at the same time;*
- *Sign releases required to allow the evaluator access to documents and information about the child's school and care providers; and*
- *Fully cooperate with the evaluation.*



Will the evaluator speak with our child?

Depending on the child's age and maturity, the evaluator may consider observing and talking with your child.

Will I have to pay for the evaluation?

Generally, yes. Fees and costs for the evaluation are paid by the parents; however, sometimes evaluations are paid by the courts. Your order should say who is responsible for paying for the evaluation.

How long will the evaluation take?

This varies depending on the kinds of issues the evaluator must investigate. The evaluator will give you a written explanation of the process, which will describe the time frame for gathering and analyzing information for the evaluation.

What happens after the evaluator completes the investigation?

The evaluator will make a verbal or written report to the court about the issues investigated in your case. The report will include recommendations about child custody.

Is the report confidential or can I share it with my friends and family?

The child custody evaluation report and recommendation is confidential and may not be given to, disclosed, or discussed with any person except the parties, attorney for the parties, and any other person permitted access by written court order. If disclosed, the court can impose a fine against the disclosing party in an amount that is large enough to prevent that person from disclosing information in the future.

Does my court have special rules or forms?

Courts in most counties have local rules and forms for cases involving child custody evaluations. Some courts provide online access to their local rules and forms. See www.courtinfo.ca.gov/rules/localrules/htm. You may also contact the family law facilitator or self-help center at the superior court in your county.

What if I disagree with the evaluator's recommendations?

You may object to the evaluator's recommendations and request a hearing or trial to contest the recommendations. If you do not have an attorney, you may wish to get legal help with this matter. You may read the local rules of the family law court in your county to find out how to do this.

What if I have a complaint about the evaluator's performance?

You may want to:

- Discuss your concern with the evaluator to try to resolve the issue.
- Contact the court to find out the procedures for accepting and responding to complaints about an evaluator's performance.
- Consult with an attorney about raising your concern as part of your case.
- If the complaint cannot be resolved in court or if it is about a licensing issue, contact the board responsible for licensing the evaluator (Medical Board of California, Board of Psychology, or Board of Behavioral Sciences).

Where can I get information or legal advice?

Ask a lawyer for assistance. You may:

1. Contact the family law facilitator or self-help center for referrals to local legal services providers.
2. Find a lawyer through your local bar association, the State Bar of California at <http://calbar.ca.gov>, or call the Lawyer Referral Service at 1-866-442-2529 or 415-538-2250.
3. Seek free and low-cost legal help (if you qualify), go to: www.lawhelpcalifornia.org.

Where can I get more information?

For more information about child custody evaluations, you may:

1. Visit the California Courts Online Self-Help Center Web site: www.courtinfo.ca.gov/selfhelp.
2. Ask at your local law library or public library.

**Notice Regarding Confidentiality of Child Custody
Evaluation Report**

DO NOT FILE WITH THE COURT

When a court-ordered child custody evaluation is served,
this notice must be included as the first page of the report.

THE ENCLOSED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL

Confidential Report

The enclosed court-ordered child custody
evaluation report is confidential.

You must not give, disclose, or discuss the
contents of this report with any person except
your attorney or any other person permitted
access by written court order.

Unwarranted Disclosure of Report

You must not make an unwarranted disclosure
of the contents of the child custody evaluation
report.

A disclosure is unwarranted if it is done either
recklessly or maliciously and is not in the best
interest of the child.

**Potential Consequences for the
Unwarranted Disclosure of the Report**

By law, the court can impose a penalty for the
unwarranted disclosure of the child custody
evaluation report.

The penalty for the unwarranted disclosure
of the child custody report can include
monetary sanctions (a fine) and attorney's fees
and costs.

Monetary Sanctions

If the court determines that an unwarranted
disclosure of a written confidential report has
been made, the court may impose a fine against
the disclosing party in an amount that is large
enough to prevent that person from disclosing
information in the future.

Attorney's Fees and Costs

The sanction may also include reasonable
attorney's fees, costs incurred, or both unless the
court finds that the disclosing party acted with
substantial justification or that other circumstances
make the imposition of the sanction unjust.

For more information about child custody
evaluations, visit the California Courts Online
Self-Help Center Web site:
www.courtinfo.ca.gov/selfhelp.

BILL NUMBER: AB 1877 CHAPTERED
BILL TEXT

CHAPTER 215
FILED WITH SECRETARY OF STATE AUGUST 1, 2008
APPROVED BY GOVERNOR AUGUST 1, 2008
PASSED THE SENATE JULY 10, 2008
PASSED THE ASSEMBLY JULY 15, 2008
AMENDED IN SENATE JUNE 17, 2008
AMENDED IN ASSEMBLY APRIL 3, 2008
AMENDED IN ASSEMBLY MARCH 13, 2008

INTRODUCED BY Assembly Member Adams

FEBRUARY 4, 2008

An act to amend Section 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, Adams. Child custody evaluations: confidentiality.

Existing law provides that in any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation, which report shall not be made available other than as specified. In addition, any information obtained from access to a juvenile court case file is confidential and shall only be disseminated as specified.

This bill would authorize the court, commencing January 1, 2010, to impose a monetary sanction for the unwarranted disclosure of a written confidential report, as specified. The bill would require that the Judicial Council, by January 1, 2010, adopt a form that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report; and adopt a rule to require that, when a court-ordered child custody evaluation report is served on the parties, the form shall be included with the report.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the

court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

Item SPR09-31 Response Form

Title: **Family Law: Child Custody Evaluations** (amend Cal. Rules of Court, rule 5.220; revise form FL-327; approve form FL-327-INFO; adopt form FL-328)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.