

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Susan D. Huguenor, Co-chairs
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DATE: September 7, 2004

SUBJECT: Child Custody: Education, Training, and Experience Standards for
Evaluators (amend Cal. Rules of Court, rule 5.225; adopt form FL-325;
revise form FL-326) (Action Required)

Issue Statement

Since rule 5.225 of the California Rules of Court took effect on January 1, 2000, a number of child custody evaluators, family court services officials, and family law attorneys have contacted the Administrative Office of the Courts (AOC) to express concerns regarding implementation of the rule's requirements, often citing current budgetary constraints. In response to these concerns, the Family and Juvenile Law Advisory Committee has identified structural changes that would provide greater clarification and flexibility. The proposed changes, including the use of separate declaration forms depending on the type of evaluator involved, would assist child custody evaluators in both complying with the rule's requirements and establishing a record of compliance.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, amend rule 5.225 of the California Rules of Court; adopt form FL-325, *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications*; and revise form FL-326, *Declaration of Private Child Custody Evaluator Regarding Qualifications*, to clarify the education, training, and experience requirements and certification procedures for court-appointed child custody evaluators.

The texts of the proposed rule and forms are attached at pages 7–13.

Rationale for Recommendation

The committee recommends the following amendments to rule 5.225 to promote flexibility in compliance and accommodate current budgetary constraints.

First, the committee recommends eliminating language in subdivision (e) allowing evaluators to complete up to 10 hours of education and training through self-study because the term “self-study” is vague and confusing. “Self-study” does not clearly indicate the type of training that qualifies within the meaning of the term. The proposed revision still requires evaluators to complete 40 hours of initial education and training through an eligible provider. The AOC must approve all education and training programs to ensure that the appropriate content is included in the training.

Second, the committee recommends elimination of the requirement in current subdivision (j)(1) that an alternative evaluator must possess a master’s or doctoral degree. Under Family Code section 3110.5(d), if no licensed or court-connected evaluators are available, the parties may stipulate to the appointment of an alternative evaluator, subject to court approval. There is no legislative requirement that the alternative evaluator possess a master’s or doctoral degree. Rather, current rule 5.225(j) imposes the requirement that alternative evaluators both possess a master’s or doctoral degree and complete the education, training, and experience requirements of the rule. The committee recommends eliminating the master’s or doctoral degree requirement, but clarifying that the parties have the ability to stipulate to the appointment of an alternative evaluator with a master’s or doctoral degree if such an evaluator is available, subject to court approval. Alternative evaluators would still be required, at a minimum, to complete the education, training, and experience requirements of this rule to qualify for appointment. This change would assist counties with limited pools of qualified evaluators.

The committee also recommended amending the experience requirements in subdivision (f). However, the committee has since concluded that further discussion on this issue is needed. To adequately address concerns that were raised during and subsequent to the public comment period, the committee intends to amend and circulate this portion of the rule in a future RUPRO cycle.

The committee further recommends making grammatical and organizational changes to improve the rule’s structure and language and clarify certain issues.

First, subdivision (i), which concerns training and experience requirements for court-connected evaluators beginning practice, would be relettered (g) so that it is positioned logically after the education, training, and experience requirements of subdivisions (e) and (f).

Second, current subdivision (i) would be amended to clarify the training and experience requirements for court-connected evaluators who are beginning practice. The current

wording is unclear both to whom it applies and what it requires. The proposed amended title is “Court-connected evaluators.” Other proposed amendments would clarify that the subdivision is intended to apply to evaluators beginning practice and specifically identify each criterion that evaluators must meet to conduct evaluations.

Third, current subdivisions (j) and (k) would be combined into one subdivision, (j), to improve the rule’s organization. Current subdivision (k), which concerns licensing requirements, would become proposed subdivision (j)(1). Current subdivision (j), which governs appointment when no licensed or court-connected evaluators are available, would become proposed subdivision (j)(2).

Fourth, the committee proposes to clarify the process in subdivision (l) (formerly (m)) for submitting declarations of compliance with the applicable education, training, and experience requirements, including separate forms for court-connected and private evaluators. The process itself would not change significantly: court-connected evaluators would have to file annually with family court services, while private evaluators would have to file within 10 days after notification of each appointment and before any work on each child custody evaluation had begun. However, subdivision (l) would address the filing process for court-connected and private evaluators separately, and court-connected evaluators would be instructed to file by a certain date each year.

The committee further recommends adopting form FL-325 and revising form FL-326 to reflect the distinctions between the two types of child custody evaluators in these proceedings: the private evaluator and the court-connected evaluator. Current form FL-326, *Declaration of Child Custody Evaluator Regarding Qualifications*, applies to both court-connected and private evaluators. The committee recommends applying this form solely to private evaluators, entitling it *Declaration of Private Child Custody Evaluator Regarding Qualifications*. The caption at the top would request the evaluator’s name and contact information instead of an attorney or a party to the action, as it currently requests. It would also distinguish between private evaluators currently in compliance with the rule and those who qualify as alternative evaluators under rule 5.225(j)(2). The form should be filed in the court file for each case to which the private evaluator is appointed.

The committee also recommends clarifying that form FL-326 is mandatory, not optional. As currently written, rule 5.225(m) and form FL-326 are inconsistent: subdivision (m) requires child custody evaluators to file form FL-326 with the court, but form FL-326 declares itself to be an “optional” form. The Judicial Council therefore needs to “adopt” form FL-326 for “mandatory” use to make the form consistent with the provisions of the rule. Current rule 5.225(m) has required all evaluators to file form FL-326 since January 1, 2004.

Proposed new form FL-325 follows essentially the same format as form FL-326. However, the proposed title would be *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications*, and there would be no caption for case-specific

information because court-connected evaluators, unlike private evaluators, are not required to file a form in the court file of each case to which they are appointed. Rather, they would file the form annually with the local family court services office or administrator. The form would also distinguish between court-connected evaluators who have fully complied with rule 5.225 and those who qualify for appointment under the alternative means described in proposed subdivision (g). Subdivision (g) is not applicable to private evaluators.

Alternative Actions Considered

No alternative actions were considered. The proposed amendments are necessary to clarify the legal and procedural requirements of rule 5.225 and to provide flexibility in compliance.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 5 through June 4, 2004, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals, such as family court services' directors, managers, supervisors, and staff.

The comments are summarized in the attached chart at pages 14–24. There were a total of 19 commentators. Eighteen of the 19 either agreed with the proposed rule or agreed if modifications were made. Several commentators praised the clarity and flexibility provided by the proposed amendments. One commentator did not agree with the proposed changes. The following subdivisions received the most significant comments.

Subdivision (e)

One commentator stated that eliminating the provision allowing 10 hours of self-study would be impractical because of current budgetary constraints. She asserted that distance learning is available only during normal work hours and that current understaffing restricts participation. The committee proposes elimination of this alternative because the term “self-study” is vague and promotes confusion. However, the committee agrees that greater flexibility is needed to accommodate current budgetary constraints. The committee therefore recommends expanding the permissible means of training to include distance learning, such as broadcast instruction, online study, or alternative learning methods implemented by an “eligible” education and training provider as defined in subdivision (m). Offering these means promotes flexibility in compliance and should provide staff with the opportunity to study without traveling or taking time off from work.

Subdivision (f)

One commentator disagreed with changing the number of evaluations necessary to satisfy the experience requirements from six to three, citing a serious gap between rudimentary knowledge and professional expertise and the need for continued professional consultation. The committee agrees that further discussion is needed on this issue. To adequately address concerns that were raised during and subsequent to the public comment period, the committee intends to circulate a proposed amended subdivision (f) in a future RUPRO cycle.

Subdivision (j)

Three commentators disagreed with subdivision (j)(1). Two of those commentators disagreed with the licensing requirement for evaluators. Family Code section 3110.5(c)(1)–(5), however, requires evaluators to be *either* licensed as a physician, psychologist, marriage and family therapist, or clinical social worker *or* court-connected, effective January 1, 2005. Subdivision (j)(1), therefore, reflects the mandate of the Legislature. If the evaluator is neither licensed nor court-connected, he or she must qualify under the alternative evaluator criteria described in subdivision (j)(2) to be appointed. It is not within the Judicial Council’s purview to alter legislative requirements.

The third commentator asserted that the complexities of psychotherapy make it essential for all evaluators, whether court-connected or private, to possess a master’s degree and license. However, as stated above, the Legislature does not require court-connected evaluators to have a license or a master’s degree under Family Code section 3110.5(c). Rule 5.225(j)(1) simply reiterates distinctions created by the Legislature.

Two commentators disagreed with proposed subdivision (j)(2), asserting that it provides an exception to counties lacking evaluators with a professional degree and opens the door to people lacking adequate professional qualifications. Current rule 5.225(j) requires any alternative evaluator to both possess a master’s or doctoral degree and satisfy the education, training, and experience requirements of the rule. Family Code section 3110.5(d), however, does not mandate that alternative evaluators possess a professional degree. Rather, it allows the parties, subject to court approval, to stipulate to the appointment of an evaluator in the event that no licensed or court-connected evaluators are available. As proposed, rule 5.225(j)(2) would reference Family Code section 3110.5(d) and require that any alternative evaluator appointed must, at a minimum, have satisfied the education, training, and experience requirements of rule 5.225. This language would preserve flexibility in those counties where only limited pools of potential qualified evaluators are available. It would also allow parties to stipulate to the appointment of an alternative evaluator with a master’s degree if an evaluator with that level of education were available, subject to court approval.

Subdivision (l)

Three commentators thought the process for filing form FL-326 was unrealistic, cumbersome, and restrictive. Subdivision (l)(1)(B) requires private evaluators to file form FL-326 within 10 days after notification of each appointment and before any work on each child custody evaluation has begun. Two commentators suggested that private evaluators, like court-connected evaluators, should only be required to file annually. There were also proposals to amend this subdivision to allow evaluators to attach form FL-326 to the evaluation once it was completed or to permit courts to develop local rules on proper procedure.

The committee recommends continuing to require private evaluators to file form FL-326 within 10 days after notification of each appointment and before any work on each evaluation has begun. This process has been in effect since the rule's adoption, on January 1, 2000. While it may seem more efficient for an evaluator to file the form upon completing the evaluation, the purpose of the filing requirements is to establish, prior to conducting evaluations, whether the evaluator has complied with all of the applicable education, training, and experience specified in rule 5.225. Allowing evaluators to submit declarations of compliance subsequent to the evaluation defeats this purpose and may create situations in which an unqualified evaluator is conducting evaluations without the knowledge of either the court or the parties. Further, it is not the responsibility of a court agency to keep a file regarding the qualifications of those who are privately employed.

Implementation Requirements and Costs

The proposed amendments should not result in additional costs other than the cost of producing forms FL-325 and FL-326. The flexibility provided by the alternative means of training should result in cost savings.

Attachments

Rule 5.225 of the California Rules of Court is amended, effective January 1, 2005, to read:

1 **Rule 5.225. Education, ~~experience, and training, and experience~~ standards for**
2 **court-appointed child custody investigators and evaluators**

3 (a)–(c) ***

4
5 (d) **[Requirements for evaluators’ qualifications: education,**
6 **~~experience, and training, and experience~~]** Persons appointed as child
7 custody evaluators must:

8
9 (1) ~~Effective January 1, 2004, Complete a total of 40 hours of initial~~
10 ~~education and training and education as described in subdivision~~
11 ~~(e); At least 20 of the 40 hours of education and training required~~
12 ~~by this rule must be completed by January 1, 2003;~~

13
14 (2) ***

15
16 (3) Fulfill the experience requirements described in ~~subdivision (f);~~
17 and

18
19 (4) Meet the continuing education, ~~experience, and training, and~~
20 ~~experience~~ requirements described in ~~subdivision (g) (h).~~

21
22 (e) **[Education and training requirements]** Only education and training
23 acquired after January 1, 2000, ~~that meets the requirements for training~~
24 ~~and education from~~ providers described in ~~subdivision (n) (m)~~ meets the
25 requirements of this rule. ~~Ten of the hours required by this rule may be~~
26 ~~earned through self study that is supervised by a training provider who~~
27 ~~meets the requirements described in subdivision (n).~~ Serving as the
28 instructor in a course meeting the requirements described in ~~subdivision~~
29 ~~(n) (m)~~ in one or more of the subjects listed in paragraphs (1) through
30 (21) below can be substituted for completion of the requisite number of
31 hours specified in ~~subdivision (d)~~ on an hour-per-hour basis, but each
32 subject taught may be counted only once. The hours required by this
33 rule must include, but are not limited to, all of the following subjects:

34
35 (1)–(21) ***

36
37 (f) ***

1 **(g) [Court-connected evaluators]** Court-connected evaluators who do not
2 meet the education and training requirements in (d) and (e) may conduct
3 child custody evaluations:

4
5 (1) If they have completed 20 of the 40 hours of initial education and
6 training required by (d);

7
8 (2) If they complete the additional 20 hours of education and training
9 required by (d) within 12 months of beginning practice as a child
10 custody evaluator;

11
12 (3) If they comply with the experience requirements in (f); and

13
14 (4) If, during the period in which the evaluator does not meet the
15 requirements of the rule, he or she is supervised by a court-
16 connected evaluator who has complied with the education,
17 training, and experience requirements of this rule.

18
19 **(g) (h) [Continuing education and training]** Effective January 1, 2004,
20 After completing the initial 40 hours of training, persons appointed as
21 child custody evaluators must annually attend complete 8 hours of
22 update training covering subjects described in subdivision (e) after
23 completing the initial 40 hours of training. This requirement is in
24 addition to the annual 4 hours of domestic violence update training
25 described in rule 5.230.

26
27 **(h) (i) [Ongoing clinical consultation]** When conducting evaluations,
28 persons appointed as child custody evaluators should, where
29 appropriate, seek guidance from professionals who meet the
30 requirements of this rule.

31
32 ~~**(i) [Court employees]** Effective January 1, 2004, court connected~~
33 ~~evaluators may conduct evaluations if they have already completed at~~
34 ~~least 20 hours of the training required in subdivision (d) of this rule and~~
35 ~~meet all of the qualifications established by this rule within 12 months~~
36 ~~after completing the 20-hour requirement. During the period in which a~~
37 ~~court connected evaluator does not yet meet the requirements of this~~
38 ~~rule, a court connected professional who meets the requirements of the~~
39 ~~rule must supervise the court connected evaluator's work.~~

40
41 ~~**(j) [Alternative appointment criteria]** If the court appoints a child~~
42 ~~custody evaluator under Family Code section 3110.5(d), the court must~~
43 ~~require that the evaluator:~~

1
2 (1) ~~Possess a master's or doctoral degree in psychology, social work,~~
3 ~~marriage and family counseling, or another behavioral science~~
4 ~~substantially related to working with families; and~~
5

6 (2) ~~Have completed the education, experience, and training~~
7 ~~requirements in subdivisions (e) and (g) of this rule.~~
8

9 ~~(k) [Licensing requirements] On or after January 1, 2005, persons~~
10 ~~appointed as child custody evaluators must meet the criteria set forth in~~
11 ~~Family Code section 3110.5(e)(1)–(5).~~
12

13 **(j) [Appointment criteria]**
14

15 (1) On or after January 1, 2005, persons appointed as child custody
16 evaluators must meet the criteria set forth in Family Code section
17 3110.5(c)(1)–(5).
18

19 (2) If there are no child custody evaluators available locally who meet
20 the criteria of Family Code section 3110.5(c)(1)–(5), the parties
21 may, under Family Code section 3110.5(d), stipulate to an
22 individual who does not meet the criteria described in Family Code
23 section 3110.5(c)(1)–(5), subject to approval by the court. Any
24 evaluator chosen must, at a minimum, have complied with the
25 education, training, and experience requirements in (d), (e), and
26 (f).
27

28 ~~(k)~~ **(k) [Responsibility of the courts]** Each court:
29

30 (1) ~~On or before January 1, 2004, Must~~ develop local court rules to
31 ~~implement this rule~~ that:

32 (A)–(B) ***
33

34 (2) ~~Effective January 1, 2004, Must~~ use the Judicial Council form
35 *Order Appointing Child Custody Evaluator* (FL-327) to appoint a
36 private child custody evaluator or a court-connected evaluation
37 service. Form FL-327 may be supplemented with local court
38 forms;
39

40 (3)–(4) ***
41
42

1 ~~(m)~~ (l) [Child custody evaluator] A person appointed as a child custody
2 evaluator must:

3
4 (1) ~~Effective January 1, 2004, complete and file with the court Judicial~~
5 ~~Council form *Declaration of Child Custody Evaluator Regarding*~~
6 ~~*Qualifications* (FL-326). This form must be filed no later than 10~~
7 ~~court days after receipt of notification of the appointment and~~
8 ~~before any work on the child custody evaluation has begun, unless~~
9 ~~the person is a court connected employee who must file annually~~
10 ~~with the court Judicial Council form *Declaration of Child Custody*~~
11 ~~*Evaluator Regarding Qualifications* (FL-326); Submit to the court~~
12 ~~a declaration indicating compliance with all applicable education,~~
13 ~~training, and experience requirements.~~

14
15 (A) Court-connected child custody evaluators practicing as of
16 January 1 of the given year must submit Judicial Council
17 form *Declaration of Court-Connected Child Custody*
18 *Evaluator Regarding Qualifications* (FL-325) to the local
19 family court services office or administrator by January 30 of
20 that year. Court-connected evaluators beginning practice after
21 January 1 must file form FL-325 before any work on the first
22 child custody evaluation has begun and by January 30 of
23 every year thereafter; and

24
25 (B) Private child custody evaluators must complete Judicial
26 Council form *Declaration of Private Child Custody*
27 *Evaluator Regarding Qualifications* (FL-326) and file it with
28 the clerk's office no later than 10 days after notification of
29 each appointment and before any work on each child custody
30 evaluation has begun;

31
32 (2)–(6) ***

33
34 ~~(n)~~ (m) [~~Training and Education and training providers~~] Eligible
35 providers may include educational institutions, professional
36 associations, professional continuing education groups, public or private
37 for-profit or not-for-profit groups, court-connected groups, and the
38 Administrative Office of the Courts. Eligible providers must:

39
40 (1)–(3) ***

41
42 (4) Distribute a certificate of completion to each person who has
43 ~~attended~~ completed the training. The certificate ~~will~~ must

1 document the number of hours of training offered, the number of
2 hours the person ~~attended~~ completed, the dates of the training, and
3 the name of the training provider; and
4

5 (5) Meet the approval requirements described in ~~subdivision (e)~~ (n).
6

7 ~~(e)~~ (n) **[Eligible training]** ~~Effective July 1, 2003, Eligible education and~~
8 ~~training and education~~ programs must be approved by the
9 Administrative ~~Director~~ Office of the Courts. ~~Training and Education~~
10 ~~and training courses that were~~ taken between January 1, 2000, and July
11 1, 2003, may be applied toward the requirements of this rule if ~~it~~ they
12 ~~addresses~~ addressed the subjects listed in ~~subdivision (e)~~; and ~~is~~ were
13 either certified for continuing education credit by a professional
14 provider group or offered as part of a related postgraduate degree or
15 licensing program.

EVALUATOR <i>(Name and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 14</h2> <h2 style="margin: 0;">09/07/04 mc</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DECLARATION OF COURT-CONNECTED CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	

1. I, *(name):* _____, declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.

2. As of *(date):* _____, I am a court-connected child custody evaluator for the above court.

3. I have satisfied all of the domestic violence training requirements for a court-connected child custody evaluator set forth in Family Code sections 1816 and 3110.5 and rule 5.230 of the California Rules of Court; and

4. a. I have satisfied all of the education, training, and experience requirements for a court-connected child custody evaluator set forth in rule 5.225(d)–(f) of the California Rules of Court; or
 b. I have not satisfied all of the education, training, and experience requirements for a court-connected child custody evaluator set forth in rule 5.225(d)–(f) of the California Rules of Court, but I qualify for appointment under rule 5.225(g) because:
 - (1) I have completed at least 20 of the 40 hours of initial education and training required by rule 5.225(d);
 - (2) I will complete the additional 20 hours of education and training required by rule 5.225(d) within 12 months of the date I began practice as a court-connected child custody evaluator;
 - (3) I am in compliance with rule 5.225(f) of the California Rules of Court; and
 - (4) I am being supervised by a court-connected child custody evaluator who has complied with all of the applicable education, training, and experience requirements for court-connected child custody evaluators.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

▶

(TYPE OR PRINT NAME)
(SIGNATURE OF DECLARANT)

EVALUATOR (Name and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Draft 12 09/20/04 mc</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
<p>DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS</p>	CASE NUMBER:

1. I, (name): _____, declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. On (date): _____, I was appointed by the court to perform a child custody evaluation in this matter.
3. I have satisfied all of the domestic violence training requirements for a private child custody evaluator set forth in Family Code sections 1816 and 3110.5 and rule 5.230 of the California Rules of Court; and
4. I have satisfied all of the education, training, and experience requirements for a private child custody evaluator set forth in rule 5.225(d)–(f) of the California Rules of Court; and
5. a. I have satisfied the licensing requirement for a private child custody evaluator set forth in Family Code section 3110.5(c) and rule 5.225(j)(1) of the California Rules of Court; or
 - b. I have not satisfied the licensing requirement for a private child custody evaluator set forth in Family Code section 3110.5(c) and rule 5.225(j)(1) of the California Rules of Court, but I am eligible to perform a child custody evaluation in this case under Family Code section 3110.5(d) and rule 5.225(j)(2) of the California Rules of Court because:
 - (1) The court has determined there are no evaluators meeting the criteria of Family Code section 3110.5(c) who are willing and available, within a reasonable period of time, to perform child custody evaluations; and
 - (2) The parties have stipulated to, and the court has approved, having the evaluation done by an individual who does not satisfy the licensing criteria set forth in Family Code section 3110.5(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

SPR04-23

**Child Custody: Education, Training, and Experience Standards for Evaluators
(amend Cal. Rules of Court, rule 5.225; adopt form FL-325; revise form FL-326)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Dr. Albert French Psychiatrist Roseville	AM	N	<p>1. Subdivision (d)(1). The requirement that “at least 20 of the 40 hours of education and training required by this rule must be completed by January 1, 2003” clearly makes it impossible for any new evaluators to be qualified.</p> <p>2. Subdivision (f). This provision will “lock the gate” in a manner which protects the existing pool of 730 evaluators.</p> <p>3. I suggest that evaluators submit their reports in a standard format, using a form, and specify exactly what the basis of each recommendation is. Evaluations must always use a standard set of procedures.</p>	<p>1. Agree that the date restriction currently contained in subdivision (d)(1) is no longer necessary. The committee has proposed revising this sentence to state that evaluators must complete a total of 40 hours of initial education and training.</p> <p>2. Because of concerns raised regarding the experience requirements, this issue will be addressed in a future RUPRO cycle.</p> <p>3. This rule establishes qualifications and training for court-appointed child custody evaluators; it does not concern the proper procedure or format for submitting evaluations or for qualifying evaluators as experts.</p>
2.	Ms. Frances Henderson Director/Facilitator Family Court Services Written on behalf of 10 family court services directors present at the Bay Area Regional Meeting of Family Court Services Directors	AM	Y	<p>1. Subdivision (e). Training or continuing education that qualifies for professional education units and also addresses the list of subject matters in subdivision (e) should be a permissible means to meet the training requirements of this rule. We recommend the addition of the following language after online study: “Any study for which professional continuing educational units can be acquired shall satisfy the requirements of this section.”</p>	<p>1. It is unnecessary to add language regarding professional education units in subdivision (e) because subdivision (m), which outlines the types of providers eligible to provide education and training, already specifies that evaluators may count training obtained from “professional continuing education groups” toward meeting the education and training described in subdivision (e). Any training obtained from a professional continuing education group must cover at least one of the 21 subjects listed in subdivision (e) in order to qualify as education and training within the meaning of the rule.</p>

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**Child Custody: Education, Training, and Experience Standards for Evaluators
(amend Cal. Rules of Court, rule 5.225; adopt form FL-325; revise form FL-326)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				2. Subdivision (f)(1). Replace “between January 1, 2000, and July, 1, 2003” with “within the previous four years of the date of performance of said oral written or oral report.” This will reflect the importance of individuals remaining current in the field.	2. Owing to concerns raised regarding the experience requirements during and subsequent to the public comment period, subdivision (f) will be addressed in a future RUPRO cycle.
3.	Ms. Mary Hildebrandt Child Custody Evaluator/ Senior Family Mediator	AM	N	Subdivision (j)(1). I do not agree that child custody evaluators should be required to have a license effective 2005. Requiring a license may cause attorneys to object to a court-appointed evaluator for not meeting the standards of practice. They might exercise peremptory challenges against those evaluators who don’t possess a license, believing that a licensed evaluator is more qualified. The license requirement complicates the logistical procedures of the court and causes work inequities. In addition to potentially setting a two-tiered system of court-connected evaluators, the license requirement causes a great disservice to families who would otherwise benefit from a highly trained and experienced “unlicensed” evaluator.	Requiring certain evaluators to possess a license is a legislative mandate. Family Code section 3110.5(c)(1)–(5) requires that, effective January 1, 2005, all child custody evaluators appointed under the Family Code, section 730 of the Evidence Code, or section 2032 of the Code of Civil Procedure must be <i>either</i> licensed as a physician, psychologist, marriage and family therapist, or clinical social worker <i>or</i> court-connected and certified as having met all the requirements established in this rule. Subdivision (j)(1) merely reflects the mandate of the Legislature. If the evaluator does not possess a license, he or she must either be court-connected or qualify under the alternative evaluator criteria described in subdivision (j)(2) to be appointed.
4.	Ms. Wendy Homer Child Custody Mediator/ Family Assessment Specialist Family Court Services Superior Court of Napa County	N	N	Subdivision (j)(1). It is essential for all evaluators, whether court-connected or private, to possess at least a master’s degree and a license to practice psychotherapy, as well as a minimum of five years’ experience as a psychotherapist. An evaluator often needs the ability to understand and assess psychiatric diagnoses made by other professionals involved with	The Legislature, in Family Code section 3110.5(c)(1)–(5), makes a distinction in the professional licensure requirements for private and court-connected evaluators. Section 3110.5(c)(1)–(5) requires that evaluators be <i>either</i> licensed as a physician, psychologist, marriage and

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**Child Custody: Education, Training, and Experience Standards for Evaluators
(amend Cal. Rules of Court, rule 5.225; adopt form FL-325; revise form FL-326)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				the family members and how they affect decisions regarding a parenting plan.	family therapist, or a clinical social worker <i>or</i> court-connected, effective January 1, 2005. The Legislature does not require court-connected evaluators to have a license or a master’s degree under the terms of the statute. Rule 5.225(j)(1) merely reiterates the educational requirements and distinctions created by the Legislature.
5.	Ms. Kim Hubbard President Orange County Bar Association	A	Y	The committee’s recommendations for changes in the experience requirements and alternative appointment criteria for child custody evaluators, for the clarification of requirements affecting court-connected evaluators beginning practice, and for the new and revised forms, all seem to be appropriate.	No response required.
6.	Mr. Scott Jones Manager Family Mediation Program Superior Court of Ventura County	A	N	Subdivision (j)(2). I’d prefer that the education standards be applied equally in all counties without exception. Counties without evaluators with a master’s level of education are given an exception to the education requirements. No time limit is set, though one would be appropriate. Nominal fees assessed from child custody cases may assist in funding educational requirements.	Subdivision (j)(2) does apply equally in all counties and makes no exceptions for counties that lack evaluators with a master’s level of education. The purpose of this subdivision is merely to establish minimum requirements in accordance with Family Code section 3110.5(d). That provision states that, when there are no evaluators available who are either licensed or court-connected, as described in Family Code section 3110.5(c)(1)–(5), the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to court approval. Rule 5.225(j)(2) supplements Family Code section 3110.5(d) by further requiring that any alternative evaluator stipulated to by

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					the parties must, at a minimum, have satisfied the education, training, and experience requirements of the rule in order to qualify to conduct evaluations. Parties in every county are free, with court approval, to appoint evaluators with a master's degree level of education if there is an evaluator with that level of education available.
7.	Ms. Patricia Kaplan Supervisor Family and Children's Bureau Superior Court of Alameda County	A	N	<i>No specific comment</i>	No response required.
8.	Ms. Alice M. King Attorney and Co-president Plumas County Bar Association	A	N	I am glad to see the proposed changes allow for flexibility in selecting child custody evaluators. In our small county, we would be hard-pressed to find an investigator who would meet the requirements as currently written. We currently have an investigator who possesses great wisdom and experience and provides quality work, but who does not meet the educational qualifications.	No response required.
9.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County	A	N	I feel it is important there be standardized requirements for these type of positions. Yet I do not feel qualified to evaluate what those requirements should be. Currently not a juvenile court issue.	No response required.
10.	Ms. Adele Myers Investigator Family Court Services Superior Court of Plumas County	A	N	Subdivision (j)(2). I have been conducting child custody evaluations for nearly 15 years in Plumas County but do not possess a master's degree. I do, however, have a great deal of empirical knowledge, am well respected by colleagues and clients, and	No response required.

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				would like to be able to continue in my profession. I feel the proposed amendment is critical in rural areas, such as Plumas County, where the number of investigators with a master's degree is quite limited.	
11.	Dr. Shary Nunan Psychologist Family Resolution Center Walnut Creek	AM	N	<p>1. Subdivision (h). There is too much training in domestic violence required. It takes time and resources away from evaluators who would be better served by becoming educated in other critical areas. I would recommend domestic violence training every four years, or, at most, every two years.</p> <p>2. Subdivision (l)(1)(B): Private evaluators should be required to file proof of their fulfillment of the training requirements once a year rather than with every evaluation.</p>	<p>1. It is not possible to use this proposal as a means of amending the domestic violence requirements because the amount of domestic violence training required is imposed under the provisions of rule 5.230, not rule 5.225. Rule 5.230(d) requires evaluators to complete 16 hours of advanced domestic violence training and 4 hours of domestic violence training annually thereafter. The four hours of annual domestic violence training specified in rule 5.225(h) is simply a reiteration of what is required in rule 5.230(d). It was included in rule 5.225 so that all training requirements relevant to child custody evaluators would be grouped together in one rule. Proposed amendments to the domestic violence training requirements, therefore, would have to be directed to the provisions of rule 5.230.</p> <p>2. Private evaluators are required to file a declaration of qualifications (FL-326) before beginning work on each evaluation because the form needs to be placed in the court file for the case to which the private evaluator was appointed. Court-connected evaluators file annually because those</p>

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					records are housed in family court services and are readily accessible to the court if necessary. Private evaluators, however, have no general court-based office or administrator who maintains files on their behalf.
12.	Dr. Zena D. Polly Private Psychology Practice Irvine	A	N	<i>No specific comment</i>	No response required.
13.	Mr. Michael Powell Supervisor Family Court Services Superior Court of San Luis Obispo County	A	N	Proposal provides appropriate clarity to training and documentation of training. Would not have significant impact on our current process or budget.	No response required.
14.	Dr. Gary Rick Licensed Psychologist Ventura	AM	N	Subdivision (l)(1)(B). Requiring private evaluators to file form FL-326 within ten days after notification of each appointment and before commencing the evaluation is unrealistic and cumbersome. Due to time and resource issues affecting court staff, it can take weeks after filing form FL-326 for the clerk's office to send it back stamped. I suggest either that (1) private evaluators have a procedure similar to that of court-connected evaluators in which the private evaluator sends in the form only once a year (court-connected and private evaluator forms could be kept in separate files), (2) there be a provision allowing the development of local court rules concerning how this form should be filed, or (3) form FL-326 be a sworn statement that has to be attached to the evaluation at the time it is submitted to the court.	Private evaluators are required to file a declaration of qualifications (FL-326) before work on each evaluation because the form needs to be placed in the court file for the case to which the private evaluator was appointed. Court-connected evaluators file annually because those records are housed in family court services and are readily accessible to the court if necessary. Private evaluators, however, have no general court based office or administrator who maintains files on their behalf. In addition, allowing evaluators to submit declarations of proof subsequent to the evaluation may create situations in which an unqualified evaluator is conducting evaluations without the knowledge of those involved. It is also important to note that

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					the evaluator need only file within 10 days—he or she doesn’t have to wait for the stamped copy to be returned by the court.
15.	Mr. Joseph Roberson Northridge	A	N	As a person educated in a counseling field I have been left in shock at the lack of skill I have seen exhibited by some mediators. It has often become obvious to me that the mediators lacked an insight into their own prejudices and biases. I also found it shocking that several of the mediators informed me that they had not done a comprehensive review of the case file to get any background information on the case. In what field can someone exhibit wisdom and understanding without reviewing the circumstances of the situation?	No response required.
16.	Ms. Martha Rosenberg Director Family and Investigative Court Services Superior Court of Contra Costa County	AM	N	As funding is significantly restricted for the courts at this time, it seems foolhardy to eliminate the provision allowing for 10 hours of self-study. Actually, the amount of allowable self-study hours should be increased. Not only is funding a problem, but current understaffing restricts the amount of time staff can be away from their jobs to attend distance or broadcast learning that is only available during normal work hours. Self-study allows staff to accumulate hours on their own time as desired. One means of self-study should be audiotapes of various workshops sponsored and distributed by CFCC.	The committee recommends eliminating the term “self-study” owing to confusion surrounding its interpretation. However, because current budgetary constraints demand flexibility in compliance, the committee recommends expanding the means of obtaining training to include distance learning in addition to in-person instruction. Learning methods such as audiotapes and videotapes may be a means of fulfilling the training requirements if they are forms of study approved by the training and education providers identified in subdivision (m) of the rule. The option of distance learning should enable staff to complete training without having to travel or take time off from work. There is no

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					<p>indication that distance learning is available only during normal work hours.</p> <p>In addition, the effect of eliminating the 10 hours of self-study currently allowed by the rule would be to increase the flexibility in complying with the rule. Because there is no time restriction, evaluators can complete the entire 40 hours of required training through any combination of in-person instruction and/or distance learning they choose.</p>
17.	Dr. Daniel J. Rybicki Clinical and Forensic Psychologist ForenPsych Services Agoura Hills	A	N	<p>1. Subdivision (f)(2). While lowering the required number of evaluations from 6 to 3 to satisfy the experience requirements is likely to assist with qualifying more evaluators to serve, there is a serious gap between rudimentary knowledge and professional expertise in this complex area. The standard should not be changed. Rather, we should highlight the importance of continued professional consultation, supervision, and due diligence to practice in areas where one has suitable training and experience.</p> <p>2. Subdivision (l)(1)(B). There should be some leeway regarding the requirement that private evaluators submit form FL-326 within 10 days of appointment. Perhaps the evaluator, if he or she is on the county listing, could submit the certification form at the conclusion of the process when the report is submitted.</p>	<p>1. In order to adequately address concerns that were raised regarding the experience requirements outlined in subdivision (f), the committee will amend and circulate this portion of the rule in a future RUPRO cycle. It is agreed that further discussion is needed on this issue.</p> <p>2. The intent of the filing deadlines is to ensure that evaluators have met the education, training, and experience requirements prior to their beginning work on an evaluation. Allowing evaluators to submit declarations of proof when the report is submitted defeats the purpose. It may also create situations in which an</p>

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				<p>3. Subdivision (j)(2). Eliminating the requirement that evaluators possess a master’s or doctoral degree opens the door for people without adequate training, experience, or professional qualifications to conduct evaluations. This increases the risk for serious errors and poor data for the court. There are already a high number of people with degrees and the requisite training who are brought before the ethics committee, the licensing board, or even malpractice litigation. To allow persons with even less formal education to undertake these tasks is to risk even greater challenges. Perhaps we need greater clarification of the term “well qualified to perform evaluations.”</p>	<p>unqualified evaluator is conducting evaluations without the knowledge of those involved.</p> <p>3. The purpose of this subdivision is merely to establish minimum requirements in accordance with Family Code section 3110.5(d). That provision states that, when no evaluators who are either licensed or court-connected, as described in Family Code section 3110.5(c)(1)–(5), are available, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to court approval. Rule 5.225(j)(2) supplements Family Code section 3110.5(d) by further requiring that any alternative evaluator stipulated to by the parties must, at a minimum, have satisfied the education, training, and experience requirements of the rule in order to qualify to conduct evaluations. Parties in every county are free, with court approval, to appoint evaluators with a master’s degree level of education if there is an evaluator with that level of education available.</p>
18.	Ms. Barbara Sanchez Smart Child Custody Evaluator Superior Court of Los Angeles County	AM	N	<p>1. Subdivision (j)(1). I am opposed to the provision requiring that child custody evaluators possess a license effective January 1, 2005. The current education requirement for mediators and child custody evaluators is a master’s degree in the social sciences or related fields. Requiring child custody</p>	<p>1. Requiring certain evaluators to possess a license is a legislative mandate. Family Code section 3110.5(c)(1)–(5) requires that, effective January 1, 2005, all child custody evaluators appointed under the Family Code, Section 730 of the Evidence</p>

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				<p>evaluators to have a license creates inequities on a statewide basis, imposes substantial costs to the state, court and taxpayers, reduces the pool of bilingual resources since many bilingual evaluators only have a master’s degree, and limits consumer choices to only licensed private evaluators. It also creates a discrepancy between the level of education required of mediators and evaluators even though many mediators and evaluators perform both functions within the context of their court. There needs to be a grandfather clause or waiver for evaluators who don’t have a license, but who have a certain number of years of experience which qualifies them to conduct evaluations.</p> <p>2. I agree with the yearly training requirements and appreciate that the AOC provides a forum to receive that training, although training has shortened due to budget cuts.</p>	<p>Code, or Section 2032 of the Code of Civil Procedure must <i>either</i> be licensed as a physician, psychologist, marriage and family therapist, or clinical social worker <i>or</i> court-connected and certified as having met all the requirements established in this rule. Subdivision (j)(1) merely reflects the mandate of the Legislature. If the evaluator does not possess a license, he or she must either be court-connected or qualify under the alternative evaluator criteria described in subdivision (j)(2) to be appointed.</p> <p>2. No response required.</p>
19.	Dr. Philip Stahl Psychologist Danville	A	N	Subdivision (h). I’d also like to see changes in the annual domestic violence update training required—training every other year should meet the needs of the public.	It is not possible to use this proposal as a means of amending the domestic violence requirements because the amount of domestic violence training required is imposed under the provisions of rule 5.230, not rule 5.225. Rule 5.230(d) requires evaluators to complete 16 hours of advanced domestic violence training and 4 hours of domestic violence training annually thereafter. The 4 hours of annual domestic violence training specified in rule 5.225(h) is simply a reiteration of what is required in rule 5.230(d). It was included

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					in rule 5.225 so that all training requirements relevant to child custody evaluators would be grouped together in one rule. Proposed amendments to the domestic violence training requirements, therefore, would have to be directed to the provisions of rule 5.230.