

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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DATE: September 18, 2007

SUBJECT: Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241; and 5.242; repeal Cal. Stds. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322 and FL-323) (Action Required)

Issue Statement

Family Code section 3150 authorizes the court to appoint an attorney to represent the best interest of a child in a custody or visitation dispute. Other Family Code sections set forth the rights and responsibilities of counsel appointed under section 3150.¹ Existing standards of judicial administration provide guidelines to assist family courts in determining when to appoint counsel for a child and how to apportion the costs of appointed counsel.² Currently, there are no statutes or guidelines that specify the education, training, and experience requirements for counsel appointed to represent a child in family law proceedings, although such a rule exists for attorneys appointed to represent children in juvenile proceedings.³ This has led to inconsistency statewide over the qualifications of attorneys appointed to represent children in family court and also has caused confusion for counsel seeking to understand if and how they qualify for appointment. The proposed new rules and forms would address the need for consistency and clarity in appointing counsel to represent a child in family law proceedings.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Amend rule 5.10 of the California Rules of Court to add the term “best interest of the child” and a reference to Family Code 3011 for a description of this term;

¹ Family Code, §§ 3151, 3151.5, 3152, and 3153.

² Cal. Stds. Jud. Admin., stds. 5.10 and 5.11.

³ Rule 5.660 of the California Rules of Court was originally adopted as rule 1438, effective January 1, 1996.

2. Adopt rule 5.240 (incorporating standard 5.11 of the California Standards of Judicial Administration) to establish criteria for appointing counsel to represent a child in family court proceedings; specify the issues that must be addressed in orders appointing counsel; to require courts to have complaint procedures; and to include provisions regarding counsel's termination;
3. Adopt rule 5.241 (incorporating standard 5.10 of the California Standards of Judicial Administration) to include provisions relating to the determination of counsel's compensation, the parties' ability to pay, and payment of counsel's fees.
4. Adopt rule 5.242 to establish the education, training, and experience requirements for counsel appointed to represent a child in family law proceedings, and to highlight counsel's rights and responsibilities in representing a child;
5. Approve the *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) and *Order Appointing Counsel for a Child* (form FL-323) for optional use; and
6. Repeal standards 5.10 and 5.11 of the California Standards of Judicial Administration.

Rationale for Recommendation

Revise rule 5.10. Definitions and use of terms

The term "best interest of the child" is used in several rules in Division Five of the Rules of Court. This proposal would amend rule 5.10 to define the term as specified in Family Code section 3011.

Move existing Standards of Judicial Administration into Rules of Court

Proposed rules 5.240 and 5.241 would amend and incorporate standards 5.10 and 5.11 of the Standards of Judicial Administration. Proposed rule 5.240 would guide the courts as to the factors that should be considered in appointing counsel. In addition, the proposed rule would provide guidance for courts that establish panels of appointed counsel and would require that courts establish a process to accept and respond to complaints about appointed counsel. Rule 5.240 would also address court orders appointing counsel and termination of the appointment. Proposed rule 5.241 would guide the courts in setting the compensation for the child's counsel and determining the respective financial ability of the parties to pay counsel's compensation.

Education and training requirements

Proposed rule 5.242 would establish the education and training as well as the continuing education requirements for counsel appointed to represent children under Family Code section 3150. The proposed rule would require counsel to complete at least 12 hours of education and training preceding appointment as counsel for a child. This requirement would be effective January 1, 2009, to allow time for existing minor's counsel to comply with this requirement. Initial education and training would be required in three subject

areas: (1) laws relating to child custody and visitation litigation; (2) representation of children in such proceedings; and (3) special issues in children's representation.

Further, the rule would require that counsel complete continuing education to remain eligible for appointment. Specifically, effective January 1, 2010, counsel would have to complete 8 hours of annual update training in the above three subject areas to remain eligible for appointment.

Experience and alternative experience requirements

Proposed rule 5.242 would establish experience and alternative experience requirements that would optimize the pool of counsel eligible for appointment. This subdivision would require persons appointed as counsel for a child in a family law proceeding to have represented a party or a child in at least six proceedings involving child custody within the preceding five years. The proposed rule would specify that two of the six proceedings must have involved contested child custody and visitation issues in family law and that child custody proceedings in dependency or guardianship cases can count for no more than three of the six required for appointment. In addition, the proposed rules would allow courts to develop local rules that impose additional experience requirements before counsel may be appointed to represent a child in a family law proceeding.

The proposed rule would also establish alternative experience requirements for appointment. This would allow the court to appoint attorneys who are employed by a legal services organization, a governmental agency, a private law firm, or who work in consultation with an attorney who meets the regular experience requirements of the rule. In addition, the rule would allow counsel to comply with the experience requirements of the rule by demonstrating substantial equivalent experience.

Rights and responsibilities of counsel for a child

To provide a comprehensive guide for courts and counsel, proposed rule 5.242 would include the statutory rights and responsibilities of counsel. In addition, the proposed rule would provide a number of actions that counsel may consider taking to assist with implementing those duties that are statutorily mandated.

Judicial Council forms proposed for optional use

To assist the courts and counsel in implementing the requirements of the proposed new rules, the following two forms were developed for optional use: (1) *Declaration of Counsel for a Child Regarding Qualifications*, (form FL-322), and (2) *Order Appointing Counsel for a Child* (form FL-323).

Alternative Actions Considered

The committee considered leaving existing standards 5.10 and 5.11 of the Standards of Judicial Administration in place. The committee also considered simply moving standards 5.10 and 5.11 into the rules of court. However, the Legislature recently indicated an interest in further defining the roles and responsibilities as well as minimum experience

and education standards for counsel appointed to represent children in family law cases. A bill was introduced in 2006, that included new statutory provisions concerning court appointed counsel for children in family law proceedings, but these provisions were taken out of the bill before it passed. The committee concluded that new rules would promote greater consistency in the appointment of counsel for a child in family law proceedings and that the adoption of new rules and forms would be preferable over new legislation in this area.

Comments From Interested Parties

The invitation to comment was circulated from April 25, 2007, through June 20, 2007, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Included on the lists were judges, court administrators, attorneys, mediators, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff.

Thirty-five individuals and organizations submitted comments on this proposal. Of these, five commentators supported adoption of the proposal as circulated. Twenty-two commentators expressed that they would agree with the proposal if modified. Eight commentators disagreed with the proposal.

Substantive, technical, and grammatical changes have been made in response to the suggestions that were received relating to the proposed rules. These suggestions and the committee's responses are summarized below.

Rule 5.240. Appointment of counsel to represent a child in a family law proceeding

As circulated for comment, rule 5.240(a) listed items the court should consider when deciding to appoint counsel for a child. These considerations were taken from standard 5.11 of the Standards of Judicial Administration. In response to comments that suggested restructuring sections to improve clarity of this subdivision, the committee made the following technical changes: (1) replaced the word "significant" with the word "relevant" at subdivision (a)(3) to describe the information that counsel could provide to the court regarding the child; (2) rephrased (a)(5) to state that "one or both parents are incapable of providing a ...safe...environment;" (3) amended subdivision (a)(4) to include disputes involving child neglect as well as child abuse; (4) at (b)(6), included child abduction prosecutors as persons who may request that the family court appoint counsel for a child.

At (a)(8), one commentator suggested providing some guideline about what is an actual conflict of interest that would require appointment of separate counsel if there are two or more children. The committee, however, did not include a description or definition of the term "actual conflict of interest" in the proposed rule as it would be difficult to provide guidelines. Whether an actual conflict of interest exists depends on the circumstances specific to a case and should be determined by counsel and the court on a case-by-case basis.

In addition to the above suggested changes, the committee added prefatory language under rule 5.240(a) to clarify the context of this subdivision. The committee also created a new subdivision (b) titled “Request for appointment of counsel” to list separately those persons whose requests for appointment of counsel the court should consider.

Four persons commented on rule 5.240(b) (*now rule 5.240(d) on the panel of counsel eligible for appointment and rule 5.240(e) on complaint procedures*). One commentator affirmatively agreed with this subdivision as drafted. Another commentator disagreed with the requirement in (b)(1) (*now (e)*) that the courts have a process to accept and respond to complaints about counsel’s performance. Another commentator from a court stated that subdivision (b)(2) (*now (d)*) regarding creating and maintaining a panel of counsel appears to have hidden costs and that the rule mandates courts to maintain and police a list of qualified attorneys. Another commentator suggested that (b)(2) (*now (d)*) include knowledge of the Indian Child Welfare Act as a qualification for appointment.

The committee believes that it is important that courts have a complaint process to handle complaints about appointed attorneys. The complaint process, as drafted, is consistent with existing rules regarding the appointment of counsel for a child in juvenile cases as well as the appointment requirements for child custody evaluators. Further, the committee maintained the provision allowing courts to create and maintain a list or panel of counsel meeting the requirements. This provision is drafted using discretionary, not mandatory, language and reflects existing local practice in some family courts. The committee does not believe that the provision that permits courts to maintain a panel of attorneys should lead to increased costs. Finally, the committee incorporated the language regarding knowledge of the Indian Child Welfare Act in rule 5.242(k)(5) instead of placing it under this subdivision.

Two persons commented on rule 5.240(d) (*now 5.240 (e)*) regarding the content of orders appointing counsel for a child. In response to the comments, the committee changed (d)(1)(B) (*now (c)(1)(C)*) to include the child’s date of birth on the order. However, the committee did not delete subdivision (d)(2)(B) (*now (c)(2)(B)*), which permits the courts to identify the counsel’s tasks related to the case. The committee believes that this discretionary provision would be helpful to the court and to counsel.

Rule 5.241. Compensation of counsel appointed to represent a child in a family law proceeding

To improve clarity of the proposed rules, the committee moved the provisions of rule 5.240(c) relating to counsel’s compensation and the parties’ ability to pay into a separate rule titled *Compensation of counsel appointed to represent a child in a family law proceeding*. Four persons commented on this subdivision.

In response to the comment received on rule 5.240(c)(2) (*now rule 5.241(a)(2)(B)*), the committee included parties and counsel for the child as persons who may request a redetermination of counsel’s fees. One commentator suggested that the court should pay

counsel appointed for the child and seek reimbursement from the parties. The committee believes that it is more appropriate for the court to have discretion to determine how the attorney's fees will be paid. The same commentator suggested the deletion of rule 5.240(c)(4)(C) (*now rule 5.241(c)(3)*) requiring the court to inform the parties of the consequences of their failure to pay fees. Although the commentator stated that the notice requirement would not lead to compliance with fee orders, the committee believes that the parties should be informed of the consequences of failing to pay attorney's fees.

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

Initial and Continuing Education and Training Requirements

One commentator affirmatively agreed with these requirements. Two commentators stated that the initial and continuing training requirements are too onerous and would result in fewer attorneys being willing to represent children, especially if they receive little pay for the appointment.

In response to comments, the committee changed the rule to (1) add that counsel have training in domestic violence and child abuse and its effects on children; (2) include that counsel should become knowledgeable in the Indian Child Welfare Act; (3) add language to clarify how the education requirement will be administered; (4) clarify that the hours of education are required to be completed before counsel's appointment; and (5) add that the training can be acquired by various means including through continuing legal education that is approved by the State Bar. In addition, the committee modified the rule to delay the effective date of these requirements to January 1, 2009. This one-year delay would avoid the need for the "phase-in clause" that was originally circulated in the rule and allow existing appointed counsel time to comply with the training requirements of the proposed rule.

One commentator suggested that the continuing education and training requirements mirror those for attorneys in juvenile court, under rule 5.660(d)(3). Under this rule, attorneys have to complete at least eight hours of continuing education related to dependency proceedings every three years. The committee believes that the difference between attorneys who practice in family and juvenile courts warrants different annual training requirements. Minors' counsel in family court generally receive fewer appointments than juvenile attorneys each year to exclusively represent children. In addition to the continuing education requirement, counsel for children in juvenile matters generally contract with the court, are in the court on a daily basis representing children, and receive specialized job training in this area. The committee believes that the eight hours of annual training proposed in rule 5.242 would help increase the quality of counsel's representation of a child in family law proceedings.

Experience and Alternative Experience Requirements

Eleven commentators stated that the proposed experience and alternative experience requirements are too low. Six of these 11 recommended that counsel appointed to represent

a child have no less than five years of experience in family law with at least 50 percent of the attorney's practice in child custody matters. They commented that, as circulated, the rule creates a low standard, presents a danger to clients, and reflects poorly on the family law courts. Other commentators stated that the experience requirements are too high and would pose an obstacle to appointment for attorneys and are too complicated and would be difficult to track. Additional comments included that the time frame during which people must have had a number of various cases seems arbitrary and does not assure that qualified people will provide services. Finally, a judge stated that his court would be severely hampered if the education and training and the experience requirements were adopted without the alternative experience requirement that permits appointment by a showing of substantial equivalent experience.

The committee carefully considered all of the comments received. While the committee shares the concern that only qualified attorneys be appointed to represent children in family law cases, the committee also recognizes that this rule of court has statewide application. All of the comments that suggested that the experience requirements in the rule that was circulated for comment create too low a standard are from attorneys that specialize in family law and practice law in large counties. These larger counties have a pool of attorneys from which the courts can appoint counsel for children. However, judges from smaller counties argued persuasively that a rule requiring five years of experience with at least 50 percent of counsel's practice in child custody cases would result in few, if any, attorneys being available for appointment in smaller counties.

The committee believes that adopting a rule that sets experience standards that will result in no attorneys being available to represent children in many counties presents a greater risk of harm for children than to have minimum requirements that some practitioners consider to be too low. To strike the appropriate balance and to address all of the concerns that were expressed in the comments, the committee amended the rule to provide that experience requirements set forth in the rule are a minimum and that courts may adopt local rules that establish additional experience requirements.

In response to the other comments regarding the alternative experience requirements, the committee: (1) changed (e)(1) (*now (g)(1)*) to state that the person appointed under this subdivision will be "directly" supervised instead of "appropriately" supervised and (2) changed (e)(3) (*now (g)(3)*) to permit courts to determine, by local rule or local procedure, whether counsel has demonstrated substantial equivalent experience.

Responsibilities of Counsel for a Child

Nine persons commented on the responsibilities of counsel. One person commented that the proposed responsibilities are good common sense and are what one would expect from minors' counsel. Three persons stated that the responsibilities are too burdensome and may make experienced attorneys shy away from an appointment for having to undertake all the tasks listed in the rule. Some commentators suggested that this subdivision specify that not every listed responsibility has to be performed in each case and that the duties should be

performed if they are appropriate. Three commentators stated that the listed responsibilities expand the role of the child’s attorney to areas beyond the scope of the proceeding. Another stated that having counsel attend and participate in any other hearings relevant to the child seems to be overstepping the bounds of a family court appointment. Another commentator suggested that this subdivision state that minor’s counsel is not the court’s expert and is not expected to make substantive recommendations as an expert regarding custody and visitation.

In response, the committee clearly identified those responsibilities in the rule that are mandated by statute. The committee also drafted a new subdivision titled “Other considerations” and included a preface specifying that the actions listed in this new subdivision are those that counsel may take when representing a child under the rule.

Other comments

In response to comments suggesting technical and substantive changes to forms FL-322 and FL-323, the committee added space for (1) counsel’s email address, the age of the child, contact information for the child; (2) additional orders; and (3) notice that failure to pay fees to the appointed attorney or to the court may result in the attorney initiating legal action to collect the fees. The committee also omitted the clerk’s certificate to be consistent with other original order forms.

Implementation Requirements and Costs

Standard reproduction costs will be incurred in distributing the new forms. Although courts are required by Government Code section 77003 to pay the costs for counsel appointed to represent a minor child in family law proceedings that parties are unable to pay, the new rules do not mandate the appointment of counsel nor should they increase the number of appointments. The courts continue to have discretion to appoint and therefore costs for appointed counsel should not significantly increase. Attorneys may incur some minimal additional costs to comply with the education and training requirements.

The text of the amended and proposed rules, repealed standards, and proposed forms are attached at pages 9–30. The comment chart is attached at pages 31–61.

Attachments

Rule 5.10 of the California Rules of Court is amended; rules 5.240, 5.241, and 5.242 are adopted, and standards 5.10 and 5.11 of the California Standards of Judicial Administration are repealed, effective January 1, 2008, to read:

1 **Rule 5.10. Definitions and use of terms**

2
3 As used in this division, unless the context or subject matter otherwise requires, the
4 following definitions apply:

5
6 (1)–(3) ***

7
8 (4) “Best interest of the child” is described in Family Code section 3011.

9
10 **Rule 5.240. Appointment of counsel to represent a child in family law**
11 **proceedings**

12
13 **(a) Appointment considerations**

14
15 In considering appointing counsel under Family Code section 3150, the court
16 should take into account the following factors, including whether:

- 17
18 (1) The issues of child custody and visitation are highly contested or
19 protracted;
20
21 (2) The child is subjected to stress as a result of the dispute that might be
22 alleviated by the intervention of counsel representing the child;
23
24 (3) Counsel representing the child would be likely to provide the court with
25 relevant information not otherwise readily available or likely to be
26 presented;
27
28 (4) The dispute involves allegations of physical, emotional, or sexual abuse or
29 neglect of the child.
30
31 (5) It appears that one or both parents are incapable of providing a stable,
32 safe, and secure environment;
33
34 (6) Counsel is available for appointment who is knowledgeable about the
35 issues being raised regarding the child in the proceeding;
36
37 (7) The best interest of the child appears to require independent
38 representation; and
39
40 (8) If there are two or more children, any child would require separate counsel
41 to avoid a conflict of interest.
42

1 **(b) Request for appointment of counsel**

2
3 The court may appoint counsel to represent the best interest of a child in a
4 family law proceeding on the court's own motion or if requested to do so by:

- 5
6 (1) A party;
7
8 (2) The attorney for a party;
9
10 (3) The child, or any relative of the child;
11
12 (4) A mediator under Family Code section 3184;
13
14 (5) A professional person making a custody recommendation under Family
15 Code sections 3111 and 3118, Evidence Code section 730, or Code of
16 Civil Procedure section 2032.010 et seq.;
17
18 (6) A county counsel, district attorney, city attorney, or city prosecutor
19 authorized to prosecute child abuse and neglect or child abduction cases
20 under state law; or
21
22 (7) A court-appointed guardian ad litem or special advocate;
23
24 (8) Any other person who the court deems appropriate.

25
26 **(c) Orders appointing counsel for a child**

27
28 The court must issue written orders when appointing and terminating counsel
29 for a child.

- 30
31 (1) The appointment orders must specify the:
32
33 (A) Appointed counsel's name, address, and telephone number;
34
35 (B) Name of the child for whom counsel is appointed; and
36
37 (C) Child's date of birth.
38
39 (2) The appointment orders may include the:
40
41 (A) Child's address, if appropriate;
42
43 (B) Issues to be addressed in the case;
44

- 1 (C) Tasks related to the case that would benefit from the services of
2 counsel for the child;
- 3
- 4 (D) Responsibilities and rights of the child’s counsel;
- 5
- 6 (E) Counsel’s rate or amount of compensation;
- 7
- 8 (F) Allocation of fees payable by each party or the court;
- 9
- 10 (G) Source of funds and manner of reimbursement for costs and
11 attorney’s fees;
- 12
- 13 (H) Allocation of payment of attorney’s fees to one party subject to
14 reimbursement by the other party;
- 15
- 16 (I) Terms and amount of any progress or installment payments; and
- 17
- 18 (J) Ability of the court to reserve jurisdiction to retroactively modify the
19 order on fees and payment.

20

21 (3) Courts may use *Order Appointing Counsel for a Child* (form FL-323) or
22 may supplement form FL-323 with local forms developed under rule
23 10.613.

24

25 **(d) Panel of counsel eligible for appointment**

- 26
- 27 (1) Each court may create and maintain a list or panel of counsel meeting the
28 minimum qualifications of this rule for appointment.
- 29
- 30 (2) If a list or panel of counsel is maintained, a court may appoint counsel not
31 on the list or panel in special circumstances, taking into consideration
32 factors including language, culture, and the special needs of a child in the
33 following areas:
- 34
- 35 (A) Child abuse;
- 36
- 37 (B) Domestic violence;
- 38
- 39 (C) Drug abuse of a parent or the child;
- 40
- 41 (D) Mental health issues of a parent or the child;
- 42
- 43 (E) Particular medical issues of the child; and
- 44
- 45 (F) Educational issues.

1 (3) If the court maintains a panel of counsel eligible for appointment and the
2 court appoints counsel who is not on the panel, the court must state the
3 reason for not appointing a panel counsel in writing or on the record.

4
5 **(e) Complaint procedures**

6
7 By January 1, 2010, each court must develop local court rules in accordance
8 with rule 10.613 that provide for acceptance and response to complaints about
9 the performance of the court-appointed counsel for a child.

10
11 **(f) Termination of appointment**

12
13 On entering an appearance on behalf of a child, counsel must continue to
14 represent that child until:

15
16 (1) The conclusion of the proceeding for which counsel was appointed;

17
18 (2) Relieved by the court;

19
20 (3) Substituted by the court with other counsel;

21
22 (4) Removed on the court's own motion or request of counsel or parties for
23 good cause shown; or

24
25 (5) The child reaches the age of majority or is emancipated.

26
27 **Rule 5.241. Compensation of counsel appointed to represent a child in a family**
28 **law proceeding**

29
30 **(a) Determination of counsel's compensation**

31
32 The court must determine the reasonable sum for compensation and expenses
33 for counsel appointed to represent the child in a family law proceeding, and the
34 ability of the parties to pay all or a portion of counsel's compensation and
35 expenses.

36
37 (1) The court must set the compensation for the child's counsel:

38
39 (A) At the time of appointment;

40
41 (B) At the time the court determines the parties' ability to pay; or

42
43 (C) Within a reasonable time after appointment.
44

1 (2) No later than 30 days after counsel is relieved as attorney of record, the
2 court may make a redetermination of counsel's compensation:

3
4 (A) On the court's own motion;

5
6 (B) At the request of a party or a party's counsel; or

7
8 (C) At the request of counsel for the child.

9
10 **(b) Determination of ability to pay**

11
12 The court must determine the respective financial ability of the parties to pay all
13 or a portion of counsel's compensation.

14
15 (1) Before determining the parties' ability to pay:

16
17 (A) The court should consider factors such as the parties' income and
18 assets reasonably available at the time of the determination, and
19 eligibility for or existence of a fee waiver under Government Code
20 section 68511.3; and

21
22 (B) The parties must have on file a current *Income and Expense*
23 *Declaration* (form FL-150) or *Financial Statement (Simplified)*
24 (form FL-155).

25
26 (2) The court should determine the parties' ability to pay:

27
28 (A) At the time counsel is appointed;

29
30 (B) Within 30 days after appointment; or

31
32 (C) At the next subsequent hearing.

33
34 (3) No later than 30 days after counsel is relieved as attorney of record, the
35 court may redetermine the parties' ability to pay:

36
37 (A) On the court's own motion; or

38
39 (B) At the request of counsel or the parties.

40
41 **(c) Payment to counsel**

42
43 (1) If the court determines that the parties have the ability to pay all or a
44 portion of the fees, the court must order that the parties pay in any manner

1 the court determines to be reasonable and compatible with the parties'
2 financial ability, including progress or installment payments.

3
4 (2) The court may use its own funds to pay counsel for a child and seek
5 reimbursement from the parties.

6
7 (3) The court must inform the parties that the failure to pay fees to the
8 appointed counsel or to the court may result in the attorney or the court
9 initiating legal action against them to collect the money.

10
11 **(d) Parties' inability to pay**

12
13 If the court finds that the parties are unable to pay all or a portion of the cost of
14 the child's counsel, the court must pay the portion the parties are unable to pay.

15
16 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
17 **represent a child in family law proceedings**

18
19 **(a) Purpose**

20
21 This rule governs counsel appointed to represent the best interest of the child in
22 a custody or visitation proceeding under Family Code section 3150.

23
24 **(b) General appointment requirements**

25
26 To be eligible for appointment as counsel for a child, counsel must:

27
28 (1) Be an active member in good standing of the State Bar of California;

29
30 (2) Have professional liability insurance or demonstrate to the court that he or
31 she is adequately self-insured; and

32
33 (3) Meet the education, training, and experience requirements of this rule.

34
35 **(c) Education and training requirements**

36
37 Effective January 1, 2009, before being appointed as counsel for a child in a
38 family law proceeding, counsel must have completed at least 12 hours of
39 applicable education and training which must include all the following subjects:

40
41 (1) Statutes, rules of court, and case law relating to child custody and
42 visitation litigation;

43
44 (2) Representation of a child in custody and visitation proceedings;

45

1 (3) Special issues in representing a child, including the following:

2
3 (A) Various stages of child development;

4
5 (B) Communicating with a child at various developmental stages and
6 presenting the child's view;

7
8 (C) Recognizing, evaluating and understanding evidence of child abuse
9 and neglect, family violence and substance abuse, cultural and ethnic
10 diversity, and gender-specific issues;

11
12 (D) The effects of domestic violence and child abuse and neglect on
13 children; and

14
15 (E) How to work effectively with multidisciplinary experts.

16
17 **(d) Annual education and training requirements**

18
19 Effective January 1, 2010, to remain eligible for appointment as counsel for a
20 child, counsel must complete during each calendar year a minimum of 8 hours
21 of applicable education and training in the subjects listed in (c).

22
23 **(e) Applicable education and training**

24
25 (1) Education and training that addresses the subjects listed in (c) may be
26 applied toward the requirements of this rule if completed through:

27
28 (A) A professional continuing education group;

29
30 (B) An educational institution;

31
32 (C) A professional association;

33
34 (D) A court-connected group; or

35
36 (E) A public or private for-profit or not-for-profit group.

37
38 (2) A maximum of two of the hours may be by self-study under the
39 supervision of an education provider that provides evidence of
40 completion.

41
42 (3) Counsel may complete education and training courses that satisfy the
43 requirements of this rule offered by the education providers in (1) by
44 means of video presentations or other delivery means at remote locations.
45 Such courses are not self-study within the meaning of this rule.

1
2 (4) Counsel who serve as an instructor in an education and training course
3 that satisfies the requirements of this rule may receive 1.5 hours of course
4 participation credit for each hour of course instruction. All other counsel
5 may claim credit for actual time he or she attended the education and
6 training course.

7
8 **(f) Experience requirements**

9
10 (1) Persons appointed as counsel for a child in a family law proceeding must
11 have represented a party or a child in at least six proceedings involving
12 child custody within the preceding five years as follows:

13
14 (A) At least two of the six proceedings must have involved contested
15 child custody and visitation issues in family law; and

16
17 (B) Child custody proceedings in dependency or guardianship cases can
18 count for no more than three of the six required for appointment.

19
20 (2) Courts may develop local rules that impose additional experience
21 requirements for persons appointed as counsel for a child in a family law
22 proceeding.

23
24 **(g) Alternative experience requirements**

25
26 Counsel who does not meet the initial experience requirements in (f) may be
27 appointed to represent a child in a family law proceeding if he or she meets one
28 of the following alternative experience requirements. Counsel must:

29
30 (1) Be employed by a legal services organization, a governmental agency, or
31 a private law firm that has been approved by the presiding or supervising
32 judge of the local family court as qualified to represent a child in family
33 law proceedings and be directly supervised by an attorney in an
34 organization, an agency, or a private law firm who meets the initial
35 experience requirements in (f);

36
37 (2) Be an attorney working in consultation with an attorney approved by the
38 presiding or supervising judge of the local family court as qualified to
39 represent a child in family law proceedings; or

40
41 (3) Demonstrate substantial equivalent experience as determined by local
42 court rule or procedure.

1 **(h) Compliance with appointment requirements**

2
3 A person appointed as counsel for a child must:

- 4
5 (1) File a declaration with the court indicating compliance with the
6 requirements of this rule no later than 10 days after being appointed and
7 before beginning work on the case. Counsel may complete the
8 Declaration of Counsel for a Child Regarding Qualifications (form FL-
9 322) or other local court forms for this purpose; and
- 10
11 (2) Notify the court within 5 days of any disciplinary action taken by the State
12 Bar of California, stating the basis of the complaint, result, and notice of
13 any reproof, probation, or suspension.

14
15 **(i) Rights of counsel for a child**

16
17 Counsel has rights relating to the representation of a child's best interest under
18 Family Code sections 3111, 3151, 3151.5, 3153, and Welfare and Institutions
19 Code section 827, which include the right to:

- 20
21 (1) Reasonable access to the child;
- 22
23 (2) Seek affirmative relief on behalf of the child;
- 24
25 (3) Notice to any proceeding, and all phases of that proceeding, including a
26 request for examination affecting the child;
- 27
28 (4) Take any action that is available to a party to the proceeding, including
29 filing pleadings, making evidentiary objections, and presenting
30 evidence;
- 31
32 (5) Be heard in the proceeding, which may include presenting motions and
33 orders to show cause and participating in settlement conferences and
34 trials, seeking writs, appeals, and arbitrations;
- 35
36 (6) Access the child's medical, dental, mental health, and other health-care
37 records, and school and educational records;
- 38
39 (7) Inspect juvenile case files subject to the provisions of Welfare and
40 Institutions Code section 827;
- 41
42 (8) Interview school personnel, caretakers, health-care providers, mental
43 health professionals, and others who have assessed the child or
44 provided care to the child; however, the release of this information to

1 counsel does not constitute a waiver of the confidentiality of the
2 reports, files, and any disclosed communications;

3
4 (9) Interview mediators, subject to the provisions of Family Code sections
5 3177 and 3182;

6
7 (10) Receive reasonable advance notice of and the right to refuse any
8 physical or psychological examination or evaluation, for purposes of
9 the proceeding, that has not been ordered by the court;

10
11 (11) Assert or waive any privilege on behalf of the child;

12
13 (12) Seek independent psychological or physical examination or evaluation
14 of the child for purposes of the proceeding on approval by the court;

15
16 (13) Receive child custody evaluation reports;

17
18 (14) Not be called as a witness in the proceedings;

19
20 (15) Request the court to authorize release of relevant reports or files,
21 concerning the child represented by the counsel, of the relevant local
22 child protective services agency; and

23
24 (16) Receive reasonable compensation and expenses for representing the
25 child, the amount of which will be determined by the court.

26
27 **(j) Responsibilities of counsel for a child**

28
29 Counsel is charged with the representation of the best interest of the child.
30 The role of the child's counsel is to gather facts that bear on the best interest
31 of the child and present those facts to the court, including the child's wishes
32 when counsel deems it appropriate for consideration by the court under
33 Family Code section 3042. Counsel's duties, unless under the circumstances
34 it is inappropriate to exercise the duties, include those under Family Code
35 section 3151;

36
37 (1) Interviewing the child;

38
39 (2) Reviewing the court files and all accessible relevant records available
40 to both parties;

41
42 (3) Making any further investigations that counsel considers necessary to
43 ascertain the facts relevant to the custody or visitation hearings;

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- (4) Participating in the proceeding to the degree necessary to adequately represent the child, including introducing and examining counsel’s own witnesses and presenting arguments to the court concerning the child’s welfare; and
- (5) Preparing, at the court’s request, a written statement of issues and contentions setting forth the facts that bear on the best interest of the child.

(k) Other considerations

Counsel is not required to assume the responsibilities of a social worker, probation officer, child custody evaluator, or mediator and is not expected to provide nonlegal services to the child. Subject to the terms of the court’s order of appointment, counsel for a child may take the following actions to implement his or her statutory duties in representing a child in a family law proceeding:

- (1) Interview or observe the child as appropriate to the age and circumstances of the child. In doing so, counsel should consider all possible interview or observation environments and select a location most conducive to both conducting a meaningful interview of the child and investigating the issues relevant to the case at that time.
- (2) In a manner and to the extent consistent with the child’s age, level of maturity, and ability to understand, and consistent with the order of appointment for the case:
 - (A) Explain to the child at their first meeting counsel’s role and the nature of the attorney-client relationship (including confidentiality issues); and
 - (B) Advise the child on a continuing basis of possible courses of action and of the risks and benefits of each course of action.
- (3) Actively participate in the representation of the child at any hearings that affect custody and visitation of the child and attend and participate in any other hearings relevant to the child. In doing so, counsel may, as appropriate:
 - (A) Take positions relevant to the child on legal issues before the court;
 - (B) Seek and advocate for services for the child;

- 1 (C) Prepare for any hearings or trials;
2
3 (D) Work to settle contested issues and to define trial issues;
4
5 (E) Prepare witnesses, including the child if the child is to testify;
6
7 (F) Introduce and examine witnesses on behalf of the child;
8
9 (G) Cross-examine other witnesses;
10
11 (H) Make appropriate evidentiary objections;
12
13 (I) Review court files and other pertinent records;
14
15 (J) Prepare motions to advance the child’s interest, including motions to
16 quash subpoenas for the child and other protective orders;
17
18 (K) Present arguments to advance the child’s interest;
19
20 (L) Prepare trial briefs and other documents if appropriate; and
21
22 (M) Request appointment of separate appellate counsel.
23
24 (4) Conduct thorough, continuing, and independent investigations and
25 discovery to protect the child’s interest, which may include:
26
27 (A) Obtaining necessary authorizations for the release of information.
28
29 (B) Reviewing the child’s social services, mental health, drug and
30 alcohol, medical, law enforcement, education, and other records
31 relevant to the case;
32
33 (C) Reviewing the court files of the child and his or her siblings, case-
34 related records of the social service agency, and case-related records
35 of other service providers;
36
37 (D) Contacting attorneys for the parties and nonlawyer guardians ad
38 litem, Court Appointed Special Advocates (CASAs), and other
39 service professionals, to the extent permitted by local rule, for
40 background information;
41
42 (E) Contacting and meeting with the child’s parents, legal guardians, or
43 caretakers, with permission of their attorneys;
44

- 1 (F) Interviewing witnesses and individuals involved with the child,
2 including school personnel, child welfare caseworkers, foster parents
3 and other caretakers, neighbors, relatives, coaches, clergy, mental
4 health professionals, physicians, law enforcement officers, and other
5 potential witnesses;
6
7 (G) Reviewing relevant photographs, video- or audiotapes, and other
8 evidence;
9
10 (H) Documenting the results of these investigations;
11
12 (I) Monitoring compliance with court orders as appropriate, including
13 the provision for and effectiveness of any court-ordered services;
14
15 (J) Promoting the timely progression of the case through the judicial
16 system;
17
18 (K) Investigating the interests of the child beyond the scope of the
19 proceeding and reporting to the court other interests of the child that
20 may need to be protected by the institution of other administrative or
21 judicial proceedings; however, counsel is not responsible for
22 instituting those proceedings or representing the child in them unless
23 expressly appointed by the court for that purpose; and
24
25 (L) After learning of other existing administrative or judicial
26 proceedings involving the child, communicating and cooperating
27 with others to the extent necessary and appropriate to protect the
28 child's interest.
29
30 (5) Taking all other steps to represent the child adequately as appropriate to
31 the case, including becoming knowledgeable in other areas affecting
32 minors including:
33
34 (A) The Indian Child Welfare Act;
35
36 (B) Information about local experts who can provide evaluation,
37 consultation, and testimony; and
38
39 (C) Delinquency, dependency, probate, family law, and other
40 proceedings.
41

1 ~~Standard 5.10. Guidelines for determining payment for costs of appointed~~
2 ~~counsel for children in family court~~

3
4 ~~(a) General~~

5
6 Whenever in a proceeding under the Family Law Act counsel is appointed to
7 represent children under Family Code sections 3150–3153, the court should
8 determine the ability of the parties to pay all or a portion of the cost of the
9 counsel.

10
11 *(Subd (a) amended effective January 1, 2007; previously amended effective January 1,*
12 *2005.)*

13
14 ~~(b) Presumed inability to pay~~

15
16 If a party is currently eligible for a fee waiver under Government Code
17 section 68511.3 (in forma pauperis), the party should be deemed unable to
18 pay any part of the costs of the appointed counsel.

19
20 ~~(c) Individual determination required~~

21
22 In all other cases, the court should determine ability to pay based on the
23 party's income and assets reasonably available. The court may require the
24 party to complete and file an income and expense statement unless the party
25 has filed one in the proceeding that represents the party's financial status at
26 the time of the determination.

27
28 *(Subd (c) amended effective January 1, 2007.)*

29
30 ~~(d) Time for determination~~

31
32 The court may make the determination of the ability to pay at the time of
33 appointment of counsel or thereafter at the request of the appointed counsel,
34 but not later than 30 days after the attorney is relieved as attorney of record.

35
36 *(Subd (d) amended effective January 1, 2007.)*

37
38
39 ~~(e) Payment of attorney~~

40
41 If the court finds the parties are unable to pay all or a portion of the cost of
42 appointed counsel, under Family Code section 3153(b) it must pay the

1 portion the parties are unable to pay. The order may provide for progress or
2 installment payments.

3
4 *(Subd (e) amended effective January 1, 2007; previously amended effective January 1,*
5 *2005, and July 1, 2005.)*

6
7 *Standard 5.10 amended and renumbered effective January 1, 2007; adopted as sec. 20.6 effective*
8 *January 1, 1992; previously amended effective January 1, 2005, and July 1, 2005.*

9
10

Repealed

1 **Standard 5.11. Guidelines for appointment of counsel for minors when time**
2 **with or responsibility for the minor is disputed**

3
4 **(a) Request for appointment of counsel**
5

6 In any family law or other proceeding where two or more persons are
7 disputing the division of time with (physical custody) or responsibility for
8 (legal custody) a minor child, the court should consider the appointment of
9 an attorney to represent the best interest of the child if requested to do so by
10 either party, the attorney for either party, a mediator performing duties under
11 Civil Code section 4607, a professional person making a custody
12 recommendation under Civil Code section 4602, a court appointed guardian
13 ad litem or special advocate, the child, or any relative of the child; and the
14 court may also appoint counsel on its own motion.
15

16 **(b) Guidelines**
17

18 In considering the appointment of counsel for the minor, the court should
19 take into account the following factors:
20

- 21 (1) Whether the dispute is exceptionally intense or protracted;
- 22
- 23 (2) Whether the child is subjected to stress on account of the dispute,
24 which might be alleviated by the intervention of counsel representing
25 the child;
- 26
- 27 (3) Whether an attorney representing the child would be likely to provide
28 the court with significant information not otherwise readily available or
29 likely to be presented;
- 30
- 31 (4) Whether the dispute involves allegations that a parent, a stepparent, or
32 other person with the parent's knowledge has physically or sexually
33 abused the child;
- 34
- 35 (5) Whether it appears that neither parent is capable of providing a stable
36 and secure environment;
- 37
- 38 (6) Whether the child is capable of verbally expressing his or her views;
- 39
- 40 (7) Whether attorneys are available for appointment who are sensitive to
41 the needs of children and the issues raised in representing them; and
42

1 ~~(8) Whether the best interest of the child appears to require special~~
2 ~~representation.~~

3
4 ~~(Subd (b) amended effective January 1, 2007.)~~

5
6 ~~**(e) Contents of order**~~

7
8 ~~If counsel is appointed to represent a child under (b), the order may specify~~
9 ~~the following:~~

10
11 ~~(1) The issues regarding which the child's representation is ordered;~~

12
13 ~~(2) Any tasks related to the case that would benefit from the services of the~~
14 ~~attorney;~~

15
16 ~~(3) The duration of the appointment, which may be extended on a showing~~
17 ~~of good cause; and~~

18
19 ~~(4) The source of funds and manner of reimbursement for costs and~~
20 ~~attorney fees.~~

21
22 ~~(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1990.)~~

23
24 ~~**(d) Two or more children**~~

25
26 ~~If there are two or more children, the court should consider whether there~~
27 ~~may be such a conflict between the children that one attorney cannot~~
28 ~~adequately represent them all.~~

29
30 ~~Standard 5.11 amended and renumbered effective January 1, 2007; adopted as sec. 20.5 effective~~
31 ~~January 1, 1990.~~

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ COUNSEL FOR THE CHILD(REN) <i>(Name Each):</i> _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">Draft 13 09/14/07 gs Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARTY: _____	
DECLARATION OF COUNSEL FOR A CHILD REGARDING QUALIFICATIONS	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 represent *(name of child):* _____ in the above case.

LICENSE / INSURANCE

3. I am a licensed attorney and an active member in good standing of the State Bar of California;
4. I have professional liability insurance or am adequately self-insured as previously determined by the court.

EDUCATION AND TRAINING *(Effective January 1, 2009)*

5. I have completed at least 12 hours of education and training in the subjects listed in rule 5.242(c).

EXPERIENCE

6. a. I have complied with the experience requirements of rule 5.242(f).
 b. I have complied with any local court rules that impose experience requirements in addition to those under rule 5.242.
7. I have complied with one of the following alternative experience requirements stated in rule 5.242(g):
 - a. I am employed by a legal services organization government agency private law firm that has been approved by the presiding or supervising judge of the local family court as qualified to represent a child in family law proceedings, and I will be directly supervised by an attorney of the organization, agency, or private law firm who meets the experience requirements under rule 5.242(f);
 - b. I am working in consultation with an attorney approved by the presiding or supervising judge of the local family court as qualified to represent a child in family law proceedings; or
 - c. I have demonstrated substantial equivalent experience *(please provide a summary of equivalent experience):*
 Continued in Attachment 7c.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
--	--------------

ANNUAL CONTINUING EDUCATION (Effective January 1, 2010)

8. I have completed 8 hours of continuing education and training annually in the subject areas described in rule 5.242(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)

NOTICE: Attorneys appointed to represent a child must file a declaration with the clerk of the court indicating compliance with California Rules of Court, rule 5.242, no later than 10 days after each appointment and before beginning work on the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> Draft 12 09/14/07 gs Not approved by the Judicial Council
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER 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 present Attorney present *(name)*: _____
 On the order to show cause or motion filed *(date)*: _____ by *(name)*: _____

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).

Counsel appointed for the child <i>(name of counsel)</i>: Address: Phone number: _____ E-mail address <i>(optional)</i>: _____
--

2. CHILD OR CHILDREN FOR WHOM COUNSEL IS APPOINTED

<u>Name</u>	<u>Date of birth</u>	<u>Address <i>(if appropriate)</i></u>
-------------	----------------------	--

3. REASON FOR APPOINTMENT *(specify)*:

4. COUNSEL FOR A CHILD IS CHARGED WITH THE FOLLOWING RESPONSIBILITIES:

- a. Interviewing the child;
- b. Reviewing the court files and all accessible relevant records available to both parties;
- c. Making any further investigations counsel considers necessary to ascertain facts relevant to the custody or visitation hearing;
- d. Participating in the proceedings to the degree necessary to adequately represent the child, including introducing and examining counsel's own witnesses and presenting arguments to the court concerning the child's welfare; and
- e. Preparing, at the court's request, a written statement of issues and contentions setting forth the facts that bear on the best interest of the child consistent with the requirements of Family Code section 3151(b).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
--	--------------

5. COUNSEL FOR A CHILD HAS THE FOLLOWING RIGHTS:

- a. Reasonable access to the child;
- b. Standing to seek affirmative relief on behalf of the child;
- c. 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. Access to the child's medical, dental, mental health, and other health-care records;
- f. Access to the child's school and educational records;
- g. 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 reasonable advance notice of and the right to refuse any physical or psychological examination, for purposes of the proceeding, 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 release of relevant reports or files concerning the child represented by the counsel of the relevant local child protective services agency as provided by Family Code section 3152; and
- m. Not to be called as a witness in the proceeding. (Fam. Code, §§ 3151(b) and 3151.5).

6. 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 retroactively modify the compensation payable to counsel for the child.
- 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
 - Petitioner/Plaintiff must make installment payments of \$ _____ per month until paid or modified by court order.
 - Respondent/Defendant 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 both parties are unable to pay all a portion of the costs for the minor child's counsel. Minors' 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 % Payable by the court.
 - Petitioner/Plaintiff must make installment payments of \$ _____ per month until paid or modified by court order.
 - Respondent/Defendant must make installment payments of \$ _____ per month until paid or modified by court order.
 - (3) The court reserves jurisdiction to reallocate attorney's 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:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
--	--------------

NOTICE

Any party required to pay court-ordered attorney's fees or reimburse the court for attorney's 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's 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.

7. ADDITIONAL ORDERS

- a. The parties and their counsel are ordered to cooperate with counsel for the child to permit the performance of his or her duties.
- b. Counsel for the child must be provided with complete copies of all relevant copies of proceedings within 10 days of the appointment.
- c. 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.
- d. 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.

8. OTHER ORDERS

9. Counsel must continue to represent the child until relieved by the court.

THE COURT SO ORDERS.

Date:

JUDICIAL OFFICER

SPR07-25

Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, *Declaration of Counsel for a Child Regarding Qualification*, and FL-323, *Order Appointing Counsel for a Child*)

GENERAL POSITIONS AND COMMENTS

List of All Commentators and Their Overall Positions on the Proposal

	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committee Response
1	Vincent J. Adeszko Assistant Chief Deputy District Attorney Sacramento	AM	Y	See comments on specific items below.	See response below.
2	Sandy Almansa Supervising Legal Clerk II, Family Law, Probate and IV-D Division Superior Court of Stanislaus County	A	Y	No narrative comments.	No response required.
3	Grace Andres Program Manager Superior Court of Solano County	A	N	See comments on specific items below.	See response below.
4	Steve Baron Retired Director of Family Court Services Superior Court of Santa Clara County	AM	Y	See comments on specific items below.	See response below.
5	Jill L. Barr Attorney Sacramento	N	N	See comments on specific items below.	See response below.
6	Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of Orange County	AM	N	See comments on specific items below.	See response below.
7	W. Michael Becker, Ph.D., J.D. Attorney at Law and Licensed	AM	N	See comments on specific items below.	See response below.

SPR07-25

Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, *Declaration of Counsel for a Child Regarding Qualification*, and FL-323, *Order Appointing Counsel for a Child*)

	Psychologist Lafayette				
8	Lynette Berg Robe and Frieda Gordon Minors' Counsel Committee Family Law Executive Committee Los Angeles County Bar Association	AM	Y	See comments on specific items below.	See response below.
9	Paul L. Brimberry Attorney at Law Sacramento	N	N	See comments on specific items below.	See response below.
10	Christine N. Carlson Staff Attorney, Family Law Department Superior Court of Solano County	N	N	See comments on specific items below.	See response below.
11	Joseph Chairez President Orange County Bar Association	N	Y	See comments on specific items below.	See response below.
12	Fredrick S. Cohen Attorney at Law Sacramento	N	N	See comments on specific items below.	See response below.
13	Rolanda Pierre Dixon Assistant District Attorney District Attorney of Santa Clara County	AM	Y	See comments on specific items below.	See response below.
14	Gena Rae Eichenberg Attorney at Law Eureka	AM	Y	See comments on specific items below.	See response below.
15	David A. Fink President-Elect American Academy of Matrimonial Lawyers San Francisco	AM	Y	See comments on specific items below.	See response below.

SPR07-25

Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, *Declaration of Counsel for a Child Regarding Qualification*, and FL-323, *Order Appointing Counsel for a Child*)

16	Paula Forthun-Baldwin Administrative Analyst Inland Regional Center San Bernardino	A	Y	No narrative comments.	No response required.
17	H. Vincent Jacobs President Association of Certified Family Law Specialists San Francisco	AM	Y	See comments on specific items below.	See response below.
18	Dennis Jones Court Executive Officer Superior Court of Sacramento County	AM	Y	See comments on specific items below.	See response below.
19	Hon. Irwin Joseph Superior Court of Santa Cruz County	AM	Y	See comments on specific items below.	See response below.
20	Rachel Kronick Rothbart Director of Legal Services Harriet Buhai Center for Family Law Los Angeles	AM	Y	See comments on specific items below.	See response below.
21	Superior Court of Los Angeles County	AM	Y	See comments on specific items below.	See response below.
22	Mary Molinaro Attorney, Certified Family Law Specialist Sacramento	AM	N	See comments on specific items below.	See response below.
23	Deborah Mullin Family Law Facilitator Superior Court of Santa Barbara County	AM	Y	See comments on specific items below.	See response below.
24	Lorie Nachlis Member of the Board of Directors Bar Association of San Francisco and its Family Law Section	AM	Y	See comments on specific items below.	See response below.

SPR07-25

Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, *Declaration of Counsel for a Child Regarding Qualification*, and FL-323, *Order Appointing Counsel for a Child*)

25	Andrea Nelson Director of Operations Superior Court of Butte County	A	N	No narrative comments.	No response required.
26	Mary A. Oaklund Attorney at Law Oaklund & Oaklund San Leandro	N	N	See comments on specific items below.	See response below.
27	Mark Radoff Directing Attorney California Indian Legal Services Escondido	AM	Y	See comments on specific items below.	See response below.
28	Mike Roddy Court Executive Officer Superior Court of San Diego County	A	Y	No narrative comments.	No response required.
29	David D. Ruport, Jr. Law Offices of David D. Ruport, Jr. Pinole	AM	N	See comments on specific items below.	See response below.
30	Deborah Jo Sandler Attorney Walnut Creek	N	N	See comments on specific items below.	See response below.
31	Nicholas G. Soter Attorney Soter & Park San Francisco	AM	N	See comments on specific items below.	See response below.
32	William Spiller, Jr. Attorney at Law Rolling Hills Estates, CA	AM	N	See comments on specific items below.	See response below.
33	Michael B. Stone Attorney at Law	N	N	See comments on specific items below.	See response below.

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	El Segundo				
34	Hon. Alice Vilardi Judge Superior Court of Alameda County	AM	N	See comments on specific items below.	See response below.
35	Diane Wasznicky Chairperson Children’s Counsel Section of Sacramento County Bar Association and Attorney and Advisor to the Family Law Section, Executive Committee of the State Bar of California	AM	Y	See comments on specific items below.	See response below.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary	Committee Response
W. Michael Becker, Ph.D., J.D. Attorney at Law and Licensed Psychologist Lafayette	States, “the audience of readers [of the proposed rule] will be overpopulated by those who have a stake in keeping the door somewhat closed.” Suggests that the proposal be circulated additionally to people within the psychological community to add more validity to the dependent variables.	This proposal was circulated to persons within the psychological community. Specifically, Family Court Services (FCS) was given an opportunity to comment on this proposal. FCS personnel include those with backgrounds in marriage and family therapy, psychology, and psychiatry.
Christine N. Carlson Staff Attorney, Family Law Department Superior Court of Solano County	Disagrees with the proposed rule because it only addresses family law cases and fails to consider cases like guardianship cases where minors’ counsel might be appointed. This results in significant rules and regulations for minors’ counsel in family cases, but no oversight for minors’ counsel in guardianship cases. If adopted, these same rules should also be implemented in the Probate Rules of Court to maintain consistency.	As stated in the invitation to comment, the intention of the committee was to focus on the appointment requirements for counsel appointed under Family Code section 3150. The committee has forwarded this comment to the Probate and Mental Health Advisory Committee.

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Dennis Jones Court Executive Officer Superior Court of Sacramento County	The rules use both terms “child” and “minor.” For consistency, one term should be used, “child.”	Modified as proposed.
Rachel Kronick Rothbart Director of Legal Services Harriet Buhai Center for Family Law Los Angeles	Regarding proposed rule 5.420, we support the development of standards for appointment of counsel and qualifications of counsel. Each court has had its own practices and policies for when to make an appointment and how to select a qualified minor’s counsel, but uniformity is needed to ensure that justice is equally meted out for all litigants. Regarding proposed rule 5.2421 (<i>now 5.242</i>), these standard qualifications are desperately needed. The range of education and experience varies and can affect the quality of minor’s counsel.	No response required. No response required.
David D. Ruport, Jr. Law Offices of David D. Ruport, Jr. Pinole	The rules are an improvement over existing rules.	No response required.

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated rule 5.10–Definition and use of terms

Commentator	Comment Excerpt or Summary	Committee Response
Joseph Chairez President Orange County Bar Association	The proposal repeals an existing California Rule of Court and replaces it with one that misstates the law (i.e. Family Code section 3011 does not define “best interests” but lists factors for the court to consider when determining best interests.	This proposal would amend, not repeal, rule 5.10 of the California Rules of Court. The proposed amendment to rule 5.10 would add the term “best interest of the child” and reference Family Code section 3011 for a description of the term.

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Circulated as rule 5.240(a)—(now rule 5.240 subdivisions (a) and (b))—Appointment considerations

Commentator	Comment Excerpt or Summary	Committee Response
<p>Vincent J. Adeszko Assistant Chief Deputy District Attorney Sacramento</p>	<p>Recommends including in 5.240(a)(3)(E) (<i>now 5.240(b)(6)</i>) that district attorneys in child abduction cases are among those persons who may request that the court appoint counsel for a child.</p>	<p>Modified to include the following provision: “A county counsel, district attorney, city attorney, or city prosecutor authorized to prosecute child abuse and neglect or child abduction under state law;”</p>
<p>Steve Baron Retired Director of Family Court Services Superior Court of Santa Clara County</p>	<p>Recommends changing proposed rule 5.240(a)(1)(D), lines 29–31 (<i>now 5.240(a)(4)</i>) to include “child neglect” or reference all forms of child abuse or neglect subject to mandatory child abuse reporting as defined in the Child Abuse and Neglect Reporting Act, California Penal Code sections 11164–11174.3.</p>	<p>Modified to include child neglect.</p>
<p>Lorie Nachlis Member of the Board of Directors Bar Association of San Francisco and its Family Law Section</p>	<p>Recommends changing “significant” to “relevant” at (a)(1)(C) (<i>now 5.240(a)(3)</i>).</p> <p>Suggests that (a)(1)(E) (<i>now 5.240(a)(5)</i>) should read “one or both” of the parents is “incapable of...” rather than “neither parent is capable.”</p>	<p>Modified as proposed at subdivision (a)(3).</p> <p>Modified as proposed at subdivision (a)(5).</p>
<p>Nicholas G. Soter Attorney Soter & Park San Francisco</p>	<p>a. Questions whether section (a)(1)(E) (<i>now 5.240(a)(5)</i>) should be in the rule. If the bench officer determines neither parent can provide a safe and secure environment for the child, then Child Protective Services should be called in, not just have an attorney appointed for the child.</p>	<p>a. Proposed subdivision (a)(1)(E) (<i>now subdivision (a)(5)</i>) was modified to state “It appears that one or both parents is incapable of providing a stable, safe, and secure environment.”</p>

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	<p>b. Recommends that (a)(1)(G) (<i>now 5.240(a)(7)</i>) state: “The best interests of the child will always require independent representation, unless it has been shown that both parents can act in the child’s best interests.”</p> <p>c. Recommends that guidelines be provided to help determine if an actual conflict of interest exists.</p>	<p>b. Family Code section 3150 gives courts the discretion to appoint counsel for a child. The suggested change to always appoint counsel for a child absent a particular showing would require action by the Legislature.</p> <p>c. Whether an actual conflict of interest exists depends on the circumstances of each case. The attorney would make the determination as a result.</p>
<p>Michael B. Stone Attorney at Law El Segundo</p>	<p>Suggests, “Whether or not the parties can afford the [costs] of a third lawyer” be listed as an appointment criterion. The money for a lawyer doesn’t grow on trees; it must come from the family’s assets that otherwise might be available for the child’s support and education.</p>	<p>Under Family Code section 3153, the examination of the parties’ ability to pay is made subsequent to the appointment of counsel. Any change to this procedure must be made legislatively.</p>

Circulated as rule 5.240(b)—Responsibility of the courts

(Now rule 5.240(d)—Panel of counsel eligible for appointment and rule 5.240(e)—Complaint procedures)

Commentator	Comment Excerpt or Summary	Committee Response
<p>Superior Court of Los Angeles County</p>	<p>a. There appears to be a cost associated with this rule, and it is unclear how this cost will be funded.</p> <p>b. The rule mandates the court to maintain and police a list of qualified attorneys to act as minor’s counsel. This is a workload issue and possibly a liability issue to the degree that the</p>	<p>a. There may be costs associated with reproducing the new optional forms. Other costs are not known to the committee.</p> <p>b. The proposed rule does not mandate the courts to maintain any list of counsel. The proposed language in the rule is discretionary and provides that the courts “may create and maintain a list or panel of counsel meeting the minimum qualifications.”</p>

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	court is held responsible for the quality of services provided.	
Mary A. Oaklund Attorney at Law Oaklund & Oaklund	Indicates concern regarding the complaint process in the rule and that “To give parents or other relatives and/or third parties a grievance process against the child’s attorney is not well thought out.” Suggests that the complaint process be left to local review, and describes the complaint process used by the Alameda County Bar Association (ACBA). “I know that many 3150 attorneys, including myself, would be more than happy to discuss these issues and try to make a good comprehensive, workable rule rather than one that appears to be good but in practice is a well intentioned mistake.”	The committee believes that the complaint process should be included in the proposed rules. Such a provision would be consistent with existing California Rules of Court relating to court child custody mediators (rule 5.210), as well as the appointment of child custody evaluators (rule 5.220) and counsel appointed to represent children in juvenile court proceedings (rule 5.660). The committee has considered all comments in making changes to the proposed rules.
Mark Radoff Directing Attorney California Indian Legal Services Escondido	Recommends that in CRC 5.240(b)(2) (<i>now 5.240(d)</i>) the panel list of minor’s attorneys meeting the minimum qualifications should include as a criteria knowledge of the Indian Child Welfare Act and, in cases where the act applies, knowledge of the matters noted above.	The committee modified proposed rule 5.242(k) to include this criterion.
Nicholas G. Soter Attorney Soter & Park San Francisco	This section seems fine.	No response required.

Circulated as rule 5.240(c)—Determination of fees and payment
(Now rule 5.241—Compensation of counsel appointed to represent a child in a family law proceeding)

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Commentator	Comment Excerpt or Summary:	Committee Response
<p>Gena Rae Eichenberg Attorney at Law Eureka</p>	<p>Recommends changing the rule to require that the court pay counsel appointed for the child and seek reimbursement from the parties. This would avoid the situation in which counsel has to withdraw from the case after initiating a legal action against one party who fails to pay. It would also avoid the appearance of compromised independence of the child’s counsel if one party is able to pay and the other is unable to pay.</p>	<p>Rule 5.240(d)(4)(B) (<i>now rule 5.241(c)(2)</i>) gives the court discretion to pay counsel and seek reimbursement of the parties. Court discretion in this area is appropriate.</p>
<p>Deborah Mullin Family Law Facilitator Superior Court of Santa Barbara County</p>	<p>a. Recommends rule 5.240(c)(2) (<i>now 5.241(a)(2)</i>) include self-represented litigants as persons who may request a redetermination of counsel’s compensation.</p> <p>b. Recommends rule 5.240(c)(3)(B) (<i>now 5.241(b)(3)(B)</i>) include self-represented litigants as persons who may request a redetermination of a parties’ ability to pay counsel’s compensation</p>	<p>a. Modified to reflect the committee’s intention that parties may request a redetermination of counsel’s compensation.</p> <p>b. Modified to reflect the committee’s intention that parties may request a redetermination of a party’s ability to pay counsel’s compensation.</p>
<p>Lorie Nachlis Member of the Board of Directors Bar Association of San Francisco and its Family Law Section</p>	<p>Recommends adding that the 3150 counsel should also be able to request a redetermination of fees along with other counsel.</p>	<p>Modified as proposed.</p>
<p>Nicholas G. Soter Attorney Soter & Park San Francisco</p>	<p>a. Questions whether there will be differences in rates depending on the parent’s financial condition if the court is to set the rate of compensation and expenses for counsel.</p>	<p>a. The issue of rate differentials is a matter that is left to the discretion of the courts.</p>

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	<p>b. Agrees with the time frames for making the determination of counsel’s compensation</p> <p>c. Questions whether counsel’s rate will be consistent if the court is going to pay counsel and seek reimbursement from the parties.</p> <p>d. States that 5.240(c)(4)(C) (<i>now 5.241(c)(3)</i>) should not be included in the rule. Warning parents that legal action may be instituted by the attorney to collect unpaid fees is not going to work.</p> <p>e. Question regarding 5.240(c)(5) (<i>now 5.241(d)</i>): When will the court pay the portion of the costs of child’s counsel that the parties are unable to pay and how much the court will pay if the parties have agreed on a higher rate than the court usually pays?</p>	<p>b. No response required.</p> <p>c. The issue of the rate paid to appointed counsel is a matter that is left to the discretion of the court.</p> <p>d. The committee believes that the parties should be informed of the consequences of failing to pay attorney’s fees. The results of including such a notice cannot be determined prospectively.</p> <p>e. The matter of when the court will pay a portion of counsel’s fees is an issue that is left to the discretion of the court.</p>
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**Circulated as rule 5.240(d)—Content of orders appointing counsel for a child
(Now rule 5.240(c)—Orders appointing counsel for a child)**

Commentator	Comment Excerpt or Summary	Committee Response
<p>Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of Orange County</p>	<p>Suggests adding the order appointing counsel must include the child’s date of birth.</p>	<p>Modified as proposed.</p>
<p>Nicholas G. Soter Attorney Soter & Park San Francisco</p>	<p>States that identifying tasks is not that helpful. The attorney should be allowed to assess and do whatever he or she thinks is appropriate, and not have to undertake a task because it has been ordered by the court in the appointment order.</p>	<p>The provision allows the court discretion to determine whether it would be helpful that the order identify tasks related to the case that would benefit from the services of counsel for a child. The committee believes it is appropriate to keep this provision in the proposed rule.</p>

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Circulated rule 5.241(b)—(now rule 5.242(b))—General appointment requirements

Commentator	Comment Excerpt or Summary	Committee Response
Hon. Alice Vilardi Judge Superior Court of Alameda County	Recommends that the rule either define what qualifies as acceptable self-insurance or authorize or require the courts to adopt local rules providing that direction.	Modified to state “counsel must ... demonstrate that he or she is adequately self-insured, as determined by local court rule or procedure.”

Circulated as rule 5.241(c)—(now rule 5.242(c))—Education and training requirements

Commentator	Comment Excerpt or Summary	Committee Response
Jill L. Barr Attorney Sacramento	Recommends that (c) be changed to read “Counsel must have completed at least 12 hours of education and training ...preceeding his or her first appointment...”	The committee changed the effective date of the education requirements to January 1, 2009. This change would address the issue raised in this comment.
Rolanda Pierre Dixon Assistant District Attorney District Attorney of Santa Clara County	Recommends adding a requirement that appointed counsel have training in domestic violence and child abuse and its effect on children.	Modified as proposed.
Mary A. Oaklund Attorney at Law Oaklund & Oaklund	Indicates “much of the understanding and ability to represent children comes from constant reading discussions (formal and informal) with teachers, child development specialists, health care professionals in our community. I am concerned that, in an attempt to standardize 3150 attorneys, the AOC and rules committee are going to neglect variations in communities, needs of different types of families, understanding of bench officers who	The committee modified the rule to include a provision in the proposed rule titled “Applicable education and training.” This subdivision (e) would specify that the required education and training for appointment may be completed through a professional continuing education group, educational institution, professional association, court-connected group, or public or private for-profit or not-for-profit group and may be applied toward the requirements of this rule. In addition, this subdivision would provide for self-study, remote training, and allow instructors to claim 1.5 hours for each hour of course instruction.

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	know the case needs and how to direct appointments.”	
Mark Radoff Directing Attorney California Indian Legal Services Escondido	Recommends that the educational and training requirements for minor’s counsel include knowledge of Indian children, families, and tribes in cases where the Indian Child Welfare Act applies or may apply. That type of training is essential for recognizing issues specific to Indian country and working with tribes to augment state court services.	Rule 5.242(k) was added to provide that counsel should become knowledgeable about the Indian Custodian Welfare Act if appropriate to the case.
David D. Rupert, Jr. Law Offices of David D. Rupert, Jr. Pinole	“No credit given for degree in related areas.” “No thought given to how education requirement will be administered. Will the State set up training class, the local bars or law schools?”	The committee modified the proposed rule to add a new subject heading titled “Applicable education and training.” This subdivision (e) would specify that the required education and training for appointment may be completed through a professional continuing education group, educational institution, professional association, court-connected group, or public or private for-profit or not-for-profit group may be applied toward the requirements of this rule. In addition, subdivision (e) would provide for self-study, remote training, and allow instructors to claim 1.5 hours for each hour of course instruction.
Deborah Jo Sandler Attorney Walnut Creek	I think it is appropriate to require minor’s counsel to take some sort of basic training before they can be appointed. The trainings can be offered by each county, and has been offered by our county. I would not object to such a requirement.	No response required.
Nicholas G. Soter Attorney Soter & Park San Francisco	Training requirements seem fine.	No response required.

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Circulated as rule 5.241(f)—(now rule 5.242(d))—Annual education and training requirements

Commentator	Comment Excerpt or Summary	Committee Response
W. Michael Becker, Ph.D., J.D. Attorney at Law and Licensed Psychologist Lafayette	States “to require significant continuing education requirements, repeated submission of the qualification forms, and other hurdles suggest that many attorneys might see this as simply a community service project or will not want to get involved at all.”	No response required.
Gena Rae Eichenberg Attorney at Law Eureka	Recommends that this subdivision mirror Rule 5.660(d)(3).	The committee believes that the difference between attorneys who practice in family and juvenile courts warrants different annual update training requirements. Minors’ counsel in family court generally receive fewer appointments than juvenile attorneys each year to exclusively represent children. In addition to the continuing education requirement, counsel for children in dependency generally contract with the court, are in the court on a daily basis representing children, and receive specialized job training in this area. The committee believes that the 8 hours of annual training proposed in rule 5.242 would provide additional training to minors’ counsel in family court and help increase the quality of counsel’s representation of a child in family law proceedings.

Circulated as rule 5.241(d) and (e)—(now rule 5.242(f) and (g))—Experience requirements and alternative experience requirements

Commentator	Comment Excerpt or Summary	Committee Response
Grace Andres Program Manager Superior Court of Solano County	Initial and alternative experience requirements seem complicated and difficult to track.	The committee modified the experience requirements of the proposed rule to state the following: <u>(1) Persons appointed as counsel for a child in a family law proceeding must have represented a party or a child in at least</u>

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		<p><u>six proceedings involving child custody within the preceding five years as follows:</u></p> <p>(A) <u>At least two of the six proceedings must have involved contested child custody and visitation issues in family law; and</u></p> <p>(B) <u>Child custody proceedings in dependency or guardianship case can count for no more than three of the six required for appointment.</u></p> <p>(2) <u>Courts may develop local rules that impose additional requirements for persons appointed as counsel for a child in a family law proceeding.</u></p> <p>Regarding tracking requirements, under the proposed rules, the proposed optional Judicial Council forms would assist counsel in tracking their compliance with the appointment requirements.</p>
<p>Jill L. Barr Attorney Sacramento</p>	<p>Objects to this entire subdivision as the experience requirements are too low. An attorney could be appointed in these very difficult cases with only a few months experience. Comments that if the rule is enacted as proposed, it will not improve the quality of minor’s counsel. The overall effect of the [proposed] rule is that it will cause damage to minor children, not help them.</p>	<p>The committee shares the concern for appointing experienced and highly qualified attorneys to represent children in family law cases. The proposed rules would, for the first time, provide guidance for the appointment of counsel in counties where there have not been local rules regarding the appointment of a child’s counsel and where there may be fewer attorneys available for such an appointment. The committee also recognizes that there are larger counties that have long established local rules with more stringent appointment requirements for a child’s counsel. To address the concerns that the proposed rule may not meet the more stringent requirements of such counties, the committee modified the rule to permit courts to develop local rules that impose additional experience requirements for counsel appointed to represent a child under Family Code section 3150.</p>

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<p>W. Michael Becker, Ph.D., J.D. Attorney at Law and Licensed Psychologist Lafayette</p>	<p>The time frame during which people must have had a number of various cases seems somewhat arbitrary, and does not itself assure that qualified people will provide such services nor that qualified persons will not be excluded.</p> <p>Questions “how clear a path will be provided by the mentoring option for those who are deemed not so qualified.”</p>	<p>See response to Jill L. Barr’s comments (above).</p> <p>The courts may decide to appoint or not appoint a counsel for a child under this subdivision based on the qualifications of the mentoring attorney.</p>
<p>Lynette Berg Robe Frieda Gordon Minors’ Counsel Committee Family Law Executive Committee Los Angeles County Bar Association</p>	<p>a. While we support the new rules in the main, and believe it is very important to implement them as soon as possible, we urge you to consider our comments and amend the rules before they are adopted.</p> <p>b. Comments that the experience requirements set the bar too low. Recommends counsel for a child should have at least five years of experience prior to appointment with at least 50% of the practice in custody cases.</p>	<p>a. The committee has considered all comments and has made changes to the proposed rule.</p> <p>b. The committee believes that a rule requiring five years of experience with at least 50 percent of counsel’s practice in child custody cases would result in too few attorneys being available for appointment in smaller counties. The committee modified the rule to permit courts to develop local rules to impose additional experience requirements for counsel appointed to represent a child under Family Code section 3150.</p>
<p>Paul L. Brimberry Attorney at Law Sacramento</p>	<p>Endorses the comments of Ms. Mary Molinaro (below).</p>	<p>See response to Mary Molinaro’s comments (below).</p>
<p>Fredrick S. Cohen Attorney at Law Sacramento</p>	<p>a. Strongly opposes rule 5.241 (<i>now rule 5.242</i>) because the criteria to be established for appointing minor’s counsel to represent children in family law cases are inadequate to ensure that attorneys appointed to represent children are truly qualified. Children and family could,</p>	<p>a. See response to Jill L. Barr’s comments (above).</p>

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	<p>potentially, be harmed by the Court’s reliance on unqualified attorneys.</p> <p>b. Recommends that the experience level for minors’ counsel be increased, so as to be “similar to that of others in the Family Law arena who deal with evaluating children’s issues such as child custody evaluators who must have five years post-doctoral experience, in addition to the specified number of hours of training and education.”</p>	<p>b. California Rules of Court, rule 5.225 establishes the experience, education and training requirements for appointment of a child custody evaluators. There is no requirement in that rule that evaluators have five years post-doctoral experience before being appointed by the court.</p>
<p>David A. Fink President-Elect American Academy of Matrimonial Lawyers Northern California Chapter San Francisco</p>	<p>a. We wish to register a strong objection and concern with respect to proposed rule 5.241 (<i>now rule 5.242</i>) dealing with qualifications and responsibilities of minor’s counsel, termination of minor’s counsel appointment. Setting the standards as proposed would present a danger to the children represented and would likely damage the public’s perception of the role of minor’s counsel in family court proceedings.</p> <p>b. The Academy supports the Judicial Council’s efforts to clarify the qualifications and role of minor’s counsel. We hope our comments will lead to an improvement in the quality and efficacy of statewide appointments, and not increase the risk of harm to children in these proceedings.</p> <p>c. In our view, subsections (d) and (e) (<i>now 5.242(f) and (g)</i>) should be reworked entirely. The minimum level for appointment as minor’s</p>	<p>a. See response to Jill L. Barr’s comments (above).</p> <p>b. The committee has considered all comments and has made changes to the proposed rule.</p> <p>c. California Rules of Court, rule 5.225 establishes the experience, education and training requirements for appointment of a child custody evaluators. There is no requirement in that rule that</p>

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	<p>counsel should be comparable to that of others in family court who deal with evaluating children’s issues such as custody evaluators (who must have five years post-doctoral experience, in addition to specified number of hours of training and education, etc.)</p> <p>d. Another suggestion would be to permit attorneys who have been practicing for more than five years <u>and</u> who have been appointed minor’s counsel in at least five matters, would be eligible to serve even if they had not appeared in court within the preceding three years. This would permit experience minor’s counsel to be “grandfathered,” even if they had not been actively litigating in the recent past.</p>	<p>evaluators have five years post-doctoral experience before being appointed by the court.</p> <p>d. The committee has changed the experience requirements. See response to Grace Andres’ comments (above).</p>
<p>H. Vincent Jacobs President Association of Certified Family Law Specialists San Francisco</p>	<p>Comments that the experience requirements are too low. Recommends appointed minor’s counsel have at least five years experience prior to appointment, with at least 50 percent of the attorney’s practice in child custody matters.</p>	<p>The committee believes that a rule requiring five years of experience with at least 50 percent of counsel’s practice in child custody cases would result in too few attorneys being available for appointment in smaller counties. The committee modified the rule to permit courts to develop local rules to impose additional experience requirements before counsel’s appointment.</p>
<p>Hon. Irwin Joseph Superior Court of Santa Cruz County</p>	<p>“This court would be severely hampered if 5.241(c) and (d) (<i>now 5.242(c) and (f)</i>) are adopted without (e)(3) (<i>now rule 5.242(g)(3)</i>). We rely on smart, mature, common-sense lawyers (including A.D.A.’s) as part of our program.”</p>	<p>The committee recommends that the Judicial Council adopt the provision of the rule allowing counsel to demonstrate substantial equivalent experience, which would be determined by the local court rule or procedure.</p>
<p>Mary Molinaro Attorney</p>	<p>Comments that the rule proposes a level of qualifications and experience that is too low.</p>	<p>See response to H. Vincent Jacobs (above).</p>

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Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, Declaration of Counsel for a Child Regarding Qualification, and FL-323, Order Appointing Counsel for a Child)

<p>Certified Family Law Specialist Sacramento</p>	<p>Further states that the proposed rule, as currently drafted, will result in fewer attorneys being willing to represent children, harm to children, and ultimately, an even poorer perception of our family law courts.</p>	
<p>Deborah Jo Sandler Attorney Walnut Creek</p>	<p>“Although I am one of the most experienced minor’s counsel in this county, I noted to my consternation that I would not qualify to represent children under any of these scenarios. I have handled a few custody trials in the past three to five years, but they were in the context of representing adults, not children, but only one of them involved taking testimony from a non-party witness, and the proposed rules appear not to include taking testimony from the parties.”</p>	<p>The rule does not limit recent experience to having represented children. Under the proposed rule, counsel may demonstrate experience by having represented a party or a child. The committee’s modifications to the experience requirements of the proposed rule deletes reference to proceedings with witnesses.</p>
<p>William Spiller, Jr. Attorney at Law Rolling Hills Estates</p>	<p>Recommends changing the proposed rule to require each attorney appointed as minor’s counsel to certify that “he/she has been primarily engaged in the practice of family law for at least five years prior to the time of submission of the certification document.”</p>	<p>See response to H. Vincent Jacobs (above).</p>
<p>Hon. Alice Vilardi Judge Superior Court of Alameda County</p>	<p>a. Recommends that subdivision 5.241(e)(1) (<i>now 5.242(g)(1)</i>) define what “appropriate” supervision is or use a word such as “directly.”</p> <p>b. Recommends that (e)(3) (<i>now rule 5.242(g)(3)</i>) be changed to permit courts to determine “substantial equivalent experience” by local rule or by local procedure</p>	<p>a. Modified as proposed.</p> <p>b. Modified as proposed.</p>

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<p>Diane Wasznicky Chairperson Children’s Counsel Section of Sacramento County Bar Association and Attorney and Advisor to the Family Law Section, Executive Committee of the State Bar of California</p>	<p>a. In setting the “bar” (minimum level needed) at the absolute lowest level, the Judicial Council would be, in fact, creating the standard for qualifications so low as to present a danger to the clients represented and major harm to the public’s perception of Minor’s Counsel and thus to the Family Law Court system itself.</p> <p>b. Comments that the experience requirements in the rule set the bar too low to qualify for appointment. Recommends that this section be deleted and revised to require that minors’ counsel have five years of experience in custody cases.</p>	<p>a. See response to Jill L. Barr’s comments (above).</p> <p>b. See response to H. Vincent Jacobs (above).</p>
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Circulated as rule 5.241(g)—(now rule 5.242(h))—Compliance with requirements

Commentator	Comment Excerpt or Summary	Committee Response
<p>Grace Andres Program Manager Superior Court of Solano County</p>	<p>a. “Rather than having minors’ counsel file a declaration in each case, why not have them file one declaration annually. The court can maintain a list of minors’ counsel who meet the qualifications. Each case would contain the order appointing.”</p> <p>b. “Who is responsible for preparing the order appointing minors’ counsel?”</p>	<p>a. The committee believes that the commentator’s recommendation would require the court to incur additional costs to maintain a separate filing/tracking system for counsels’ declarations. Such a requirement might also create additional work for clerks to research and retrieve the relevant declaration if the court, a party, or counsel wants to review it. For these reasons, the committee does not recommend changing the proposed rule to require annual filings.</p> <p>b. This decision is left to the discretion of the court.</p>
<p>Gena Rae Eichenberg Attorney at Law Eureka</p>	<p>Recommends that each county/court certify attorneys who meet the requirements to represent children instead of requiring more pleadings be filed in each case. “No attorneys</p>	<p>The committee does not recommend mandating the courts to certify attorneys, but allows the courts the discretion to create and maintain a panel of qualified counsel under proposed rule 5.240(d).</p>

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	will be appointed who do not meet the minimum requirements and who are not certified.”	
Nicholas G. Soter Attorney Soter & Park San Francisco	Comments that 5.241(g)(1) (<i>now 5.242(h)(1)</i>) does not seem well thought out. Questions whether there should be panel of attorneys eligible to receive appointment whose compliance has already been determined before appointment on any case.	Proposed rule 5.240(d) allows the courts the discretion to establish a panel of counsel meeting the qualifications of the rule. The proposed rule would also require counsel to file a declaration regarding his or her qualifications subsequent to appointment.

Circulated as rule 5.241(h)—(*now 5.242(i)*)—Rights of counsel for a child

Commentator	Comment Excerpt or Summary	Committee Response
Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of Orange County	Recommends adding right of counsel to view confidential court records, including juvenile court records.	The committee added 5.242(i)(7) to state that counsel for a child has the right to inspect juvenile case files subject to the provisions of Welfare and Institutions Code section 827.
Lynette Berg Robe Frieda Gordon Minors’ Counsel Committee Family Law Executive Committee Los Angeles County Bar Association	Recommends adding that minor’s counsel has the right to remove a judicial officer for cause or preemptively if the judicial officer is not the one who appointed minor’s counsel in the first place.	The committee believes that the subdivisions authorizing counsel to take any action that is available to a party to the proceeding, including filing pleadings, making evidentiary objections, presenting motions and orders to show cause adequately cover the specific change suggested by the commentator.
H. Vincent Jacobs President Association of Certified Family Law Specialists San Francisco	Recommends adding that minor’s counsel has the right to remove a judicial officer for cause or preemptively, and to refuse to stipulate to a commissioner already assigned to the case, especially if the judicial officer is not the one who appointed minor’s counsel originally.	See response above to Lynette Berg Robe (above).

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<p>Lorie Nachlis Member of the Board of Directors Bar Association of San Francisco and its Family Law Section</p>	<p>Recommends different language at 5.241(i)(1)(A) (<i>now 5.242(j)(1)</i>) to state “interviewing the child unless minor’s counsel concludes that interviewing the child is contrary to the child’s best interests. If minor’s counsel concludes interviewing the child is contrary to the child’s best interests, counsel shall inform the court and parties of this conclusion as well as the underlying facts supporting the conclusion. The court on its own motion or upon motion of either party may order the interview notwithstanding the conclusion of minor’s counsel.”</p>	<p>The committee believes the language should remain as is to reflect the language of Family Code section 3151.</p>
<p>Nicholas G. Soter Attorney Soter & Park San Francisco</p>	<p>Indicates that subdivision (h) (<i>now 5.242(i)</i>) seems fine, except (1)(H) (<i>now (i)(9)</i>) does not provide any guidance as to whether and when a child’s attorney can speak with a mediator. Questions whether there should be a general statement that attorneys for the children can speak directly with the mediators without further authorization.</p>	<p>Rule 5.235 of the California Rules of Court concerning ex parte communication provides guidance as to whether and when a child’s attorney may speak with a mediator.</p>
<p>Hon. Alice Vilardi Judge Superior Court of Alameda County</p>	<p>Recommends changing the introductory language in (h) (<i>now subdivision (i)</i>) to avoid repeating the text of the statute and potential conflict if or when the statute is revised.</p> <p><i>(h) Rights and responsibilities of counsel for a child To implement counsel’s rights and responsibilities as set forth in the Family Code, including the rights and responsibilities</i></p>	<p>The committee modified the introductory language of this subdivision to state: <u>Counsel has rights relating to the representation of a child’s best interest under Family Code sections 3111, 3151, 3151.5, 3153, and Welfare and Institutions Code section 827, which include the right to:</u>”</p>

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	<i>described in sections 3111, 3151, 3151.5, 3152, 3153, and 3042, counsel should:</i> "
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**Circulated as rule 5.241(i)—Responsibilities of counsel for a child
(Now rule 5.242(j))—Responsibilities of counsel for a child and rule 5.242(k)—Other considerations)**

Commentator	Comment Excerpt or Summary	Committee Response
Jill L. Barr Attorney Sacramento	<p>Objects to this entire subdivision. "It purports to legislate what minor's counsel should do in every case. If minor's counsel should do an entire laundry list of activities and chooses not to do every item, then it can be argued that counsel did not do his or her job effectively by one of the litigants. Then, the minor's counsel's actions or inactions become more the focus of litigation than the child or the parties themselves. The laundry list is unrealistic."</p> <p>"Subsection (i)(2)(G) (<i>now 5.242(k)(5)</i>) is especially troublesome. This appears to state that counsel is required to represent the child in other proceedings and/or give advice with regard to other areas of law that are outside of family law."</p>	<p>The committee recommends clarifying that the intent of the subdivision circulated as (i)(2) (<i>now 5.242(k)</i>) is to inform counsel of actions they may consider, subject to the terms of the court's appointment, to help implement their statutory duties to the child. Specifically, the committee recommends placing under the heading "responsibilities of counsel for a child" (<i>now 5.242(j)</i>) those duties that are mandated by statute. Those items that are not statutorily mandated would be placed under a new subdivision titled "Other considerations" (<i>now 5.242(k)</i>) with appropriate prefatory language to clarify that the items listed would assist counsel in implementing his or her statutory duties.</p>
Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of Orange County	<p>Suggests, at 5.241(i)(2)(D)(ii) (<i>now 5.242(k)(4)(C)</i>), adding the underlined language; Reviewing the court files of the child and his or her siblings, <u>including confidential court records to include Juvenile files, case-related records of social service agency, and case-related records of other service providers.</u></p>	<p>The committee modified subdivision 5.242(i) to include that counsel has the right to inspect juvenile case files subject to the provisions of Welfare and Institutions Code section 827.</p>

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<p>Lynette Berg Robe Frieda Gordon Minors' Counsel Committee Family Law Executive Committee Los Angeles County Bar Association</p>	<p>a. Comments that the responsibilities are too onerous, and may make experienced attorneys shy away from an appointment for having to undertake all the listed tasks in each case. Recommends including some prefatory language to clarify that not every listed duty has to be performed in each case.</p> <p>b. Suggests clarifying whether counsel "shall" or "may" file a written statement of issues and contentions or even if the court will consider it if not previously ordered.</p> <p>c. Recommends stating that minor's counsel is not the court's expert and is not expected to make substantive recommendations as an expert regarding custody and visitation.</p>	<p>a. See response to Jill L. Barr's comments (above).</p> <p>b. Modified as proposed. Under Family Code section 3151, counsel has to prepare a statement of issues and contentions if the court requests such a statement.</p> <p>c. Modified as proposed.</p>
<p>Joseph Chairez President Orange County Bar Association</p>	<p>The proposed rule would expand the role of the attorneys for the child to include investigation into areas beyond the scope of the proceeding.</p>	<p>The committee modified this subdivision to clarify that the intent of the subdivision circulated as (i)((2) (<i>now 5.242(k)</i>) is to inform counsel of actions they may consider, subject to the terms of the court's appointment, to help implement their statutory duties to the child.</p>
<p>David A. Fink President-Elect American Academy of Matrimonial Lawyers San Francisco</p>	<p>The Academy generally supports this subsection. It is helpful to have a guide with suggested responsibilities for minor's counsel depending on the issues in the case; however, as drafted, it is susceptible to being interpreted as expanding the responsibilities beyond what is contemplated by statute.</p>	<p>See response to Jill L. Barr's comments (above).</p>
<p>H. Vincent Jacobs</p>	<p>a. Comments that the responsibilities are too</p>	<p>a. See response to Jill L. Barr's comments (above).</p>

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<p>President Association of Certified Family Law Specialists San Francisco</p>	<p>onerous, and may make experienced attorneys reluctant to take an appointment out of concern that they are to undertake all the listed tasks in each case. Recommends including some language to clarify that every listed duty is not necessary in each case.</p> <p>b. Suggests clarifying whether counsel “shall” or “may” file a written statement of issues and contentions or even if the court will consider it if not previously ordered.</p> <p>c. Recommends stating that minor’s counsel is not the court’s expert and is not expected to make substantive recommendations as an expert regarding custody and visitation.</p>	<p>b. Modified as proposed. Under Family Code section 3151, counsel has to prepare a statement of issues and contentions if the court requests such a statement.</p> <p>c. Modified as proposed.</p>
<p>Dennis Jones Court Executive Director Superior Court of Sacramento County</p>	<p>Obtaining necessary authorization for the release of information should be listed first in this subdivision.</p> <p>(i)(2)(E) through (G) (<i>now 5.242(k)(4)(L) and (k)(5)</i>) extends the attorney to represent the child in other administrative and judicial proceedings, including Delinquency and Dependency.</p>	<p>The list of items in this proposed subdivision are not intended to be in any particular order of importance.</p> <p>The committee modified the introductory language of this subdivision to indicate that this subdivision is not a list a mandatory actions to be undertaken by counsel.</p>
<p>Rachel Kronick Rothbart Director of Legal Services Harriet Buhai Center for Family Law Los Angeles</p>	<p>The proposed responsibilities are good common sense and are what one would expect from minor’s counsel. Requiring minor’s counsel to prepare a written statement is also necessary to comport with due process.</p>	<p>No response required.</p>

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<p>Lorie Nachlis Member of the Board of Directors Bar Association of San Francisco and its Family Law Section</p>	<p>a. 5.241(i)(2)(A) (<i>now 5.242(k)(1)</i>) recommends saying “interview or observe as appropriate to the age and circumstances of the child if counsel deems it appropriate.”</p> <p>b. Comments that 5.241(i)(2)(C) (<i>now 5.242(k)(3)</i>), attend and participate in any other hearings relevant to the child, seems to be overstepping the bounds of a family court appointment in a family law case. Recommends defining “Other hearings.”</p> <p>c. At 5.241(i)(2)(D) and (E) (<i>now 5.242(k)(4)(K)</i>), “may” is preferred to “should.”</p> <p>d. 5.241(i)(2)(D)(ii) (<i>now 5.242(k)(4)(C)</i>). There might be privacy issues here regarding reviewing the court files of siblings’ cases. What if siblings live in different households with a different parent who is not connected to the case?</p> <p>e. 5.241(i)(2)(D)(iii) (<i>now 5.242(k)(4)(D)</i>) should say “the” parties not “other” parties because the child is not a party.</p> <p>f. At 5.241(i)(2)(D)(vi) (<i>now 5.242(k)(4)(F)</i>), Recommends replacing “should” with “may” to indicate that counsel does not have to regularly interview all the collaterals on the list.</p>	<p>a. The subdivision was modified to indicate that the items listed are not mandatory actions of the child’s counsel. Also modified to state “interview or observe as appropriate to the age and circumstances of the child.”</p> <p>b. This subdivision was modified to state that the items listed are not mandatory actions.</p> <p>c. Modified as proposed in subdivision (k).</p> <p>d. The court would decide which files the minor’s counsel should be able to review.</p> <p>e. Modified as proposed.</p> <p>f. Modified as proposed. The introductory paragraph in subdivision (k) was modified to indicate this subdivision is not a mandatory list of actions to be undertaken by counsel.</p>
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	<p>g. States that 5.241(i)(2)(E) (<i>now 5.242(k)(4)(K)</i>), investigating the child’s interest beyond the scope of the family law proceeding, would be appropriate if this were a Welfare & Institutions case, but it might overstep the bounds of family court.</p> <p>h. States that 5.241(i)(2)(G) (<i>now 5.242(k)(5)</i>) “become knowledgeable” is vague. This section does little and should be deleted.</p>	<p>g. The proposed rule was modified to provide that this subdivision (subdivision (k)) is not mandatory.</p> <p>h. The committee recommends maintaining this language in the rule to promote counsel’s continuing education in areas that may affect the child he or she is representing.</p>
<p>Deborah Jo Sandler Attorney Walnut Creek</p>	<p>a. “The requirement to file a Statement of Issues and Contentions does not make sense. Judges should still have discretion to require a statement.”</p> <p>b. “I object to the proposals setting forth the specific things that minor’s counsel would be required to do. That type of micromanagement is not seen in the requirements for other family law attorneys, and would make our work harder to do.”</p>	<p>a. The Statement of Issues and Contentions is not made mandatory under the proposed rule.</p> <p>b. See response to Jill K. Barr’s comment (above).</p>
<p>Nicholas G. Soter Attorney Soter & Park San Francisco</p>	<p>a. Questions whether there is still attorney-client privilege if the attorney is charged with advocating for the best interests of the child.</p> <p>b. Questions if there is any advocating for what the client wants other than stating the child’s wishes to the court.</p> <p>c. “(i)(2)(C) and (D) (<i>now 5.242(k)(3) and (4)</i>) seem good.”</p>	<p>a. The language in the rule charging the attorney with advocating for the best interest of the child is from Family Code section 3150.</p> <p>b. Under Family Code section 3150, the attorney is charged with advocating for the child’s best interest.</p> <p>c. No response required.</p>
<p>Diane Wasznicky Chairperson</p>	<p>a. States that provisions in this section would be interpreted as a required</p>	<p>a. See response to Jill L. Barr’s comments (above).</p>

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<p>Children’s Counsel Section of Sacramento County Bar Association and Attorney and Advisor to the Family Law Section, Executive Committee of the State Bar of California</p>	<p>duties/responsibilities, which could subject counsel to litigation by disgruntled parents. For example:</p> <p>b. “(i)(2)(C) (<i>now 5.242(k)(3)</i>) seems to require that counsel actively participate and represent their minor client in any other civil, juvenile, criminal, administrative or appellate proceeding which may impact the child.”</p> <p>c. As written, (i)(2)(D)(vi) (<i>now 5.242(k)(4)(F)</i>) would seem to indicate that minor’s counsel must interview each and every one of listed persons regardless of whether it is relevant to the issue at any given time. Suggests adding that these are intended to be examples of the kinds of people who minors’ counsel should be willing and able to interview as appropriate to the given issue.</p> <p>d. Comments that the (i)(2)G) (<i>now 5.242(k)(4)(M)</i>) would require that minor’s counsel become “expert” in juvenile dependency, probate, and other areas of law, as opposed to being familiar with aspects of each related to and occurring when cases “cross-over” areas of law.</p>	<p>b. See response to Jill L. Barr’s comments (above).</p> <p>c. See response to Jill L. Barr’s comments (above).</p> <p>d. See response to Jill L. Barr’s comments (above).</p>
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Circulated as rule 5.241(j)—(*now rule 5.240(f)*)—Termination of appointment

Commentator	Comment Excerpt or Summary	Committee Response
Lynette Berg Robe Frieda Gordon	Recommends adding that appointment will terminate when the child is no longer a minor.	Modified as proposed.

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Minors' Counsel Committee Family Law Executive Committee Los Angeles County Bar Association		
H. Vincent Jacobs President Association of Certified Family Law Specialists San Francisco	Recommends adding that appointment will terminate when the child is no longer a minor.	Modified as proposed.
Deborah Jo Sandler Attorney Walnut Creek	These provisions do not include the child reaching majority.	Modified as proposed.
Hon. Alice Vilardi Judge Superior Court of Alameda County	States that this provision is duplicative of statutory provisions.	The committee recommends including these provisions to provide a more comprehensive understanding of counsel's obligations in representing a child in a family law proceeding.
Diane Wasznicky Chairperson Children's Counsel Section of Sacramento County Bar Association and Attorney and Advisor to the Family Law Section, Executive Committee of the State Bar of California	No objection to this subdivision as a whole, but queries how counsel could be "substituted out" per 5.241(j)(3) (<i>now 5.240(f)(3)</i>). Recommends deleting this alternative to avoid language that is misleading and contradictory to the appointment process.	The committee recommends changing the proposed rule to read "substituted with other counsel by the court." The committee believes that this clarification better reflects the language of Family Code section 3150(b).

Circulated form FL-322, *Declaration of counsel for a child regarding qualifications*

Commentator	Comment Excerpt or Summary	Committee Response
Rachel Kronick Rothbart Director of Legal Services Harriet Buhai Center for Family Law Los Angeles	Item 6b should state: Within the preceding five years, I have handled <u>at least</u> five proceedings that involved child custody or visitation proceedings.	Modified to state "I have complied with the experience requirements of rule 5.242(f)."

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Circulated form FL-323, *Order appointing counsel for a child*

Commentator	Comment Excerpt or Summary	Committee Response
<p>Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of Orange County</p>	<p>a. Recommends adding the age of the minor to the order.</p> <p>b. Recommends including provisions for how to contact the child, such as who the child resides with and a phone number under item 2.</p> <p>c. Recommends adding under item 8: “Failure to pay fees to the appointed attorney may result in the attorney initiating legal action against you to collect the money.”</p> <p>d. Include information on who is required to provide copies of the order to counsel (such as the filing party, clerk, etc.) under item 7b.</p> <p>e. Include space for any other additional orders by adding an item 9 titled “Other” and a blank space.</p> <p>f. Omit the clerk’s certificate to be consistent with other original order forms.</p>	<p>a. Modified as proposed.</p> <p>b. Modified to include the child’s address (if appropriate).</p> <p>c. Modified to include a notice on the form regarding a party’s failure to pay fees to the appointed attorney.</p> <p>d. Because the use of the order appointing counsel is optional, the committee believes that the courts should have the discretion to determine who will provide copies of the order to counsel and to the parties.</p> <p>e. Modified as proposed at current item 8.</p> <p>f. Modified as proposed.</p>
<p>Deborah Jo Sandler Attorney Walnut Creek</p>	<p>a. Concerned that the order appointing minor’s counsel sets forth the legal issues to be considered and the tasks counsel is to perform. This would appear to unduly limit our work. Counsel for a child should not be precluded from doing creative problem-solving.</p>	<p>a. The order appointing counsel is an optional form. The court has the discretion to create local forms appointing counsel.</p>

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Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Sts. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322, *Declaration of Counsel for a Child Regarding Qualification*, and FL-323, *Order Appointing Counsel for a Child*)

	<p>b. The “Additional Orders” section on the proposed form for appointment is a good idea. Some litigants are unaware that they should cooperate with minor’s counsel.</p>	<p>b. No response required.</p>
<p>Hon. Alice Vilardi Judge Superior Court of Alameda County</p>	<p>Recommends:</p> <p>a. Providing space for the name of the temporary judge (i.e. “Temporary Judge (name):” ;</p> <p>b. Deleting the word “private” to modify counsel in the findings sentence, as some attorneys may not be private in the sense ordinarily used, and is not essential to the findings being made;</p> <p>c. Adding a line for counsel’s e-mail address;</p> <p>d. Hyphenating the words “mental-health” and “health care” at 5e. and 5g.</p> <p>e. At 5k, change to “Upon approval of the court,…”</p> <p>f. At 6c(4), wonders if the phrase should be “court will pay” instead of “court must pay.”</p>	<p>a. As drafted, the proposed form reflects standard Judicial Council forms regarding the space provided for the name of the judicial officer. In the standard forms, the temporary judge making the order prints his or her name in the space following the word “Judge” and then checks the box for “Temporary Judge,” which immediately follows his or her printed name.</p> <p>b. Modified as proposed.</p> <p>c. Modified as proposed.</p> <p>d. Modified to hyphenate health-care, To reflect current writing standards, the committee did not hyphenate the term mental health.</p> <p>e. Modified as proposed.</p> <p>f. The term “must” is consistent with Government Code section 77003.</p>