

UPDATE

BEYOND THE BENCH

DECEMBER 15, 2011

GASSNER/JUHAS

NOTHING ENDURES BUT CHANGE



Self represented litigants

- Trust and Confidence survey
- What SRL's want
 - To be heard
 - To be respected
 - To understand
 - To be treated fairly

EFLTF

Providing Clear Guidance Through Rules of Court. The family law rules should be revised to be more comprehensive and provide greater statewide uniformity in family law procedures.

EFLTF

Streamlining Family Law Forms and Procedures. All Judicial Council forms should be clear and easy to complete. Forms should be translated into multiple languages. Local forms should not be in conflict with statewide Judicial Council forms. Summary dissolution and other procedures for uncontested cases should be simplified.

OLD 2011 CHANGE

FC §3049

- It is the intent of the Legislature in enacting this section to codify the decision of the California Supreme Court in *In re Marriage of Carney* (1979) 24 Cal.3d 725, with respect to custody and visitation determinations by the court involving a disabled parent.

FC 217/ CRC 5.119 (live testimony)

- FC 217 as of 1/1/11
- CRC as of 7/1/11
- Default is live testimony
- FL-321 witness list form (optional)

BRAND NEW CHANGE

JC 10/28/11 EFFECTIVE 1/1/12

- FCCR
- Attorney fees
- Child custody info sheets
- DV forms/rules
- Minor's counsel
- Children's participation

FCCR

- Mandated by AB 939
- To take full effect by 1/1/13
- Courthouse—case flow management
- New statute, rule and forms
 - FC 2450/ 2451
 - CRC 5.83
 - FL-172 optional (case information)
 - FL- 174 optional (order)

Case flow FCCR (1 / 1 / 13)

- Assist parties through the court
- Assist them in accessing resources
- Assist them in early settlement possibilities
- Provide them information regarding the process

Case specific FCCR (1 / 1 / 12)

- Court may ORDER plan
- On record or in writing
- Conform with due process:
 - Early neutral case evaluation
 - ADR (DV concerns)
 - Limit discovery
 - Use of telephonic appearances
 - Experts

CHILD PARTICIPATION

FC 3042 / CRC 5.250

- 3042 is a preference statute NOT a percipient witness statute
- Focus is child's participation
- Child not mandated to or not to participate
- Court alone makes determination as to hearing from the child

FC 3042 / CRC 2.250

In deciding if/ how child participates,
Ct must balance (protect due
process)

- protecting the child;
- duty to consider child's wishes;
- probative value of child's input

CRC 5.250/ FC 3042

Child wants to address the court:

- Must inform the court:
 - Minor's counsel, evaluator, investigator, recommending counselor
- May inform the court:
 - Party, party's attorney
- Court can inquire on its own about child's wishes

Mediator role

- Child centered information

Minor's counsel

- FC 3151 modified effective 1/1/11
- FL- 321-INFO (atty. for child)
 - Costs, duties, roles of MC
- CRC 5.242(j) important
- Modified FL-323 (optional) order appointing counsel for a child
- Admissible evidence/ no statement of issues and contentions

Info sheets

- FL-313- INFO recommending counseling
- FL-314-INFO child custody mediation

DOMESTIC VIOLENCE

- Many forms changing in lots of ways
- Can now do a stipulated judgment in DV paternity case
 - DV-180
 - CRC 5.380
 - No fee
 - separate case not required– OK to open

JC 12/13/11 EFFECTIVE 1/1/12

- Default and uncontested judgments
- Domestic partnerships
- Disso same sex marriage/RDP

Summary dissolution

- Marriage and RDP*
- 5 years DOM to DOS*
- No minor children
- < \$38K of assets
- < \$6 K debt
- Court automatically enter 6 mos. post filing*
- See FL-810 info booklet

Default judgments

- Default judgment check list FL-182 optional
- CRC 5.405
 - FL-182 lists the only required forms- no additional
- CRC 5.407
 - Court review and advise how to correct
- CRC 5.409
 - Hearing case by-case discretionary on court or party- cannot be mandatory

Same sex marriage

- Same sex marriage—RDP
 - FL-103 dissolve either/ or both at same time
 - FI-123 response
- SB 651 jurisdiction change
 - Some same sex marriages can divorce even if don't live here

**WHAT MIGHT (OR
MIGHT NOT) CHANGE**

JC meeting in ?/ 2012

- Request for order (FL-300) (1/12 meeting)
- FI-107 INFO FL procedures
- Posting/publication rules
- CRC re-done/ re-numbered top to bottom
 - Some changes significant
 - Currently on 2/12 JC meeting
 - Effective 7/1/12 or 1/1/13

Request for order

- CRC 5.92
 - No more notice of motion or OSC
 - Not affect DVPA
- FL-300 (mandatory)

Where its at

- 12/13 MEETING:
COURTS.CA.GOV/JCMEETINGS.HTM
- 10/28 rules, forms:
COURTS.CA.GOV.15708.HTM

CASE LAW (BRIEFLY)

DOMESTIC VIOLENCE

Avalos vs. Perez(2011)

- FC 6345(a):

These orders may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.

SM vs. EP (2010) 184 Cal App 4TH 1249

- If a court finds DV, §3044 presumption attaches
- If court not intend to trigger §3044, then no DV
- Once triggered, §3044 must be rebutted, can't be avoided.

MOVE AWAY

Mark T vs. Jamie Z (2011)194 Cal App 4th 1115

- Court and evaluator must assume that parent requesting move, will move no matter what.
- Initial custody order in BIC.
- Joint physical custody, modification of co-parenting is not change of custody so no C of C needed.

Mark T vs. Jamie Z (2011)194 Cal App 4th 1115

- Question before the court: “what arrangement for custody should be made if and when the parent moves”.
- “will you move if request to take child is denied” improper line of Q’s.
- Bad faith motive only one factor to consider

F.T. VS. L.J. (2011) 194 Cal App 4th 1

- MHP did not set forth detailed findings, “fully sharing the sensitive data with the parties could potentially cause harm”
- Financial limitations precluded a thorough investigation of the variables relevant to the move.
- No recommendations re move, but recommended joint physical.

F.T. VS. L.J. (2011) 194 Cal App 4th 1

- Remember that if assume move, is it in the child's best interest to change custody?
- Initial custody determination: wide discretion to chose a parenting plan in BIC.

GRANDPARENT VISITATION

Hoag vs. Diedjomahor (2011)

Cal App 4th

- Mom, dad and children live with maternal grandmother
- Mom dies and dad essentially cuts off visitation.
- Trial court orders visitation
- Dad says he has constitutional right to determine if g'ma sees kids

Hoag vs. Diedjomahor (2011)

Cal App 4th

- Law presumes that a fit parent will make decisions in the child's best interest;
- Custodial parent's decisions regarding visitation are presumed valid;
- Court must give the parent's decision "special consideration"—it is not immune from judicial review.

Hoag vs. Diedjomahor (2011) Cal App 4th

- Don't punish the children if the parent and the grandparent have a problem.
- Custodial parent offers "meaningful visitation" this is entitled to "significant weight"

Rich vs. Thatcher (2011) Cal App 4th

- Paternal G'ma wants visitation after son dies;
- Hostility between M and G'ma is “open and clear”;

Rich vs. Thatcher (2011) Cal App 4th

- Rebuttable presumption that fit parent will act in BIC;
- Presumption only overcome by clear and convincing evidence;
- Must show denial is not in BIC

