



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2011

Title

Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings

Agenda Item Type

Action Required

Effective Date

January 1, 2012

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 5.242; revise form FL-323; and approve form FL-321-INFO

Date of Report

October 6, 2011

Recommended by

Family and Juvenile Law Advisory Committee

Hon. Kimberly J. Nystrom-Geist, Cochair

Hon. Dean Stout, Cochair

Contact

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.242 of the California Rules of Court and revising form FL-323 to reflect amendments made to Family Code section 3151, which was enacted by Assembly Bill 939 and effective on January 1, 2011, regarding the responsibilities of counsel appointed in family law cases to represent a child. The committee also recommends approving new form FL-321-INFO to provide information and ensure the consistent provision of information statewide about minor's counsel.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

- Amend rule 5.242 of the California Rules of Court to reflect changes to Family Code section 3151 enacted by Assembly Bill 939 (Committee on Judiciary; Stats. 2010, ch. 352);

- Revise *Order Appointing Counsel for a Child* (form FL-323); and
- Approve *Attorney for Child in a Family Law Case—Information Sheet* (form FL-321-INFO) to help respond to questions that parties in family law cases frequently ask about costs, duties, and the role that minor’s counsel might play in their case.

Copies of the rule and forms are attached at pages 9–15.

Previous Council Action

The Judicial Council adopted rule 5.242 and approved form FL-323, effective January 1, 2008.

Rationale for Recommendation

Family Code section 3151 was revised effective January 1, 2011. As a result, rule 5.242 of the California Rules of Court and *Order Appointing Counsel for a Child* (form FL-323) requires amendments to accurately reflect the statutory changes. The proposed revisions to the rule and form include:

- Adding new duties imposed by the statute to present admissible evidence to the court in the manner appropriate for the counsel of a party and to ascertain evidence relevant to the custody or visitation hearing;
- Deleting provisions regarding counsel’s former duty to prepare a written statement of issues and contentions about the best interest of the child in the case; and
- Other necessary and appropriate technical and formatting changes, including (1) clarifying that counsel’s appointment to represent the child will continue until terminated under rule 5.240(f); (2) providing more space in form FL-323 for the court to make additional orders relating to the appointment; and (3) revising the form to be consistent with other Judicial Council orders appointing professionals in child custody proceedings, which include the requirement to file a declaration regarding qualifications.

In addition, the committee recommends that the Judicial Council approve a new optional form, *Attorney for Child in a Family Law Case—Information Sheet* (form FL-321-INFO). Although not required by the above statutory changes, this form would help respond to questions that parties in family law cases frequently ask about costs, duties, and the role minor’s counsel might play in their case. It would provide information, ensure the consistent provision of information statewide about minor’s counsel, and help inform the public of the statutory and rule changes.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 19, 2011, through June 20, 2011, 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,

family dispute resolution directors, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff.

Of a total of 27 commentators, 6 agreed with the original proposal, 15 agreed if modifications were made, and 4 did not indicate whether they agreed but suggested modifications to the rule and forms. One organization neither indicated a position nor provided comments. One commentator did not submit comments in response to the invitation to comment but submitted a draft article responding to the Elkins final recommendations. No commentators disagreed with the proposal. A chart of comments providing the full text of the comments and the committee's responses is attached at pages 16–39.

Rule 5.242

As described below, five commentators provided specific comments about rule 5.242.

An organization of minor's counsel recommended deleting the reference to "admissible evidence" in the rule. The representatives believe that the reference is offensive because it is not a requirement that any rule of court or statute imposes on counsel representing a party. They recommended that the rule specify that all counsel must present admissible evidence or be silent for all. Although the reference to admissible evidence is inconsistent with provisions pertaining to other counsel in the rules, the committee did not agree with the suggested change. The committee believes that the rule should accurately reflect the language of the statute. Assembly Bill 939 amended Family Code section 3151 to clarify that counsel's other duties include presenting admissible evidence to the court in the manner appropriate for the counsel of a party and ascertaining evidence relevant to the custody or visitation hearing. The commentators' suggested change to the rule would be inconsistent with the statute and create confusion to parties and counsel.

Another commentator disagreed with the change to the rule that specifies, "If the child so desires, the child's counsel must present the child's wishes to the court." The commentator stated that the language may interfere with the attorney-client relationship because it prevents the attorney from using his or her independent judgment in presenting the child's wishes. Instead, the commentator proposed that the rule be changed to state: "If the child so desires, the child's counsel may present the child's wishes to the court, when counsel deems it appropriate for consideration by the court under Family Code 3042." Effective January 1, 2011, section 3151(a) imposed a mandatory duty on counsel to present the child's wishes to the court if the child so desires. Any change to the language must be made by the Legislature and cannot be made in this rule. The language proposed in the rule reflects the statutory language, and as a result, the committee did not recommend changing the proposed rule as the commentator suggested.

Two commentators raised the issue that rule 5.242(j) reiterates Family Code section 3151. One stated that if the intent is to reiterate the statute, the rule is unnecessary and could create a conflict if there is a modification to the statute without a change to the rule. The other

recommended either amending rule 5.242(j) to mirror the exact language of amended Family Code section 3151(a) or deleting it because it simply repeats the statute. The committee believes that deleting the statutory language from the rule would contradict the stated purpose of the Judicial Council in adopting rules 5.240, 5.241, and 5.242, effective January 1, 2008. In its report to the Judicial Council dated October 2, 2007, the committee highlighted that the purpose of the rules was to “provide a comprehensive guide for courts and counsel that includes the statutory rights and responsibilities of counsel.”¹ To continue to accomplish this purpose, the committee prefers to recommend that rule 5.242(j) mirror the exact language of Family Code section 3151.

One commentator suggested four additional changes to the rule: (1) require that “minor’s counsel provide notice to the parties of the wishes of the child within a reasonable time before the court rules to assist in the efficient adjudication of the hearing, by giving the parties the opportunity to be prepared by the hearing”; (2) “if the notice provision is added to the rule, ... include an exception for disclosure of the minor child’s wishes before the hearing if such disclosure would not be in the best interest of the child or the disclosure could place the child at risk for emotional and/or physical harm”; (3) require that minor’s counsel meet and confer with the parties before the hearing; (4) indicate that “the expression of the minor’s wishes will be accomplished in such a manner as to minimize harm, emotional and/or physical, to the minor child.”

The committee believes that the proposed changes to the rule already address the first suggestion. Rule 5.242 reflects changes made to Family Code section 3151(a) and (b). Section 3151(a) provides that, if the child so desires, the child’s counsel shall present the child’s wishes to the court, and section 3151(b) requires that the child’s counsel serve notices and pleadings on all parties, consistent with requirements for parties. In addition, Family Code section 216 and rule 5.235 prohibit ex parte communication between the child’s counsel and the court. Therefore, if the attorney is informing the court of the child’s wishes, the attorney must also provide that information to the parties.

Regarding the commentator’s second suggestion that the rule allow for an exception to disclosing the minor’s wishes, the committee believes the Legislature has addressed this issue by making the duty to report the child’s wishes, if the child so desires, mandatory. The committee believes that the commentator’s third suggestion, that the child’s counsel be required to meet and confer with the parties, would be covered under a rule of court that will be recommended to the council in early 2012. Finally, the committee believes that the fourth suggestion is covered in the general provision that charges counsel with the responsibility of representing the child’s best interest.

In a draft article responding to the Elkins Family Law Task Force, a commentator suggested that Family Code section 3151 should not be read as precluding the statement of issues and contentions because it was not deleted in Family Code section 3151.5. The commentator’s

¹ Judicial Council of Cal., Advisory Com. Rep., *Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings* (Sept. 18, 2007).

assertion is a misreading of the legislative intent of Family Code section 3151. The California Assembly's analysis of Assembly Bill 939 noted that the bill's intent was to implement the key recommendations of the Elkins Family Law Task Force. One key recommendation in the report of the final recommendations regarding minor's counsel (pages 53–54) was to amend Family Code section 3151(b) to eliminate the requirement that, at the court's request, counsel must prepare a written statement of issues and contentions. The task force reasoned that:

Judicial officers desiring to have the information necessary for a well-reasoned custody determination might consider appointing minor's counsel to gather information and investigate the case on behalf of the child. The results of counsel's investigation or fact gathering should be presented only in the appropriate evidentiary manner so that the parties' due process rights are adequately protected. Because minor's counsel is acting as an attorney, minor's counsel should never be called upon to testify or to stand in the place of a mental health evaluator or to replace the court's weighing and determination of the facts with his or her own. Any position minor's counsel will be taking must be presented in writing to the parties prior to any hearing on the matter.

An additional recommendation that the committee agrees to incorporate into rule 5.242 is an item that specifies the responsibilities of minor's counsel in any case in which a child is called to testify. Rule 5.242 would include the language from proposed rule 5.250(d)(5)(A)–(D), *Children's participation and testimony in family court proceedings*.² Because rule 5.250 was circulated and received comments during this cycle in the proposal titled *Family Law: New, Restructured, and Amended Family Law Rules of Court*, adding the language from rule 5.250 would not be considered a substantive change requiring additional public comment.

Form FL-323

Most of the comments received on the proposal pertained to form FL-323. The invitation to comment specifically requested comments about changes to items 4 (*now item 5*), 5j (*now item 6j*), and 9 (*now item 8f*); however, most of the comments received focused on other parts of the form that were not circulated for comment and are beyond the scope of the proposal. The

² Proposed rule 5.250 provides, in pertinent part, that:

In addition to adhering to the requirements for minor's counsel under Family Code section 3151 and rules 5.240, 5.241, and 5.242, minor's counsel must:

(A) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and the possibility that information provided to the court may be on the record and provided to the parties in the case;

(B) Allow but not require the child to state a preference regarding custody or visitation and, in an age-appropriate manner, provide information about the process by which the court will make a decision;

(C) Provide procedures relevant to the child's participation and, if appropriate, provide an orientation to the courtroom where the child will be testifying; and

(D) Inform the parties and then the court about the client's desire to provide input.

committee has provided responses to each comment in the attached comment chart. This report's analysis focuses on the comments on items about which the committee invited comments and on other technical changes that the committee agreed to incorporate into the revisions it is recommending for adoption. The committee will consider substantive changes to other items in the form during a future cycle.

Four commentators responded to changes proposed to item 4 (*now item 5*), which provides the responsibilities of child's counsel contained in Family Code section 3151. The suggestions included revising 4e (*now item 5a(5)(B)*) to specify that counsel for the child review the criminal records of each party and 4f (*now item 5a(5)(C)*) to specify that counsel follow up on a parent's compliance with court orders. Because the committee prefers that the list of counsel's responsibilities reflect those enumerated in Family Code section 3151, it does not agree to revise item 4 (*now item 5*) as suggested.

Two commentators suggested adding the responsibility that counsel timely file a declaration of qualifications. Rule 5.242(h) requires counsel for a child to file a declaration with the court indicating compliance with the requirements of the rule no later than 10 days after being appointed and before beginning work on the case. Rule 5.225 imposes a similar duty on court-appointed child custody evaluators, which is reflected on *Order Appointing Child Custody Evaluator* (form FL-327). To correct this oversight, the committee believes it important to update form FL-323 to include appointed counsel's obligation to file a declaration regarding his or her qualifications to represent a child in a family law proceeding. The committee proposes that the language appear as an additional order on form FL-323 instead of including it with the statutory responsibilities listed on the first page.

Two commentators suggested changes to item 5j (*now item 6j*). Both recommended that "the right to refuse any physical or psychological examination or evaluation" be revised to specify that the examination or evaluation is "of the child." Because item 5j (*now item 6j*) reflects the exact language in Family Code section 3151(c)(6), the committee did not incorporate the suggestion into the recommended changes to form FL-323.

The committee received three comments relating to item 9 (*now item 8f*). One commentator suggested that the form provide for a termination date or review date for the appointment of counsel so that the appointment is not indefinite. Another suggested revising item 9 to provide for cases in which the court wants to make orders in the "Other Orders" section of the form relating to the duration of counsel's appointment. The third commentator suggested that the form include optional provisions for the duration of the order, including that the order expire upon the filing of the judgment, upon the filing of an order after hearing on the custody issue, and upon a specific date. The committee prefers to recommend the language that was circulated for comment, which provides that counsel must continue to represent the child until the appointment terminates, as provided in rule 5.240(f) of the California Rules of Court. However, the committee agreed to revise the sentence to add "or as stated below in item 8 (*now item 9*)."

Further, the committee has decided to recommend placing the language in item 9 under "Additional Orders,"

item 7 (*now item 8*), and deleting item 9. Removing item 9 from the form creates additional space for the court to provide other orders.

Three commentators recommended that the form be adopted as a mandatory form. Generally, they noted that making the form mandatory would promote uniformity in appointment orders and streamline access to information. Although the committee agrees with the rationale, changing form FL-323 to a mandatory form is an important substantive change to both rule 5.240 and the form and was not raised in the invitation to comment. The committee believes public comment should be sought before making this change.

In response to comments on other areas of the form, the committee agreed to recommend (1) changing the form's caption to include "Other Parent/Party," (2) revising item 6 (*now item 7*), Determination of Fees and Payment, to include check boxes for orders made about "Other parent/party," and (3) including the term "request for order" in item 1.

Form FL-321-INFO

Form FL-321-INFO was designed to help respond to questions that parties in family law cases frequently ask about costs, duties, and the role that minor's counsel might play in their case. Seven commentators submitted comments to help improve the various topic areas included on the form.

The form was circulated for comment with the title *Minor's Counsel (Attorney for Child in a Family Law Case)* (form FL-321-INFO). After further discussion, the committee decided to recommend that it be named *Attorney for a Child in a Family Law Case—Information Sheet* (form FL-321-INFO). The committee was concerned that litigants may not readily understand that "minor's counsel" is synonymous with "attorney" or "counsel for a child" and, therefore, would not access information pertinent to their case. The first paragraph of the form would introduce the term "minor's counsel." Thereafter, the term would be used throughout the form as it was when circulated for comment.

In the paragraph titled "Who pays for minor's counsel?" one commentator stated that it will be one of the most important items for parties and that this section is confusing as written. The commentator suggested revising the paragraph to include the process and to indicate that the court will look at income and expense declarations, determine ability to pay, and pay counsel only where the parties have proven that they are unable to pay. In response, the committee agreed to clarify this section so that it includes information about the court's review of the parties' financial information.

Another commentator suggested that the paragraph should start out by specifying that the parties pay for fees, because litigants might stop reading after "court pays" and not realize that they are first responsible under Family Code section 3155. The commentator also stated that Family Code section 3155 puts the burden on the county and not the court. The committee agreed to include some of the suggested changes in its recommendations. However, the committee did not agree to

revise the form to state that the county must pay counsel's fees if the parties are unable to pay. Although Family Code section 3155 refers to the county's responsibility for payment of minor's counsel, statutory changes under trial court funding in Government Code section 77003 make the courts, not the counties, responsible for this cost when the court finds that the parties are unable to pay and the court appoints counsel.

Based on comments received on other areas of the form, the committee agreed to recommend (1) revising the paragraph "What will minor's counsel do?" by adding a third bullet point, "inform the court if the child wants to address the court"; (2) revising the paragraph "What do I do if I have a complaint about minor's counsel?" to provide that parties should look in the court's local rules for the court's complaint procedures"; (3) including a section to inform litigants that minor's counsel must be served with all court documents once he or she is appointed; and (4) incorporating other minor grammatical and formatting changes.

Alternatives considered

Because Family Code section 3151 amended the duties of minor's counsel, the Family and Juvenile Law Advisory Committee is required to amend the rule and companion order form. The committee rejected the option of taking no action. The committee considered not introducing the information sheet; however, the committee considers it to be valuable to litigants and attorneys in understanding the role of minor's counsel in family law proceedings.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal. Each form recommended for adoption is optional, so standard reproduction costs will be incurred only in distributing the forms where courts do not use their own local forms for the appointment of child's counsel. Litigants and counsel may also obtain the forms on the California Courts website and from public libraries, thus reducing the need for courts to maintain a large number of copies on site.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed amendment to rule 5.242, revision to form FL-323, and new information sheet regarding minor's counsel support the policies underlying Goal I, Access, Fairness, and Diversity, because they help court users understand the law concerning the duties and rights of counsel appointed to represent a child in a family law proceeding. The new information sheet also specifically addresses common issues that parties have and helps court users understand their own responsibilities when the court appoints counsel for their child in a proceeding.

Attachments

1. Rule 5.242 and forms FL-323 and FL-321-INFO, at pages 9–15
2. Chart of comments, at pages 16–39
3. Attachment A: Family Code section 3151

1 Rule 5.242 of the California Rules of Court is amended, effective January 1, 2012, to
2 read:

3
4 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
5 **represent a child in family law proceedings**
6

7 ~~(a)–(i)~~ * * *

8
9 **(j) Responsibilities of counsel for a child**
10

11 Counsel is charged with the representation of the ~~best interest of the child's best~~
12 interest. The role of the child's counsel is to gather ~~facts~~ evidence that bears on the
13 best interest of the child and present ~~those facts~~ that admissible evidence to the
14 court, ~~including the child's wishes when counsel deems it appropriate for~~
15 ~~consideration by the court under Family Code section 3042.~~ in any manner
16 appropriate for the counsel of a party. If the child so desires, the child's counsel
17 must present the child's wishes to the court.
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19 (1) The eCounsel's duties, unless under the circumstances it is inappropriate to
20 exercise the duties, include those under Family Code section 3151:
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22 ~~(1)(A)~~ (A) Interviewing the child;

23
24 ~~(2)(B)~~ (B) Reviewing the court files and all accessible relevant records
25 available to both parties; and

26
27 ~~(3)(C)~~ (C) Making any further investigations that counsel considers necessary
28 to ascertain the facts relevant to the custody or visitation hearings;

29
30 ~~(4)~~ (D) ~~Participating in the proceeding to the degree necessary to adequately~~
31 ~~represent the child, including introducing and examining counsel's own~~
32 ~~witnesses and presenting arguments to the court concerning the child's~~
33 ~~welfare; and~~

34
35 ~~(5)~~ (E) ~~Preparing, at the court's request, a written statement of issues and~~
36 ~~contentions setting forth the facts that bear on the best interest of the~~
37 ~~child.~~

38 (2) Counsel must serve notices and pleadings on all parties consistent with the
39 requirements for parties.
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41 (3) Counsel may introduce and examine witnesses, present arguments to the
42 court concerning the child's welfare, and participate further in the proceeding
43 to the degree necessary to represent the child adequately.

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(4) In any case in which counsel is representing a child who is called to testify in the proceeding, counsel must:

(A) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and the possibility that information provided to the court may be on the record and provided to the parties in the case;

(B) Allow but not require the child to state a preference regarding custody or visitation and, in an age-appropriate manner, provide information about the process by which the court will make a decision;

(C) Provide procedures relevant to the child’s participation and, if appropriate, provide an orientation to the courtroom where the child will be testifying; and

(D) Inform the parties and then the court about the client’s desire to provide input.

(k) * * *

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 1.2em; font-weight: bold;">Draft Not approved by the Judicial Council</p>
<p>PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:</p>	
<p>ORDER APPOINTING COUNSEL FOR A CHILD</p>	<p>CASE NUMBER:</p>

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 parent/party present Attorney present (name): _____

On the request for order, order to show cause, or motion filed (date): _____ by (name): _____

2. **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).

a. Counsel appointed for the child (name of counsel): _____

b. Address: _____

c. Phone number: _____ d. E-mail address (optional): _____

3. **CHILD OR CHILDREN FOR WHOM COUNSEL IS APPOINTED**

Name	Date of birth	Address(es) (if appropriate)
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4. **REASON FOR APPOINTMENT** (specify): _____

5. **DUTIES OF COUNSEL FOR A CHILD**

- a. Counsel for a child must:
- (1) Represent the child's best interests.
 - (2) Gather evidence that bears on the best interest of the child and present that admissible evidence to the court in any manner appropriate for the counsel of a party.
 - (3) Present the child's wishes to the court if the child so desires.
 - (4) Serve notices and pleadings on all parties consistent with rules and laws applicable to parties.
 - (5) Unless under the circumstances it is inappropriate to exercise the duty:
 - (A) Interview the child;
 - (B) Review the court files and all accessible relevant records available to both parties; and
 - (C) Make any further investigations child's counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.
- b. Counsel may introduce and examine witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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6. COUNSEL FOR A CHILD HAS THE FOLLOWING RIGHTS:

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

7. 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: % Other parent/party: %
- (a) Petitioner/Plaintiff must make installment payments of \$ _____ per month until paid or modified by court order.
- (b) Respondent/Defendant must make installment payments of \$ _____ per month until paid or modified by court order.
- (c) Other parent/party 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 the parties are unable to pay all a portion of the costs for child's counsel.
The child's 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: % Other parent/party: %
- Payable by court: %
- (a) Petitioner/Plaintiff must make installment payments of \$ _____ per month until paid or modified by court order.
- (b) Respondent/Defendant must make installment payments of \$ _____ per month until paid or modified by court order.
- (c) Other parent/party must make installment payments of \$ _____ per month until paid or modified by court order.

- (3) The court reserves jurisdiction to reallocate attorney 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 PARENT/PARTY:	CASE NUMBER:
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8. ADDITIONAL ORDERS

- a. No later than 10 court days after being appointed by the court and before beginning work on the case, counsel for a child must file a declaration with the court indicating compliance with the requirements of rule 5.242 of the California Rules of Court. *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) or other local court forms may be used for this purpose.
- b. The parties and their counsel are ordered to cooperate with counsel for the child to permit the performance of his or her duties.
- c. Counsel for the child must be provided with complete copies of all relevant documents and records filed in the proceeding within 10 days of the appointment.
- d. 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.
- e. 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.
- f. Counsel must continue to represent the child until the appointment terminates, as provided in rule 5.240(f) of the California Rules of Court, or as stated below in item 9.

9. OTHER ORDERS:

THE COURT SO ORDERS.

Date:

 JUDICIAL OFFICER

NOTICE

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

In some cases, the family court judge will appoint a private attorney to represent a child in a custody or parenting time (visitation) case. These attorneys are often called “minor’s counsel.”

Why might the court appoint an attorney for a child?

The court might appoint an attorney for a child for many different reasons. For example, if parents significantly disagree about issues of parenting time and a child is experiencing stress, the court might appoint an attorney to represent the child in the case.

What will minor’s counsel do?

Minor’s counsel will:

- Gather and present evidence about the best interests of the child;
- If the child wants, present the child’s wishes to the court; and
- Inform the court if the child wants to address the court.

Generally, minor’s counsel will also:

- Interview the child; and
- Review court files and records available to the parties and make additional investigation.

Minor’s counsel:

- Cannot be called as a witness but can bring witnesses for the child’s case;
- Can see a child’s mental health, medical, dental, and other health-care records, and school and educational records;
- Has the right to interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child; and
- Must be served with all documents in the case once appointed.

Who pays for minor's counsel?

In general, the parties pay for the attorney for their child, but sometimes the court will cover the cost

of minor’s counsel. The court must determine the reasonable amount for the attorney. The court must also decide about the ability of the parties to pay all or some of that amount. The court will review the parties’ financial information to make this decision. If the parties do not pay when they are required to, the attorney or the court could bring a case against them to collect the money. If the court finds that the parties are not able to pay all or some of the cost, the court must pay the part the parties can’t pay.

Who can ask that minor’s counsel be appointed?

Parties and their attorneys, other types of attorneys, the child or a relative of the child, or a child custody mediator, recommending counselor, or evaluator may ask the court to appoint minor’s counsel for the child. The court may also decide to appoint minor’s counsel without a request.

What will a court order for minor’s counsel include?

The court must make written orders when appointing and relieving counsel for a child.

Appointment orders must include the appointed counsel’s name, address, and telephone number; the name of the child for whom counsel is appointed; and the child’s date of birth.

Orders might also include:

- The child’s address, if appropriate;
- Issues to be addressed in the case;
- Case-related tasks that would benefit from the services of counsel for the child;
- Responsibilities and rights of the child’s counsel;
- Counsel’s rate or amount of compensation;
- Allocation of fees payable by each party or the court;
- Source of funds and manner of reimbursement for costs and attorney fees;
- Allocation of payment of attorney fees to one party subject to reimbursement by the other party;
- The terms and amount of any progress or installment payments; and

- The ability of the court to change the order on fees and payment.

When does the minor’s counsel stop representing the child?

Generally, the attorney keeps representing the child until the court decides otherwise or when the child turns 18 years.

Does the court have a list of attorneys who might be appointed?

The court may or may not maintain a list or panel of attorneys meeting the minimum qualifications to be appointed. The court may also appoint attorneys not on a list and may take into consideration factors including language, culture, and the special needs of the child.

What do I do if I have a complaint about minor's counsel?

Look in the court’s local rules or ask the court about its complaint procedures.

What kind of qualifications must attorneys have to be appointed?

An attorney must:

- Be an active member in good standing of the State Bar of California;
- Have professional liability insurance or demonstrate to the court that he or she is adequately self-insured;
- Have completed at least 12 hours of education and training on specific topics (see California Rules of Court, rule 5.242); and
- Have a certain amount of experience before being appointed and also receive at least 8 hours of additional training each year.

How does the attorney tell the court he or she is qualified?

The attorney must file a declaration with the court indicating compliance with all requirements no later than 10 days after being appointed and before beginning work on the case.

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	Commentator	Position	Comment	Committee Response
1.	Academy of Minors' Counsel Santa Monica Elise Greenberg, Esq.	NI	<p>Rule 5.242 need not include a reference to “admissible evidence”.</p> <p>As competent, experienced minor’s counsel, we take exception to this reference. Of course evidence must be admissible. It is particularly offensive as this is not a requirement which any rule of court or statute imposes on counsel representing a party. It should be specified that all counsel must present admissible evidence; or silent for all.</p> <p>Our specific comments to the revisions to form FL-323 are as follows:</p> <p>a. We ask that this form be mandatory rather than optional. Uniformity in appointment orders will streamline the access to information as well as payment and fees orders. It will also keep costs down on all cases.</p> <p>a. We propose that instead of “other party,” that the caption read: “Other Parent/Joined Party”. This will be more fitting for custody cases in which there is often another parent as in a County of LA captioned case or in which a third party has been joined.</p>	<p>Assembly Bill 939 amended Family Code section 3151 to clarify that counsel’s other duties include presenting admissible evidence to the court in the manner appropriate for the counsel of a party and ascertaining evidence relevant to the custody or visitation hearing. To be consistent with the language of the statute, the committee does not recommend the change to rule 5.242 that the commentator suggests.</p> <p>Changing form FL-323 to a mandatory form is an important substantive change to both rule 5.240 and the form that was not raised in the invitation to comment. The committee believes public comment should be sought before making this change and does not recommend the change as part of this proposal.</p> <p>The committee recommends making a technical change to the form’s caption to read “Other parent/party” to be consistent with the similar technical changes the committee is recommending in other proposals circulated during this cycle.</p>

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			<p>b. We propose that item 2 (<i>now item 3</i>) on page 1 include an address for the child with each parent. Custody is often shared and the inclusion of both parties’ addresses would streamline the access to the child for newly appointed counsel.</p> <p>c. We propose that item 5 (<i>now item 6</i>) on page 2 include the addition of an item 5 n (<i>now item 6n</i>) which reads “To petition the Court for fees for an expert witness, costs of an independent assessment of the minor, or deposition fees on behalf of the minor child.” As counsel for the child, the ability to prepare for hearings and trial is often impaired by a lack of funds to fully prepare the case on the child’s behalf. Often our clients need an independent assessment or would benefit from a deposition of a party or third party. This right should be enumerated at appointment so that the parties and counsel are on notice of this as well.</p> <p>d. We propose that item 6 (<i>now item 7</i>) on page 2 include provisions for the following:</p> <p>6 a. (1) (<i>now 7a.(1)</i>) should also include a provision of an amount which the parties</p>	<p>The committee recommends changing item 3 from “address” to “address(es)” and providing additional space for this item on the form.</p> <p>Item 6 includes the rights of counsel that are provided by statute. Currently, item 6j covers part of the commentator’s recommendation as it provides that counsel has the right, on approval of the court, to seek independent psychological or physical examination or evaluation of the child for purposes of the pending hearing. While item 6 does not specifically confer a right to depose a party or third party, this is covered under counsel’s responsibilities in item 5, which provides that counsel is responsible for making any further investigations child’s counsel considers necessary to ascertain evidence relevant to the custody or visitation hearing. Based on the foregoing, the committee does not recommend changing the form in the manner suggested by the commentator.</p> <p>The committee does not recommend the changes that the commentator proposes to item 7 on the form as they are beyond the scope of the invitation to comment. The committee specifically sought comment on the changes proposed to the form relevant to amended Family Code section</p>

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			<p>must advance to counsel with 7 days of the order.</p> <p>6 a. (2) (<i>now item 7 a. (2)</i>) should read: “The Court reserves jurisdiction to determine compensation payable to counsel for the child. The parties are ordered to submit updated Income and Expense Declarations to the Court 10 days in advance of the next hearing to assist the Court in making this determination.” Such a provision will allow the Court to be prepared at the next hearing to address the issue.</p> <p>6 c. (1) (<i>now item 7c. (2)</i>) should read: “The Court will pay all of the fees, costs and expenses for the child’s attorney, including filing fees.” This will eliminate the inefficient practice of paying the county filing fees and then being reimbursed by the county for the same fees.</p> <p>6 c.(2) (<i>now item 7 c.(2)</i>) should include commencement dates for the installment payments as well as a provision that if any two consecutive</p>	<p>3151.The proposed changes were highlighted on form FL-323. However, the committee does agree to recommend that the comment be retained and considered when appropriate in a future cycle. In the meantime, courts may use item 7d.”Other” to indicate information that is not currently a part of the form and relates to the proceeding.</p> <p>See response to item 6 a. (1) above.</p> <p>See response to item 6 a. (1) above.</p> <p>See response to item 6 a. (1) above.</p>

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			<p>months are unpaid that the total amount becomes due and owing.</p> <p><u>FL-321 INFO form</u> We suggest that the paragraph on “Who pays for minor’s counsel,” will be one of the most important to parties. It is confusing as written. It should be revised to include the process, that the Court will look at income and expense declarations and determine ability to pay. It should include that only in circumstances where the parties have proven that they are unable to pay, will the Court have counsel paid by the County.</p>	To help clarify, this section has been reworded based on comments received so that it now includes information about the court reviewing the parties’ financial information in making this decision. Statutory changes under trial court funding in Government Code section 77003 have resulted in this being a trial court responsibility when parents are unable to pay and the court decides to appoint minor’s counsel.
2.	Hon. Irma Poole Asbury Supervising Judge Superior Court of Riverside County	A	No specific comment.	No response required.
3.	Association of Family and Conciliation Courts Diane Wasznicky President, AFCC-CA Chapter Thousand Oaks	A	<p>This is the rule dealing with Minor’s Counsel, including the revised Appointment Order. The Rule basically reflects the language of AB939 and deletes conflicting parts of the old Rule.</p> <p>Some of the rules’ provisions that are still applicable under AB 939 have been moved from the rule and instead added to the actual Order for Appointment form. We support this rule and the form changes.</p>	No response required.
4.	California Judges Association Jordan Posamentier, Esq. Legislative Counsel San Francisco	NI	Counsel must continue to represent the child until the appointment terminates as provided in rule 5.240(f) of the California Rules of Court, or until as stated in other orders in #8 above.	The committee agrees with the suggestion and has included it, with minor alteration, in the amendments it is recommending for adoption.
5.	John C. Chemelesky	AM	Form FL-323 should include optional provisions	As circulated, the form proposed that item 9

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	Trial Court Commissioner Long Beach		for the duration of the order, stating that the order expires upon filing of the judgment, upon the filing of an order after hearing on the custody issue and upon a specific date. The form should also include optional provisions for a limit on the amount of time and amount of billing that counsel may charge without further approval from whatever source such payment is to be made.	provide that counsel must continue to represent the child until the appointment terminates as provided in rule 5.240(f) of the California Rules of Court. The committee believes that this language is more comprehensive than the language proposed in the comment. The committee believes that the item for “Other orders” is adequate for the court to use to make an order such as proposed in this comment.
6.	Christine Donovan, CFLS Senior Staff Attorney Superior Court of Solano County Fairfield	AM	<u>Re: Form FL-323</u> I agree with the proposed changes. However, given how comprehensive the form is, I wonder at it being an optional form instead of a mandatory form. It would promote consistency among counties if the same form was used state-wide to appoint minor’s counsel. I therefore suggest that the form be made mandatory.	Changing form FL-323 to a mandatory form is an important substantive change to both rule 5.240 and the form that was not raised in the invitation to comment. The committee believes public comment should be sought before making this change and may consider the suggestion during a subsequent rules cycle.
7.	Roberta Fitzpatrick San Jose	AM	FL-323. #4e. (now 5(a)(5)(B)) Please specify “all criminal records of each party. They are public records, accessible with a little effort, and can be essential in determining the fitness of a parent before allowing custody.	The committee does not recommend the change proposed by the commentator. The committee prefers to limit the responsibilities of counsel in item 5 to those specified by statute. Family Code section 3151 provides that one of counsel’s responsibilities is to review the court files and all accessible relevant records available to both parties. The committee believes that this language is sufficient to cover the criminal records of each party if they are relevant to the proceeding.

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			Item f. (<i>now 5(a)(5)(C)</i>) should include follow up on parent following Court Orders, such as school. A child has a right to an appropriate, free, public education. If minor’s counsel is supposed to be receiving school reports, and does not, the situation needs to be investigated and brought to the attention of the court. The minor’s counsel needs to coordinate with the child’s local CPS and police so s/he is informed of danger to the child. There is no requirement to document compliance with his or her responsibilities. Especially add requirement of counsel to comply. There is no oversight or consequence.	Same response as above.
8.	Frieda Gordon, CFLS Cooper-Gordon LLP Santa Monica	A	Having assisted with the development of the original amendments to minor’s counsel rules and statutes, I am delighted to see these changes finally implemented (hopefully).	No response required.
9.	Harriett Buhai Center for Family Law Erin Dabbs Los Angeles	AM	We agree with the Judicial Council’s decision to clarify the role of minor’s counsel and to emphasize their role in gathering and presenting admissible evidence to the court. We also support the JC’s decision to create an information sheet for litigants. Our comments on the proposed changes follow. <u>Form FL-323:</u> <u>Page 5:</u> We suggest that you move up the third sentence under 5L (<i>now item 6.l</i>), as there is unnecessary space at the end of line 2. <u>Form FL-321-INFO:</u>	No response required. To correct a technical error, the committee agrees to delete the extra space under item 6.l. In the section “What will minor’s counsel do?”

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			We suggest that the Judicial Council consider adding a section on service of minor’s counsel so that litigants know that once appointed, minor’s council must be served with all court documents (e.g., Orders to Show Cause). It is important that litigants know that minor’s counsel must be served with all documents so that they can avoid unnecessary sanctions and attorney’s fees.	under “Minor’s counsel,” the following has been added: “must be served with all documents in the case once appointed.”
10.	Robert N. Jacobs Pasadena	NI	<p>*The commentator did not submit specific comments regarding the proposed changes to rule 5.242 or forms FL-323 or FL-321-INFO. Instead, the commentator submitted his “thoughts on Elkins and minor’s counsel” indicated in a draft of an article titled “A Child Centered Response to the Elkins Family Law Task Force.”</p> <p>In that article, he suggested that Family Code section 3151 should not be read as precluding the statement of issues and contentions because the requirement was not deleted in Family Code section 3151.5</p>	<p>The commentator’s assertion is a misreading of the legislative intent of the Family Code section 3151. The California Assembly’s analysis of AB 939 noted that the intent of AB939 is to implement the key recommendations of the Elkins Family Law Task Force.</p> <p>One key recommendation in the report of the final recommendations of the Elkins Task Force regarding minor’s counsel (pages 53-54) was to amend Family Code section 3151(b) to eliminate the requirement that, at the court’s request, counsel must prepare a written statement of issues and contentions. The Task</p>

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				Force reasoned that “Judicial officers desiring to have the information necessary for a well-reasoned custody determination might consider appointing minor’s counsel to gather information and investigate the case on behalf of the child. The results of counsel’s investigation or fact gathering should be presented only in the appropriate evidentiary manner so that the parties’ due process rights are adequately protected. Because minor’s counsel is acting as an attorney, minor’s counsel should never be called upon to testify or to stand in the place of a mental health evaluator or to replace the court’s weighing and determination of the facts with his or her own. Any position minor’s counsel will be taking must be presented in writing to the parties prior to any hearing on the matter.”
11.	Los Angeles Center for Law and Justice Suma Mathai Supervising Family Law Attorney	AM	<u>Form FL-323:</u> Item 6 (<i>now item 7</i>), dealing with determination of fees and payment, does not currently contemplate differing standards of living for the parties. Subsection (b) of Item 6 (<i>now item 7</i>) would be used if both parties could pay a portion, and subsection (c) if neither could pay. In addition, this item makes no mention of whether fees have been waived for either party through an “Order on Fee Waiver” FW-003 form. If one or both of the parties have been deemed, under statewide fee waiver guidelines, as unable to pay for basic living expenses and court fees, these litigants	The proposed changes to item 6 are beyond the scope of the invitation to comment. The committee specifically sought comment on the changes proposed to the form that are relevant to rule 5.242 and amended Family Code section 3151. The proposed changes were highlighted on form FL-323 and did not include substantive changes to item 7. However, the committee does agree to recommend that the comments be retained and reviewed for consideration when appropriate in a future cycle. In the meantime, courts may use item 7d.”Other” to indicate information that not currently a part of the form

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			<p>should also be exempted from paying Minor’s Counsel fees – in all cases, but particularly in cases where Minor’s Counsel is appointed on the Court’s own motion – just as they are exempted from other fees such as Court reporter’s fees. Parties who qualify for a waiver of fees should not be charged with paying Minor’s Counsel fees or potentially damaging their quest for custodial or visitation time with their minor child, as is currently the case in some family law courtrooms, nor should a child be denied access to their parent who is unable to pay Minor’s Counsel fees.</p> <p>Accordingly, we propose that the following revisions be made to Item 6 (<i>now item 7</i>), beginning with subsection (b):</p> <p>“b. The court finds that the parties are able <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent is able to pay...”</p> <p>“c. The court finds that both parties are able <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent is unable to pay...”</p> <p>“c. (1) <input type="checkbox"/> The court will pay all the fees and expenses for the child’s attorney. <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent qualifies for a waiver of fees. The court will pay the party(’s) fees and expenses for the child’s attorney.</p> <p>Item 7 (<i>now item 8</i>), subsection b provides that Minor’s Counsel must be provided with complete copies of relevant proceedings within 10 days of the appointment, but does not specify who is responsible for providing those copies. As the parties, particularly self-</p>	<p>and which relates to the proceeding.</p> <p>Same response as above indicated.</p> <p>The committee does not recommend the change proposed by the commentator. The Additional orders section was not intended to impose an affirmative duty on the clerk of the court to mail copies of the court file to minor’s counsel within 10 days of the appointment. If parties are unable</p>

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			<p>represented litigants and those who qualify for a waiver of fees, often do not have ready access to complete copies of the court file and/or are unable to provide these resources to Minor’s Counsel for various reasons (lack of understanding of what is required, inability to obtain a complete copy of the file, etc.), this item should specify that the Court should provide these copies to newly appointed Minor’s Counsel. We propose that the following revisions be made to Item 7 (<i>now item 8</i>), subsection (b):</p> <p>“b. Counsel for the child must be provided with complete copies of all relevant copies of proceedings <i>court documents, including pleadings and minute orders, by the clerk of the court, within 10 days of the appointment.</i>”</p>	<p>to provide a complete copy of the file, minor’s counsel can take the order to the clerk of the court and gain access to the court’s file, if necessary.</p> <p>See above response.</p>
13.	<p>Los Angeles County Bar Association Debra S. Frank Chair of the Family Law Section Los Angeles</p>	AM	<p>We are concerned that the amended rule states the responsibilities of minor's counsel include, "If the child so desires, the child's counsel must present the child's wishes to the court", as that may impair the effectiveness of the attorney client relationship as it appears that counsel shall not exercise his or her own independent judgment if it is against the child's wishes. The Section urges that portion of the Rule should contain the language prior to the amendment which should be inserted at the end of the above language, “when counsel deems it appropriate for consideration by the court under Family Code 3042” and that “must” be changed to “may” which gives counsel discretion to act.</p>	<p>The committee does recommend the proposed change to rule 5.242 as it does not reflect the changes made to Family Code section 3151, effective January 1, 2011. Section 3151(a) added that child’s counsel shall present the child’s wishes to the court if the child so desires.</p>

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			The language in full would state: "If the child so desires, the child's counsel may present the child's wishes to the court, when counsel deems it appropriate for consideration by the court under Family Code 3042.	
14.	Laura Lynn Oceanside	AM	<p>*It does not matter what law is passed if the law is not enforced. There is too much opportunity for cronyism. There should be a list of all acceptable attorneys and appointments should be by rotation on this list. It would be easy with a simple computer program.</p> <p>When numerous complaints are made about the same firm or attorney, there should be serious disciplinary action and swift investigation made.</p>	The committee believes that rule 5.240 of the California Rules of Court sufficiently addresses the issues raised by the commentator and does not recommend changes to rule 5.242 and the companion forms suggested in the comment. Specifically, rule 5.240(d) provides that each court may create and maintain a list of panel of counsel meeting the minimum qualifications for appointment. Further, rule 5.240(e) requires that each court develop local rules that provide for acceptance and response to complaints about the performance of the court-appointed counsel for a child.
15.	Hyeonjoo Jane Mundkowski Appellant/Mother Valencia	NI	<p>*I do have serious concerns about minor's counsel. Section 3151 does not mention anything about Order After Hearing prepared by Minor's Counsels.</p> <p>First, minor's counsel must not prepare order after hearing as this is the way to illegally modify the court order after hearing. The</p>	<p>Family Code section 3150 specifies that the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding, provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court. Rule 5.240(c) provides that the court must issue orders when appointing or terminating counsel for a child. Rule 5.240(c)(3) indicates that form FL-323 is an optional form that the court and counsel may use to comply with the rule.</p> <p>It is within the court's discretion to determine who will complete form FL-323. Therefore, the committee does not recommend amending the rule</p>

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			<p>judicial benches after hearing depending on the amount of bribe proposed by litigants who conspired with minor’s counsels, the order is suddenly changed without new evidences filed with the court in the paper filed by minor’s counsels. Though certified transcripts are submitted to the court, the court denies the transcripts.</p> <p>Second, it is great that interviewing the child is removed from duty. There should be no doors for the corrupt minor’s counsels to open to create new false evidence which is fabricated through private interview. If the court orders minor’s counsels to have private interviews with the child, the interviews must be voice-recorded and be submitted as evidence. Or the court must not order private interview with child. Section 3151 does not provide this important condition to prevent abuse of discretion of the court and conspiracy.</p> <p>Third, minor’s counsel’s fees must be decided before the counsel is appointed. Though FL-323 provides that this should be decided when the minor’s counsel is appointed, the court does not comply with this section at all and there is no organization who rules for this violation. Supervising judges do not care about this violation.</p>	<p>or revising form FL-323 as requested by the commentator</p> <p>The committee does not recommend removing interviewing the child from one minor’s counsel responsibilities as it is a duty provided in Family Code section 3151(a).</p> <p>The comment relates to rule 5.241 on which the committee did not invite comment this cycle. In addition, rule 5.241 does not require fees be set before counsel is appointed. The rule provides that the court must set the compensation for the child’s counsel at the time of appointment, at the time the court determines the parties’ ability to pay, or within a reasonable time after appointment. The committee does not recommend the change proposed in the comment.</p>
16.	Neighborhood Legal Services of Los	NI	<u>Form FL-323</u> : On Page 3. we would like	The commentator proposes substantive changes to

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	Angeles County Carmen Goldberg, Esq. Pacoima		propose an additional order. Judges often need to limit the role of minor’s counsel to specific issues. We believe that by adding the language below will make it clear that judges have the option of limiting the scope of issues covered by the child’s attorney. Therefore we suggest: #8. Counsel’s Representation of child is limited to the following issues: #9. Other Orders #10.Counsel must continue....	the orders section of the form that were not raised in the invitation to comment. The committee believes public comment should be sought before making the changes and does not recommend including them as part of form FL-323 at this time.
17.	Orange County Bar Association John Hueston, President Newport Beach	A	No comment provided.	No response required.
18.	Sonoma County Bar Association Family Law Committee Rudy J. Bonilla Attorney at Law Santa Rosa	AM	Form FL-323 should provide for a termination date or review date for the appointment of counsel so the appointment is not indefinite.	See above response to John C. Chemelesky.
19.	Staff of the Superior Court of Riverside County	AM	FL-323 Order Appointing Counsel for a Child is being modified under this proposal. It is suggested that the JC add a statement to the form advising counsel of their responsibility under 5.242(h) to file a declaration regarding their qualifications. Proposed Wording: Counsel for the child shall file a declaration with the court indicating compliance with rule 5.242(h) no later than 10 days after being appointed and before beginning work on the case. Counsel may complete the <i>Declaration of Counsel for a Child Regarding Qualifications</i> (FL-322).	The committee agrees with the suggestion and has included it, with minor alterations, with the changes it is recommending for adoption.

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20.	Staff of the Superior Court of San Bernardino County	AM	<p>Re: FL-321 INFO form, section on “Who Pays”. That paragraph should start out with the parties paying for fees, as the litigants might stop reading after “court pays” and not realize that they are first responsible under Family Code section 3155. Later in that paragraph, it is stated that the court is pay all or some of the costs if the parties cannot. Section 3155 puts the burden on the county and not the court.</p> <p>FL-321 INFO: “Who can ask that minor’s counsel be appointed?” – the language doesn’t properly reflect the new term for child custody mediators. Shouldn’t it read “child custody recommending counselor”?</p> <p>FL-321 INFO does an excellent job in explaining this area of the law to the litigants.</p>	<p>The committee recommends changing this section to reflect this comment. The section now reads as follows: In general, the parties pay for the attorney for their child, but sometimes, the court will cover the cost of minor’s counsel. The court must determine the reasonable amount for the attorney. The court must also decide about the ability of the parties to pay all or some of that amount. The court will review the parties’ financial information to make this decision. If the parties do not pay when they are required to, the attorney or the court could bring a case against them to collect the money. If the court finds that the parties are not able to pay all or some of the cost, the court must pay the part the parties can’t pay.</p> <p>The phrase “child custody” is used here to modify the list following: mediator, recommending counselor, evaluator.</p> <p>No response required.</p>
22.	Superior Court of Los Angeles County	AM	<p><u>Rule 5.242</u> This rule largely just re-states the statute (Family Code section 3150). If the intent is to reiterate the statute, the rule is unnecessary and could create a conflict if there is a modification to the statute without a change to the rule.</p>	<p>The Judicial Council adopted rule 5.242, effective January 1, 2008, specifying that one of the purposes in adopting the rule was to “provide a comprehensive guide for courts and counsel that includes the statutory rights and responsibilities of counsel. In addition, the proposed rule would provide a number of actions that counsel may</p>

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			<p>The rule should require minor’s counsel to provide notice to the parties of the wishes of the child within a reasonable time before the Court rules. The notice requirement would assist in the efficient adjudication of the hearing, by giving the parties the opportunity to be prepared by hearing. However, the time for the notice by minor’s counsel to the parties should not be made more restrictive than “reasonable notice” because hearings involving minor’s counsel can be held on an emergency <i>ex parte</i> basis.</p> <p>Additionally, if a notice provision was added to the rule, it should include an exception for disclosure of the minor child’s wishes before the hearing if such disclosure would not be in the</p>	<p>consider taking to assist with implementing those duties that are statutorily mandated.” (See Judicial Council Report dated September 18, 2007, titled Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings. http://www.courtinfo.ca.gov/jc/documents/reports/102607itemA24.pdf). Removing the statutory references would contradict the above stated purpose in promulgating the rule.</p> <p>The committee believes that the proposed changes to the rule adequately address the notice issue raised in the comment. The proposed changes to rule 5.242 mirrors Family Code section 3151(a), which provides that, if the child so desires, the child’s counsel shall present the child’s wishes to the court. Although section 3151(a) does not specifically state that the child’s counsel must provide notice to the parties of the child’s wishes, Family Code section 3151(b) does require that the child’s counsel serve notices and pleadings on all parties, consistent with requirements for parties. Further, Family Code section 216 and rule 5.235 prohibit ex parte communication between the child’s counsel and the court. Thus, when the child’s counsel notifies the court of the child’s wishes to the court, he or she is required to provide notice to the parties.</p> <p>The committee believes that the suggestion is an example of counsel’s general statutory duty to represent the child’s best interests.</p>

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			<p>best interest of the child or the disclosure could place the child at risk for emotional and/or physical harm.</p> <p>Additionally, a requirement should be added to the rule that requires minor’s counsel to meet and confer with the parties prior to the hearing.</p> <p>The rule should indicate that the expression of the minor’s wishes will be accomplished in such a manner to minimize harm, emotional and/or physical, to the minor child.</p> <p>Changes on form FL 323- Should be adopted for mandatory (not optional) use and the court should be required to give a copy to each parent.</p> <p>Other changes to the form indicated by italics: 5. j. <i>(now item 6.j.)</i> “... to reasonable ... or evaluation <i>of the child</i>, for the purpose....”.</p> <p>5 .1. <i>(now item 6.1.)</i>: “On noticed motion to all parties and the local child protective services agency, to request the court to <i>authorize the relevant child protective services agency</i> to release of relevant reports or files concerning the child represented by the counsel of the relevant child protective services agency as provided by Family Code §§ 3151(b) and 3151.5).”</p>	<p>The committee believes that the commentator’s suggestion, that the child’s counsel be required to meet and confer with the parties, would be covered under a rule of court that will be recommended to the council in early 2012.</p> <p>The committee believes that the rule and statute adequately address the issue raised in this comment.</p> <p>See response provided on the same issue to Academy of Minors’ Counsel.</p> <p>The committee prefers the language specified in Family Code section 3151(c)(6), which does not include the additions suggested in the comment.</p> <p>The committee agrees with the commentator’s technical suggestions and has incorporated them into the revisions it is recommending for adoption. However, the correct statutory reference is to Family Code section 3152, not to the statutes included with the suggestion.</p>

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			6(c)(1) (<i>now 7(c)(1)</i>): “The court/ <u>county</u> will pay all the fees and expenses for the child’s attorney.” (Need check boxes for a.(1) and (3)). (Los Angeles, Ventura, Orange and perhaps other counties provide funding for Minor’s Counsel costs.)	Statutory changes under trial court funding in Government Code section 77003 have resulted in it being a trial court responsibility to cover minor counsel’s fees when parents are unable to pay and the court decides to appoint minor’s counsel.
23.	Superior Court of Monterey County Minnie Monarque Director of Civil & Family Law Division	A	No specific comment provided.	No response required.
24.	Superior Court of Orange County Linda Daeley Family Law Manager	AM	<u>Re: Form FL-321 INFO</u> In the second column, under “Who can ask that minor’s counsel be appointed,” remove “other types of attorneys” or be more specific such as “attorneys for joined parties.” Spacing issues include: Third page: extra line before "What kind of qualifications..." Third page: extra line before "How does the attorney tell..." <u>Re: Form FL-323</u> In item 1, replace two entries of dept: room: as one entry labeled "Dept/Room:" In item 3 (<i>now item 4</i>), replace "(specify)" with "(specific issues to be addressed)" Include an area on the last page so that party's contact information can be entered. This will	Family code section 3151 provides that several different types of attorneys may make this request and a longer list appeared to be more confusing than this shorter phrase. The committee agrees to delete the extra lines on the third page. The proposed changes to items 1 and 3 would result in a form that is inconsistent with the format of other Judicial Council order forms. The committee prefers that the form reflect orders relative to counsel’s appointment.

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			facilitate contact by the minor's counsel; include a box in this section for confidential. If both parties are represented by counsel, this is information that is not readily available to minor's counsel.	
25.	Superior Court of Sacramento County Robert Turner ASO II	NI	No comment provided.	No response required.
26.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	<p>Form FL-321-INFO: In the section, “What will minor’s counsel do?”: At the 2nd bullet add the language, “or inform the court that the child wants to address the court.”</p> <p>Form FL-321-INFO: Replace the section, “What do I do if I have a complaint about minor’s counsel?” with “Look in the Court’s local rules for its complaint procedures.”</p> <p>Form FL-321-INFO, In the section, “What kind of qualifications must attorneys have to be appointed?”: Use bullets to list out qualifications instead of one big paragraph.</p> <p>Form FL-323, Item 1: When referring to the date the OSC/NOM was filed, should it say Request for Order (RFO) instead? Also, what if the court appoints counsel sua sponte – does the court use the date the petitioner/respondent filed a RFO on the underlying issue?</p> <p>Our court suggests removing the checkbox for this item in its entirety since it does not really matter who brought it.</p>	<p>The committee agrees to incorporate this suggestion with the revision to the form it is recommending for adoption.</p> <p>Same response as above indicated.</p> <p>The committee recommends this change to the form.</p> <p>The committee recommends making a technical change to item 1 on the form to add “request for order” to the references to “order to show cause” or “notice of motion” if the Judicial Council adopts proposed new <i>Request for Order</i> (form FL-300).</p> <p>The committee prefers the form to remain consistent with other Judicial Council forms, which includes the checkbox.</p>

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			<p>Form FL-323, Item 3 (<i>now item 4</i>): Our court suggests checkboxes be inserted with the most common reasons for appointment and an "other" checkbox that can be used to specify a more uncommon reason.</p> <p>Form FL-323, Item 4 (<i>now item 5</i>): Add a new item before "a", stating "Timely filed declaration of qualifications."</p> <p>Form FL-323, Item 4e (<i>now item 5(a)(5)(B)</i>): This language should not be limited to "both parties" as there may be more than two parties. Suggest "both" be replaced by "all" parties.</p> <p>Form FL-323, Item 5j (<i>now 6j</i>): This should have the same wording as "k": evaluation <i>of the child</i>.</p> <p>Form FL-323, Item 6b(1) (<i>now 7b(1)</i>): What if there are additional parties? Suggest not limiting it to petitioner/plaintiff and respondent/defendant. In general, our court also suggests that, the roles be named "petitioner" and "respondent" only. It seems unnecessary to use both petitioner/plaintiff and respondent/defendant.</p> <p>Form FL-323, Item 7b (<i>now 8b</i>): This statement does not make sense: "Counsel for the child</p>	<p>The committee does not recommend changing the form as the commentator proposes as it is beyond the scope of the proposal. The proposal includes suggestions that the committee considered before recommending that the Judicial Council adopt the new form, effective January 1, 2008.</p> <p>The committee agrees with the suggestion and has incorporated it into the revisions it is recommending for adoption.</p> <p>The committee recommends language specified in Family Code section 3151(a), which does not include the additions suggested in the comment.</p> <p>The committee recommends language specified in Family Code section 3151(c)(6), which does not include the additions suggested in the comment.</p> <p>The committee recommends making appropriate technical changes to the caption and orders portion of the form to include orders made relative to a party joined in the proceeding. If the court appoints sua sponte, the court may alter item 1 as necessary and appropriate.</p> <p>The committee agrees with the suggestion and has incorporated it into the revisions recommended</p>

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			must be provided with complete copies of all relevant copies of proceedings..." Our court suggests rewording to "Counsel for the child must be provided with complete copies of all relevant documents and records filed in the proceedings within 10 days of the appointment."	for adoption.
27.	Superior Court of Santa Clara County by Hon. Mike Clark, Mary Arand, Neal Cabrinha, and Mary Ann Grilli	A	<p>Rule 5.242 - Qualifications, rights and responsibilities of counsel appointed to represent a child - Recommendation: Either amend subdivision (j) to mirror the exact language of amended Family Code section 3151(a) or delete it since it simply repeats the statute.</p> <p>Form FL-323 Order Appointing Counsel for Child - Recommendation: amend verbs in items 4.a.-h. (<i>now item 5</i>) from passive voice to active voice.</p> <p>In item 4.b. (<i>now item 5(a)(2)</i>) change "best interest" to "best interests."</p>	<p>In light of the committee's previous recommendation to the Judicial Council that the rule be adopted to "provide a comprehensive guide for courts and counsel that includes the statutory rights and responsibilities of counsel, the committee agrees to amend rule 5.242(j), to reflect the exact language of amended Family Code section 3151(a).</p> <p>The committee agrees with the suggestion and has incorporated it, with minor alterations, into the revisions it is recommending for adoption.</p> <p>The committee agrees with the suggestion and has incorporated it into the revisions it is recommending for adoption.</p>
27.	Superior Court of Santa Clara County Hon. Mary E. Arand and Mary Ann Grilli	AM	<p>Form FL-323: The order assumes that the appointment of counsel was done at a hearing. Orders are commonly issued after the hearing is completed. It can take awhile to locate counsel. The reference to the hearing should be eliminated and the order should start with the first bolded section.</p> <p>Section 3 (<i>now item 4</i>), reasons for</p>	<p>To be consistent with other Judicial Council forms, the committee prefers not changing item 1 as suggested by the commentator. The court may choose to strike through provisions in item 1 that do not apply.</p> <p>Same response as above indicated.</p>

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			<p>appointment: Reasons are not required by the code and could cause more harm than good. There may be many reasons for appointing minor’s counsel, starting with a very dysfunctional family. Consider deleting this section.</p> <p>Section 4 (<i>now item 5</i>): The responsibilities of minor’s counsel are not really needed in the order, since they are mandated by the code.</p> <p>Para. 6.a. (<i>now 7.a.</i>) (the fees section): item number 6.a.2. (<i>now 7.a.2</i>) should be listed first, followed by what is now 6.a.1. It is very common that payment of fees is reserved at the time of appointment.</p> <p><u>Form FL-321-INFO</u> In the section “Who pays for minor’s counsel”, the section should start with the general rule that the parties pay, instead of payment by the Court.</p> <p>In the section “Who can ask that minor’s counsel be appointed”, it is not clear what “other types of attorneys” means.</p> <p>In the section “What will a court order for minor’s counsel include”, the word “terminating” in reference to counsel should be changed to “relieving” or another option.</p>	<p>See above response to Superior Court of Los Angeles County.</p> <p>The committee prefers to maintain the order of item 6 as previously adopted by the Judicial Council.</p> <p>The committee agrees to incorporate this suggestion with the revisions to the form it is recommending for adoption.</p> <p>The committee prefers to recommend the language on the form that was circulated for comment. The types of attorneys that can request appointment seemed to be a more confusing list than noting other types of attorneys.</p> <p>The committee agrees to incorporate this suggestion with the revisions to the form it is recommending for adoption.</p>
28.	Superior Court of Shasta County	AM	All references to visitation should be replaced	To be consistent with the language of Family

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	<p>Stacy Larson Family Law Facilitator</p>		<p>with “parenting time” or “visitation/parenting time” in accordance with Elkins recommendations.</p> <p>In rule 5.242, we should eliminate the comma before the “and” in the second sentence. There is no complete sentence after the “and” and there are only two items in the series.</p> <p>Form FL-323, subdivision 4(b) (<i>now 5(a)(2)</i>): We should eliminate the comma before the “and” as there is no complete sentence after the “and” and there are only two items in the series.</p> <p>Form FL-323, subdivision 4(h) (<i>now 5(a)(4)</i>): We should revise this to read more smoothly, such as “Serving notices and pleadings on all parties consistent with the rules applicable to all parties.”</p> <p>Form FL-323, page 2, subdivision 5(h)(<i>now 6(h)</i>): Although I do not agree with the new nomenclature renaming “mediators” as “child custody recommending counselors,” if we are going to implement this new nomenclature, this subdivision should reflect it.</p>	<p>Code sections relating to counsel for a child, the committee believes that the rule and forms should continue to reference the word “visitation” and that Judicial Council information sheets be updated to inform the parties of the term “parenting time” as relates to child custody proceedings. Therefore, the committee does not recommend the proposed change.</p> <p>The committee agrees with the change and has incorporated it into revisions it is recommending for adoption.</p> <p>The committee agrees with the change and has incorporated it into revisions it is recommending for adoption.</p> <p>The committee agrees with the change and has incorporated it into revisions it is recommending for adoption.</p> <p>Family Code section 3183 provides that on and after January 1, 2012, all court communications and information regarding the child custody recommending process shall reflect the change in the name of the process and the name of the providers. The mandate under Section 3183 relates to communications between the courts and</p>

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			<p>Form FL-323, page 2, subdivision 5(j)(<i>now item 6j</i>): This section reads very awkwardly. Suggested revision would be “To reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation of the child that has not been ordered by the court;</p> <p>Form FL-323, page 2, subdivision 6(b)(1) (<i>now item 7(b)(1)</i>) and 6(c)(2) (<i>now item 7(c)(2)</i>): We should include a box for “% Other Party/Parent.”</p> <p>Form FL-321-INFO, “What will minor’s counsel do?”: Under the section entitled “Generally, minor’s counsel will also:” we should eliminate the comma in the second</p>	<p>litigants. To assist the courts in providing such information to litigants, the committee recommended revising form FL- 314-INFO and approving new form FL-313-INFO (See item SPR11-39 titled “Family Law: Child Custody Information Sheets (approve form FL-313-INFO; revise form FL-314-INFO”).) The committee did not propose changes to the minor’s counsel rules or forms to include child custody recommending mediation or mediators because the term “mediation” continues to encompass the work being done by child custody recommending mediators under Family Code section 3160. In addition, Section 3183 does not specifically require a change in the statewide rules of court.</p> <p>The committee agrees with the change and has incorporated it into revisions it is recommending for adoption.</p> <p>The committee agrees with the change and has incorporated it into revisions it is recommending for adoption.</p> <p>The committee agrees to incorporate this suggestion with the revisions to the form it is recommending for adoption.</p>

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			<p>bulleted list item before the “and” as follows: “review court files . . . parties and make . . .” There is no complete sentence after the “and” and there are only two items in the series.</p> <p>Form FL-321-INFO, “What will minor’s counsel do?”: Under the section entitled “Minor’s counsel.” we should eliminate the comma before the “but” in the first bulleted item as follows, “cannot be called . . . witness but can bring . . .” There is no complete sentence after the “and” and there are only two items in the series.</p> <p>Form FL-321-INFO, “What will minor’s counsel do?”: Under the section entitled “Minor’s counsel.” we should reword the series of items in the second bulleted item more smoothly, such as, “can see a child’s . . . mental health, other health care records, school and education records.”</p>	<p>Same response as above indicated.</p> <p>Same response as above indicated.</p>

Family Code section 3151

3151. (a) The child's counsel appointed under this chapter is charged with the representation of the child's best interests. The role of the child's counsel is to gather evidence that bears on the best interests of the child, and present that admissible evidence to the court in any manner appropriate for the counsel of a party. If the child so desires, the child's counsel shall present the child's wishes to the court. The counsel's duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.

(b) Counsel shall serve notices and pleadings on all parties, consistent with requirements for parties. Counsel shall not be called as a witness in the proceeding. Counsel may introduce and examine counsel's own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

(c) The child's counsel shall have the following rights:

(1) Reasonable access to the child.

(2) Standing to seek affirmative relief on behalf of the child.

(3) Notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child.

(4) The right to take any action that is available to a party to the proceeding, including, but not limited to, the following: filing pleadings, making evidentiary objections, and presenting evidence and being heard in the proceeding, which may include, but shall not be limited to, presenting motions and orders to show cause, and participating in settlement conferences, trials, seeking writs, appeals, and arbitrations.

(5) Access to the child's medical, dental, mental health, and other health care records, school and educational records, and the right to interview school personnel, caretakers, health care providers, mental health professionals, and others who have assessed the child or provided care to the child. The release of this information to counsel shall not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications. Counsel may interview mediators; however, the provisions of Sections 3177 and 3182 shall apply.

(6) The right to reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.

(7) The right to assert or waive any privilege on behalf of the child.

(8) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court.

