

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov/invitationstocomment/

INVITATION TO COMMENT

SPR-39

Title	Action Requested
Family Law: Child custody information sheets	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend form FL-314-INFO and add form FL-313-INFO	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Julia F. Weber, 415-865-7693, julia.weber@jud.ca.gov
Hon. Kimberly Nystrom-Geist and Hon. Dean Stout, Cochairs	

Discussion

Effective January 1, 2011, Assembly Bill 939 (Assembly Committee on Judiciary, Stats. 2010, ch. 352) amends Family Code section 3183(a) regarding recommendations made by child custody mediators. The statute was amended to permit recommendations being submitted to the court only if the mediator has first provided those recommendations in writing to the parties and their attorneys, including counsel for the child, prior to the hearing. The court is required to make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing.

Additionally, if the mediator is authorized to submit a recommendation under Family Code section 3183(a), the mediation and recommendation process must be referred to as “child custody recommending counseling,” and a mediator who makes those recommendations must be referred to as a “child custody recommending counselors.” All court communications and information regarding the child custody recommending counseling process must reflect the change in the name of the process and the name of the providers on and after January 1, 2012.

Existing form FL-314 INFO provides information to litigants about court processes and procedures for child custody and visitation matters. The proposed changes would update FL-314 INFO and create new form FL-313 INFO to reflect stylistic changes and the changes mandated by AB 939 and provide litigants with information about mediation and child custody recommending counseling. Additionally, the proposed changes will provide courts with an

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

optional form that will assist in satisfying the requirement that all official information use the new terms effective January 1, 2012.

The proposed amended and new forms are attached at pages 3-6. Family Code Section 3183 is attached at page 7.

Parents who come to court about child custody and visitation face decisions about parenting plans for their children. This information sheet provides general information about child custody and visitation matters, how to get help resolving a custody dispute or making a parenting plan, where to find an attorney, and where to find other resources.

What is a parenting plan?

A parenting plan describes how the parents will divide their responsibilities for taking care of their child.

The plan may include a general or specific schedule of days, times, weekends, holidays, vacations, transportation, pick-up/drop-off, limits on travel, and other details.

What are legal and physical custody?

A parenting plan usually includes:

- **Legal custody:** who makes major decisions about the child's health, education, and welfare;
- **Physical custody:** who the child lives with; and
- **Time-share or visitation:** when the child spends time with each parent.

Legal custody and *physical custody* may each be specified as *joint* (both parents have certain responsibilities) or *sole* (one parent has the responsibility alone).

Can we make our own parenting plan?

Yes. You have a right to make a parenting plan agreement on your own. This agreement may be called a *stipulation*, *time-share plan*, or *parenting plan*.

If both parents can agree on a parenting plan, the judge will probably approve it. The agreement becomes a court order after it is signed by both parents, signed by the judge, and filed with the court.

What if there is domestic violence or a protective order?

If there is domestic violence or a protective order, talk with a lawyer, counselor, or mediator before making a parenting plan.

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

What if we don't have a parenting plan?

If you can't reach an agreement on your own, the court will refer you to family court services (FCS) for child custody mediation also called "child custody recommending counseling." At the appointment, you will meet with an FCS professional also called a "child custody recommending counselor." He or she will help you and the other parent reach an agreement about a parenting plan.

What is mediation or child custody recommending counseling with family court services?

FCS provides mediation and child custody recommending counseling to help parents resolve disagreements about the care of their child. The child custody recommending counselor will meet with you and the other parent to try to help you make a parenting plan.

If you are unable to reach an agreement after meeting with family court services, the child custody recommending counselor will make a recommendation to the court about a parenting plan. You and the other parent and the attorneys will get a copy of the recommendation before the court hearing. This is a free service provided by the court.

If you are concerned about meeting with the other parent, or there is domestic violence or a protective order involving the other parent, you may ask to meet

alone with the mediator or the child custody recommending counselor without the other parent. You may also have a support person with you. The support person may not speak for you.

Do we have to agree to a parenting plan when we meet?

No. You do not have to come to an agreement. When the parents can't agree, the judge will decide. Ask family court services about how the process works in your court.

Are there other ways to resolve our dispute?

Yes. There are other Alternative Dispute Resolution (ADR) options you may try, including:

1. Meet and Confer: Parents and their lawyers (if any) may meet at any time and as often as necessary to work out a parenting plan without a court hearing. If there is a protective order limiting the contact between the parents, then the "meet and confer" can be through lawyers or a mediator in separate sessions.

2. Settlement Conference: In some courts, parents may meet with a judge, neutral evaluators, or family law lawyers not involved in your case to discuss settlement. Check with your local court to find out if this is an option. If there is a protective order, the settlement discussion can be through lawyers or a mediator in separate sessions.

3. Private Mediation: Parents may hire a private mediator to help them resolve their dispute.

4. Collaborative Law Process: Each parent hires a lawyer and agrees to resolve the dispute without going to court. The parents may also hire other experts.

Court Hearing

When the parents cannot agree to a parenting plan on their own, in mediation, or in any other ADR process, the judge will decide.

If there is domestic violence or a protective order, you may bring a support person with you to the court hearing, but the support person may not speak for you.

Where can I get help?

This information sheet gives only basic information on the child custody process and is not legal advice. If you want legal advice, ask a lawyer for assistance. You may also:

1. Contact family court services.
2. Contact the family law facilitator or self-help center for information, court forms, and referrals to local legal services providers.
3. Find a lawyer through your local bar association, the State Bar of California at <http://calbar.ca.gov>, or the Lawyer Referral Service at 1-866-442-2529 or 415-538-2250.
4. Hire a private mediator for help with your parenting agreement. A mediator may be a lawyer or counselor. Contact your local bar association, court ADR program, or family court services for a referral to local resources.
5. Find information on the Online Self-Help Center web site at www.courts.ca.gov/selfhelp.
6. For free and low-cost legal help (if you qualify), go to www.lawhelpcalifornia.org.
7. Find information at your local law library or ask at your public library.
8. Ask for a court hearing and let the judge decide what is best for your child.



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)

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What if we don't have a parenting plan?

If you can't reach an agreement, the court will refer you to mediation with family court services (FCS) to try to work out a parenting plan.

What is mediation with family court services?

~~Family Court Services~~ FCS provides mediation to help parents resolve disagreements about the care of their child. The mediator will meet with you and the other parent to try to help you make a parenting plan. This is a free service provided by the court.

If you are concerned about meeting with the other parent in mediation, or there is domestic violence or a protective order involving the other parent, you may ask to meet alone with the mediator without the other parent. You may also have a support person with you at mediation. The support person may not speak for you.

Do we have to agree to a parenting plan in mediation?

No. You do not have to come to an agreement in mediation. When the parents can't agree, the judge will decide. ~~In some courts, the judge will consider the mediator's recommendations about the parenting plan.~~ Ask family court services about how the process works in your court.

Are there other ways to resolve our dispute?

Yes. There are other Alternative Dispute Resolution (ADR) options you may try, including:

1. Meet and Confer: Parents and their lawyers (if any) may meet at any time and as often as necessary to work out a parenting plan without a court hearing. If there is a protective order limiting the contact between the parents, then the “meet and confer” can be through lawyers or a mediator in separate sessions.

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Family Code section 3183

3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, if the mediator has first provided the parties and their attorneys, including counsel for any minor children, with the recommendations in writing in advance of the hearing. The court shall make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing. If the mediator is authorized to submit a recommendation to the court pursuant to this subdivision, the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor." Mediators who make those recommendations are considered mediators for purposes of Chapter 11 (commencing with Section 3160), and shall be subject to all requirements for mediators for all purposes under this **code** and the California Rules of Court. On and after January 1, 2012, all court communications and information regarding the child custody recommending counseling process shall reflect the change in the name of the process and the name of the providers.

(b) If the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

Item SPR11-39 Response Form

Title: Family Law: Child Custody Information Sheets (approve form FL-313-INFO;
revise form FL-314-INFO)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

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

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

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