

Rule 5.250 of the California Rules of Court is adopted effective January 1, 2012, to read:

1 **Rule 5.250. Children’s participation and testimony in family court proceedings**

2
3 **(a) Children’s participation**

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5 This rule is intended to implement Family Code section 3042. Children’s
6 participation in family law matters must be considered on a case-by-case basis. No
7 statutory mandate, rule, or practice requires children to participate in court or
8 prohibits them from doing so. When a child wishes to participate, the court should
9 find a balance between protecting the child, the statutory duty to consider the
10 wishes of and input from the child, and the probative value of the child’s input
11 while ensuring all parties’ due process rights to challenge evidence relied upon by
12 the court in making custody decisions.

13
14 **(b) Determining if the child wishes to address the court**

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16 (1) The following persons must inform the court if they have information
17 indicating that a child in a custody or visitation (parenting time) matter
18 wishes to address the court:

19
20 (A) A minor’s counsel;

21
22 (B) An evaluator;

23
24 (C) An investigator; and

25
26 (D) A child custody recommending counselor who provides
27 recommendations to the judge under Family Code section 3183.

28
29 (2) The following persons may inform the court if they have information
30 indicating that a child wishes to address the court:

31
32 (A) A party; and

33
34 (B) A party’s attorney.

35
36 (3) In the absence of information indicating a child wishes to address the court,
37 the judicial officer may inquire whether the child wishes to do so.

38
39 **(c) Guidelines for determining whether addressing the court is in the child’s best**
40 **interest**

- 1 (1) When a child indicates that he or she wishes to address the court, the judicial
2 officer must consider whether involving the child in the proceedings is in the
3 child's best interest.
4
5 (2) If the child indicating an interest in addressing the court is 14 years old or
6 older, the judicial officer must hear from that child unless the court makes a
7 finding that addressing the court is not in the child's best interest and states
8 the reasons on the record.
9
10 (3) In determining whether addressing the court is in a child's best interest, the
11 judicial officer should consider the following:
12
13 (A) Whether the child is of sufficient age and capacity to reason to form an
14 intelligent preference as to custody or visitation (parenting time);
15
16 (B) Whether the child is of sufficient age and capacity to understand the
17 nature of testimony;
18
19 (C) Whether information has been presented indicating that the child may
20 be at risk emotionally if he or she is permitted or denied the opportunity
21 to address the court or that the child may benefit from addressing the
22 court;
23
24 (D) Whether the subject areas about which the child is anticipated to
25 address the court are relevant to the court's decisionmaking process;
26 and
27
28 (E) Whether any other factors weigh in favor of or against having the child
29 address the court, taking into consideration the child's desire to do so.
30

31 **(d) Guidelines for receiving testimony and other input**
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- 33 (1) If the court precludes the calling of a child as a witness, alternatives for the
34 court to obtain information or other input from the child may include, but are
35 not limited to:
36
37 (A) The child's participation in child custody mediation under Family Code
38 section 3180;
39
40 (B) Appointment of a child custody evaluator or investigator under Family
41 Code section 3110 or Evidence Code section 730;
42

- 1 (C) Admissible evidence provided by the parents, parties, or witnesses in
2 the proceeding;
3
- 4 (D) Information provided by a child custody recommending counselor
5 authorized to provide recommendations under Family Code section
6 3183(a); and
7
- 8 (E) Information provided from a child interview center or professional so
9 as to avoid unnecessary multiple interviews.
10
- 11 (2) If the court precludes the calling of a child as a witness and specifies one of
12 the other alternatives, the court must require that the information or evidence
13 obtained by alternative means and provided by a professional or nonparty:
14
- 15 (A) Be in writing and fully document the child's views on the matters on
16 which the child wished to express an opinion;
17
- 18 (B) Describe the child's input in sufficient detail to assist the court in its
19 adjudication process;
20
- 21 (C) Be provided to the court and to the parties by an individual who will be
22 available for testimony and cross-examination; and
23
- 24 (D) Be filed in the confidential portion of the family law file.
25
- 26 (3) On deciding to take the testimony of a child, the judicial officer should
27 balance the necessity of taking the child's testimony in the courtroom with
28 parents and attorneys present with the need to create an environment in which
29 the child can be open and honest. In each case in which a child's testimony
30 will be taken, courts should consider:
31
- 32 (A) Where the testimony will be taken, including the possibility of closing
33 the courtroom to the public or hearing from the child on the record in
34 chambers;
35
- 36 (B) Who should be present when the testimony is taken, such as: both
37 parents and their attorneys, only attorneys in the case in which both
38 parents are represented, the child's attorney and parents, or only a court
39 reporter with the judicial officer;
40
- 41 (C) How the child will be questioned, such as whether only the judicial
42 officer will pose questions that the parties have submitted, whether
43 attorneys or parties will be permitted to cross-examine the child, or

1 whether a child advocate or expert in child development will ask the
2 questions in the presence of the judicial officer and parties or a court
3 reporter; and
4

5 (D) Whether a court reporter is available in all instances, but especially
6 when testimony may be taken outside the presence of the parties and
7 their attorneys and, if not, whether it will be possible to provide a
8 listening device so that testimony taken in chambers may be heard
9 simultaneously by the parents and their attorneys in the courtroom or to
10 otherwise make a record of the testimony.
11

12 (4) In taking testimony from a child, the court must take special care to protect
13 the child from harassment or embarrassment and to restrict the unnecessary
14 repetition of questions. The court must also take special care to ensure that
15 questions are stated in a form that is appropriate to the witness's age or
16 cognitive level. If the child is not represented by an attorney, the court must
17 inform the child in an age-appropriate manner about the limitations on
18 confidentiality and that the information provided to the court will be on the
19 record and provided to the parties in the case. In the process of listening to
20 and inviting the child's input, the court must allow but not require the child to
21 state a preference regarding custody or visitation and should, in an age-
22 appropriate manner, provide information about the process by which the
23 court will make a decision.
24

25 (5) In any case in which a child will be called to testify, the court may consider
26 the appointment of minor's counsel for that child. The court may consider
27 whether such appointment will cause unnecessary delay or otherwise
28 interfere with the child's ability to participate in the process. In addition to
29 adhering to the requirements for minor's counsel under Family Code section
30 3151 and rules 5.240, 5.241, and 5.242, minor's counsel must:
31

32 (A) Provide information to the child in an age-appropriate manner about the
33 limitations on confidentiality and indicate to the child the possibility
34 that information provided to the court will be on the record and
35 provided to the parties in the case;
36

37 (B) Allow but not require the child to state a preference regarding custody
38 or visitation (parenting time) and, in an age-appropriate manner,
39 provide information about the process by which the court will make a
40 decision;
41

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

4
5 (D) Inform the parties and then the court about the client’s desire to provide
6 input.

7
8 (6) No testimony of a child may be received without such testimony being heard
9 on the record or in the presence of the parties. This requirement may not be
10 waived by stipulation.

11
12 **(e) Responsibilities of court-connected or appointed professionals**

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14 A child custody evaluator, a child custody recommending counselor, an
15 investigator, or a mediator appointed or assigned to meet with a child in a family
16 court proceeding must:

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18 (1) Provide information to the child in an age-appropriate manner about the
19 limitations on confidentiality and the possibility that information provided to
20 the professional may be shared with the court on the record and provided to
21 the parties in the case;

22
23 (2) Allow but not require the child to state a preference regarding custody and
24 visitation (parenting time), and, in an age-appropriate manner, provide
25 information about the process by which the court will make a decision; and

26
27 (3) Provide to the parents of the child participating in the court process
28 information about local court procedures relevant to the child’s participation
29 and information about how to best support the child in an age-appropriate
30 manner during the court process.

31
32 **(f) Methods of providing information to parents and supporting children**

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34 Courts should provide information to parties and parents and support for children
35 when children want to participate or testify or are otherwise involved in family law
36 proceedings. Such methods may include but are not limited to:

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38 (1) Having court-connected professionals meet jointly or separately with the
39 parents or parties to discuss alternatives to having a child provide direct
40 testimony;

