

**Invitation to Comment**

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|-------------------|--|
| <p>Title</p>      | <p>Family Law: Rules Regarding Counsel Appointed to Represent a Child in Family Law Proceedings Under Family Code Section 3150 (adopt Cal. Rules of Court, rules 5.240 and 5.241; amend rule 5.10; repeal sections 5.10 and 5.11 of the Cal. Sts. Jud. Admin; and approve forms FL-322, and FL-323 for optional use)</p>   |
| <p>Summary</p>    | <p>This proposal would establish comprehensive rules relating to counsel appointed to represent a child under Family Code section 3150.</p> <p>Proposed rule 5.240 would set forth criteria the court should consider before appointing counsel to represent a child in family law proceedings. In addition, the proposed rule would address payment of counsel, orders appointing counsel, and establish the responsibilities of the courts regarding the appointment of counsel.</p> <p>Proposed rule 5.241 would establish the education, training, and experience requirements for counsel appointed to represent a child in family law proceedings and include the rights and responsibilities of counsel.</p> <p>This proposal would also amend rule 5.10 to include a definition of the legal term “best interest of the child” applicable to rules under title five of the rules of court. In addition, the proposed rule would incorporate the substance of existing sections 5.10 and 5.11 of the standards of judicial administration and repeal these standards. Finally, proposed forms FL-322 and FL-323 would assist courts and counsel in implementing the requirements of the proposed new rules.</p> |
| <p>Source</p>     | <p>Family and Juvenile Law Advisory Committee<br/>Hon. Jerilyn Borack and Hon. Susan Huguenor, Cochairs</p>  |
| <p>Staff</p>      | <p>Gabrielle D. Selden, 415-865-8085, <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a></p>   |
| <p>Discussion</p> | <p><i>Background</i><br/>Existing Family Code sections authorize courts to appoint private counsel for a child in a custody or visitation proceeding (section 3150); enumerate the duties and rights of private counsel appointed for a child (section 3151); and address the compensation and expenses of private counsel (section 3153).</p> <p>Additional Family Code sections require courts to consider minor counsels’ statements of issues and contentions before making an order for custody and visitation (section 3151.5), and provide a process for child’s counsel to request reports or files from local child protective</p>  |

services agencies (section 3152).

In addition, sections 5.10 and 5.11 of the California Standards of Judicial Administration provide guidelines for determining when to appoint counsel for a minor in a family proceeding and for determining payment of costs of appointed counsel for a child in family court.

Missing is a comprehensive reference that helps counsel understand how to implement their statutory duties. Further, no rules specify the education, training, and experience required of counsel before courts can appoint him or her to represent a child in a family law proceeding. This has led to inconsistency statewide concerning the qualifications of attorneys appointed under Family Code section 3150. The lack of clarity has also caused confusion for counsel seeking to understand if and how they qualify for appointment.

The proposed rules would promote consistency and clarity in family law proceedings when counsel is appointed to represent a child by:

- Establishing the criteria the court should consider when appointing counsel;
- Establishing guidelines for determining payment for costs of counsel appointed for a child in family court, and the contents of orders appointing counsel;
- Integrating and expanding upon existing laws relating to the responsibilities and rights of counsel who represent a child in family law proceedings;
- Establishing education, training, and experience requirements for attorneys who represent a child in family law proceedings under Family Code section 3150; and
- Requiring that attorneys declare their compliance with the appointment requirements of the rule before beginning work on a case.

*Including Standards of Judicial Administration*

This proposal would include the substance of sections 5.10 and 5.11 of the standards of judicial administration in proposed rule 5.240.

Consequently, this proposal would repeal these two sections of the standards of judicial administration and include in proposed rule 5.240 provisions that guide the courts in setting the compensation for the child's counsel; determining the respective financial ability of the parties to pay counsel's compensation; and making an order specifying

the amount and responsibility for payment.

Other provisions from sections 5.10 and 5.11 included in proposed rule 5.240 would establish the criteria that courts should consider before appointing counsel for a child, specify those persons who may request appointment of counsel for a child, and guide the courts concerning the contents of the order appointing counsel.

Proposed rule 5.240 would establish new requirements for the courts concerning counsel appointed to represent a child under Family Code section 3150. The proposed rule would require courts to develop local rules that provide for acceptance and response to complaints about counsel and issue written orders when appointing counsel.

*Education and training requirements*

Proposed rule 5.241 would establish the education, training, and experience requirements, as well as the continuing education requirements for counsel appointed to represent a child under Family Code section 3150. The rule would also require counsel to declare that he or she meets all the requirements of the rule before beginning work on a case.

The proposed rule would require counsel to complete at least 12 hours of initial education and training within two years preceding appointment as counsel for a child. Initial education and training would be required in four subject areas: (1) laws relating to child custody and visitation litigation; (2) representation of a child in such proceedings; (3) special issues in representing a child; and (4) the multidisciplinary input required in child custody cases.

The rule would also require that counsel complete continuing education to remain eligible for appointment. Specifically, counsel would have to complete 8 hours of continuing education each consecutive year after completing the initial 12 hours of education and training.

Finally, the proposed rule would give existing court-appointed counsel for a child an additional 12 months to comply with the initial education and training requirements of the rule. This would ensure that existing counsel remain eligible for appointment and are given an opportunity to remain compliant under the proposed rule. This would apply to counsel appointed on or before December 31, 2007. However,

after January 1, 2009, there would be no exceptions—all counsel appointed to represent a child would need to complete the initial education and training stated in the rule.

*Experience requirements*

Proposed rule 5.241 would establish the experience requirements for counsel. The proposed rule would also provide alternative experience requirements so as to optimize the pool of eligible counsel from which courts in all counties may appoint.

To satisfy the experience requirements for appointment, counsel would be required to demonstrate that within three and five years preceding appointment, he or she had represented a parent or a child in a certain number and type of proceedings.

The proposed rule would also establish alternative experience requirements for appointment. This would allow attorneys who do not meet the regular experience requirements to qualify for appointment if they are supervised by an attorney who meets the regular experience requirements of the rule.

In addition, the proposed rule would allow counsel to comply with the experience requirements of the rule by demonstrating substantial equivalent experience. This provision would give courts flexibility to appoint counsel with specialized skills to an individual case when needed to serve the best interest of the child.

*Rights and responsibilities of counsel for a child*

To provide a comprehensive guide for courts and counsel, proposed rule 5.241 would include the statutory rights and responsibilities of counsel.

The rule would repeat the statutory rights and responsibilities of counsel for the child under the Family Code. In addition, with respect to counsel's responsibilities, the proposed rule would provide specific examples of how counsel can fulfill their statutory responsibilities. For example, Family Code section 3151 states that counsel has a duty to interview the child. The rule would repeat this duty and elaborate by outlining what counsel should consider in the interview (e.g., a location that is conducive to both conducting a meaningful interview of the child and investigating the issues relevant to the case at that time). Providing such examples in the proposed rule could help increase the quality of representation counsel provides to the child.

*Revise rule 5.10: Definitions and use of terms*

The term “best interest of the child” is used in several rules in title five of the rules of court. This term would also be included in the two proposed new rules. Instead of defining the term in both of the proposed rules, this proposal would amend rule 5.10 to reference “Family Code section 3011 for the term “best interest of the child” and its definition. The proposed change to rule 5.10 would make the definition of “best interest of the child” apply equally to all family law rules contained in title five.

*Judicial Council forms proposed for optional use*

To assist the courts and counsel in implementing the requirements of proposed rules 5.240 and 5.241, the following two forms are proposed for optional use: (1) FL-322, *Declaration of Counsel for a Child Regarding Qualifications*, and (2) FL-323, *Order Appointing Counsel for a Child*.

Proposed amended and new rules are attached at pages 6–18.

The relevant standards of judicial administration are attached at pages 19–22.

Proposed forms are attached at pages 23–27.

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Attachments

Rule 5.10 of the California Rules of Court would be amended, rules 5.240 and 5.241 of the California Rules of Court would be adopted, and sections 5.10 and 5.11 of the California Standards of Judicial Administration would be repealed, effective January 1, 2008, to read:

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

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

5  
6 (1)–(3) \*\*\*

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

9  
10 **Rule 5.240. Criteria for appointing counsel to represent a child in family law**  
11 **proceedings; court responsibilities; payment of fees; content of orders**

12  
13 **(a) Appointment considerations**

14  
15 The court should consider:

16  
17 (1) The following criteria before appointing counsel for a child in a family  
18 law proceeding, including whether:

19  
20 (A) The dispute is exceptionally intense or protracted;

21  
22 (B) The child is subjected to stress as a result of the dispute that might  
23 be alleviated by the intervention of counsel representing the child;

24  
25 (C) Counsel representing the child would be likely to provide the court  
26 with significant information not otherwise readily available or likely  
27 to be presented;

28  
29 (D) The dispute involves allegations that a parent, a stepparent, or  
30 another person with the parent’s knowledge has physically,  
31 emotionally, or sexually abused the child;

32  
33 (E) It appears that neither parent is capable of providing a stable, safe,  
34 and secure environment;

35  
36 (F) Counsel is available for appointment who is sensitive to the needs of  
37 a child and the issues raised in representing the child; and

38  
39 (G) The best interest of the child appears to require independent  
40 representation.

- 1           (2) If there are two or more children, whether any child would require  
2           separate counsel so as to eliminate conflict of interest.  
3  
4           (3) Appointing minor’s counsel on the court’s own motion or if requested to  
5           do so by:  
6  
7           (A) A party;  
8  
9           (B) The attorney for a party;  
10  
11           (C) A mediator under Family Code section 3184;  
12  
13           (D) A professional person making a custody recommendation under  
14           Family Code sections 3111 and 3118, Evidence Code section 730, or  
15           under sections 2032.010 et seq. of the Code of Civil Procedure;  
16  
17           (E) A court-appointed guardian ad litem or special advocate; or  
18  
19           (F) The child, or any relative of the child.  
20

21 **(b) Responsibility of the courts**

22 Each court:

- 23  
24  
25           (1) Must develop local court rules following the procedure set forth in rule  
26           10.613 by January 2, 2010, that provide for acceptance and response to  
27           complaints about the performance of the court-appointed counsel for a  
28           child.  
29  
30           (2) May create and maintain a list or panel of minors’ counsel meeting the  
31           minimum qualifications of this rule for appointment in cases. Unless  
32           prohibited by local rule, a court may appoint counsel not on the court-  
33           approved list or panel in special circumstances, taking into consideration  
34           factors including but not limited to, language, culture, and the special  
35           needs of a child in these areas:  
36  
37           (A) Child abuse (sexual or physical);  
38  
39           (B) Domestic violence;  
40  
41           (C) Drug abuse of a parent or the child;  
42  
43           (D) Mental health issues of a parent or the child;  
44  
45           (E) Particular medical issue of the child; and

1  
2 (F) Educational issues.  
3

4 (3) Must consider, as required by Family Code section 3151.5, any statement  
5 of issues and contentions of the child's counsel at every hearing in which  
6 the court makes a judicial determination regarding custody or visitation.  
7

8 (4) Must issue written orders when appointing and terminating counsel for a  
9 child. Courts may use *Order Appointing Counsel for a Child* (form FL-  
10 323) or may supplement form FL-323 with local forms developed  
11 following rule 10.613.  
12

13 (5) May establish procedures for the submission of billing, reimbursement,  
14 and collection of fees and payment.  
15

16 (c) **Determination of fees and payment**  
17

18 The court must determine the reasonable sum for compensation and expenses  
19 for counsel appointed to represent the child in a family law proceeding, and the  
20 ability of the parties to pay all or a portion of counsel's compensation and  
21 expenses.  
22

23 (1) The court must set the compensation for the child's counsel:  
24

25 (A) At the time of appointment;

26 (B) At the time the court determines the parties' ability to pay; or  
27

28 (C) Within a reasonable time after appointment.  
29

30 (2) A redetermination of counsel's compensation may be made:  
31

32 (A) On the court's own motion;  
33

34 (B) At the request of counsel of the parties; or  
35

36 (C) Not later than 30 days after counsel is relieved as attorney of record.  
37

38 (3) The court must determine the respective financial ability of the parties to  
39 pay all or a portion of counsel's compensation.  
40

41 (A) Before determining the parties' ability to pay, the court:  
42

43 (i) Should consider factors such as the parties' income and assets  
44 reasonably available at the time of the determination, and  
45

1 eligibility for or existence of a fee waiver under Government  
2 Code section 68511.3; and

3  
4 (ii) Must require that the parties have on file a current income and  
5 expense declaration (form FL-150) or financial statement (FL-  
6 155).

7  
8 (B) The court should determine the parties' ability to pay at the time  
9 counsel is appointed, within 30 days after appointment, or at the next  
10 subsequent hearing. Thereafter, a redetermination may be made as to  
11 the parties' ability to pay:

12  
13 (i) On the court's own motion; or

14 (ii) At the request of counsel or the parties; but

15 (iii) No later than 30 days after the counsel is relieved as attorney  
16 of record.

17  
18  
19  
20 (4) If the court determines that the parties have the ability to pay all or a  
21 portion of the fees:

22  
23 (A) The court must order that the parties pay in any manner the court  
24 determines to be reasonable and compatible with the parties'  
25 financial ability, including progress or installment payments; and

26  
27 (B) The court may use its own funds to pay counsel for a child and seek  
28 reimbursement from the parties.

29  
30 (C) The court must inform the parties that the failure to pay fees to the  
31 appointed attorney may result in the attorney initiating legal action  
32 against them to collect the money.

33  
34 (5) If the court finds that the parties are unable to pay all or a portion of the  
35 cost of the child's counsel, the court must pay the portion the parties are  
36 unable to pay.

37  
38 **(d) Content of orders appointing counsel for a child**

39  
40 (1) The appointment orders must specify the:

41  
42 (A) Appointed counsel's name, address, and telephone number; and

43  
44 (B) Name of the child for whom counsel is appointed.  
45

1           (2) The appointment orders may include the:

2  
3           (A) Legal issues to be addressed in the case;

4  
5           (B) Tasks related to the case that would benefit from the services of  
6           minor's counsel;

7  
8           (C) Responsibilities and rights of the child's counsel;

9  
10          (D) Counsel's compensation;

11  
12          (E) Allocation of fees payable by each party or the court;

13  
14          (F) Source of funds and manner of reimbursement for costs and attorney  
15          fees;

16  
17          (G) Allocation of payment of attorney's fees to one party subject to  
18          reimbursement by the other party;

19  
20          (H) Terms and amount of any progress or installment payments; and

21  
22          (I) Ability of the court to reserve jurisdiction to retroactively modify the  
23          order on fees and payment.

24  
25       **Rule 5.241. Qualifications, rights, and responsibilities of counsel appointed to**  
26       **represent a child in family law proceedings**

27  
28       **(a) Purpose**

29  
30       This rule governs counsel appointed to represent the best interest of the child in  
31       a custody or visitation proceeding under Family Code section 3150.

32  
33       **(b) General appointment requirements**

34  
35       Counsel appointed to represent a child must submit to the court appropriate  
36       documentation verifying compliance with all appointment requirements  
37       before beginning work in each case. To be eligible for appointment as  
38       counsel for a child, counsel must:

39  
40       (1) Be an active member in good standing of the State Bar of California;

41  
42       (2) Have professional liability insurance or demonstrate to the court that he or  
43       she is self insured; and

1           (3) Meet the initial education, training, and experience requirements of this  
2           rule.

3  
4   **(c) Initial education and training requirements**

5  
6           To be eligible for appointment:

7  
8           (1) Counsel must have completed at least 12 hours of education and training  
9           in the following subjects within the two years preceding his or her  
10           appointment as counsel for a child in a family law proceeding:

11  
12           (A) Statutes, rules of court, and case law relating to child custody and  
13           visitation litigation;

14  
15           (B) Representation of a child in custody and visitation proceedings;

16  
17           (C) Special issues in representing a child, including all the following:

18  
19                   (i) Knowledge of the various stages of child development;

20  
21                   (ii) Communicating with a child at various developmental stages  
22                   and presenting his or her view;

23  
24                   (iii) Recognizing, evaluating and understanding evidence of child  
25                   abuse and neglect, family violence and substance abuse,  
26                   cultural and ethnic diversity, and gender-specific issues.

27  
28           (D) The multidisciplinary input required in child-related cases, including  
29           information about local experts who can provide evaluation,  
30           consultation, and testimony.

31  
32           (2) Those appointed as counsel for a child on or before December 31, 2007,  
33           are deemed to be in compliance with the education and training  
34           requirements in (1) until December 31, 2008. To remain eligible for  
35           appointment as of January 1, 2009, all minors' counsel appointed under  
36           the Family Code must complete the education and training requirements in  
37           (1).

38  
39   **(d) Initial experience requirements**

40  
41           To satisfy the initial experience requirements of the rule, counsel must have  
42           represented a parent or a child as follows:

43  
44           (1) Within three years preceding appointment, the attorney must have  
45           handled:

- 1  
2 (A) One family law child custody or visitation hearing that involved  
3 witnesses, or  
4  
5 (B) Three family law child custody or visitation hearings, one of which  
6 must have involved a child custody evaluation conducted under  
7 Family Code section 3111, Evidence Code section 730, or Code of  
8 Civil Procedure section 2032.010.  
9
- 10 (2) In addition to the requirement in (1), within five years preceding  
11 appointment, counsel must have handled a minimum of:  
12
- 13 (A) Five proceedings that involved child custody or visitation in family  
14 law, dependency, or guardianship cases; and  
15
- 16 (B) At least two of the five proceedings must have been contested  
17 hearings with witnesses.  
18

19 **(e) Alternative experience requirements**  
20

21 An attorney who does not meet the above experience requirements may be  
22 appointed as minor's counsel if he/she meets one of the following alternative  
23 experience requirements. Counsel must either:  
24

- 25 (1) Be employed by a legal services organization, a governmental agency, or  
26 a private law firm that has been approved by the presiding or supervising  
27 judge of the local family court as qualified to represent parties in family  
28 law proceedings, and be appropriately supervised by an attorney in an  
29 organization, an agency, or a private law firm who meets the initial  
30 experience requirements in (d);  
31
- 32 (2) Be a sole practitioner working in consultation with an attorney approved  
33 by the presiding or supervising judge of the local family court as qualified  
34 to represent a party or a child in family law proceedings; or  
35
- 36 (3) Demonstrate substantial equivalent experience. Whether counsel  
37 demonstrates substantial equivalent experience will be determined by  
38 local procedure.  
39

40 **(f) Continuing education and training requirements**  
41

42 To remain eligible for appointment, counsel for a child must complete 8 hours  
43 of accredited continuing education in the subjects described in (c) each  
44 consecutive year after completing the 12 hours of initial education requirements.  
45

1 **(g) Compliance with requirements**

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

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

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

16  
17 Counsel has rights relating to the representation of a child's best interest in  
18 family law proceedings. Under:

- 19  
20 (1) Family Code section 3151, counsel has the right to:
- 21  
22 (A) Reasonable access to the child;
- 23  
24 (B) Seek affirmative relief on behalf of the child;
- 25  
26 (C) Notice of any proceeding affecting the child and all phases of that  
27 proceeding, including a request for examination;
- 28  
29 (D) Take any action that is available to a party to the proceeding,  
30 including filing pleadings, making evidentiary objections, and  
31 presenting evidence;
- 32  
33 (E) Be heard in the proceeding, which may include presenting motions  
34 and orders to show cause and participating in settlement  
35 conferences, trials, seeking writs, appeals, and arbitrations;
- 36  
37 (F) Access to the child's medical, dental, mental health, and other  
38 health– care records, and school records;
- 39  
40 (G) Interview school personnel, caretakers, health–care providers,  
41 mental health professionals, and others who have assessed the child  
42 or provided care to the child. Release of this information to counsel  
43 does not constitute a waiver of the confidentiality of the reports,  
44 files, and any disclosed communications;
- 45

- 1           (H) Interview mediators, subject to the provisions of Family Code  
2           sections 3177 and 3182;  
3  
4           (I) Receive reasonable advance notice of and the right to refuse any  
5           physical or psychological examination or evaluation, for purposes of  
6           the proceeding, that has not been ordered by the court;  
7  
8           (J) Assert or waive any privilege on behalf of the child; and  
9  
10          (K) Seek independent psychological or physical examination or  
11          evaluation of the child for purposes of the proceeding upon approval  
12          by the court;  
13  
14          (2) Family Code section 3111, counsel has the right to receive child custody  
15          evaluation reports.  
16  
17          (3) Family Code sections 3151(b) and 3151.5, counsel has the right not to be  
18          called as a witness in the proceedings.  
19  
20          (4) Family Code section 3152, counsel has the right to request the court to  
21          authorize release of relevant reports or files, concerning the child  
22          represented by the counsel, of the relevant local child protective services  
23          agency.  
24  
25          (5) Family Code section 3153, counsel has the right to receive reasonable  
26          compensation and expenses for representing the child, the amount of  
27          which will be determined by the court.  
28

29          **(i) Responsibilities of counsel for a child**  
30

31          Counsel is charged with the representation of the best interest of the child. The  
32          role of the child's counsel is to gather facts that bear on the best interest of the  
33          child, and present those facts to the court, including the child's wishes when  
34          counsel deems it appropriate for consideration by the court under Family Code  
35          section 3042.  
36

37          (1) Counsel's duties include those set forth in Family Code section 3151:  
38

39                  (A) Interviewing the child;  
40

41                  (B) Reviewing the court files and all accessible relevant records  
42                  available to both parties;  
43

44                  (C) Making any further investigations that counsel considers necessary  
45                  to ascertain the facts relevant to the custody or visitation hearings;

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

(E) Preparing a written statement of issues and contentions setting forth the facts that bear on the best interest of the child at the court's request.

(2) To implement the statutory duties, counsel should:

(A) Interview or observe the child as appropriate for the age of the child. In doing so, counsel should:

(i) Consider all possible interview or observation environments; and

(ii) Select a location most conducive to both conducting a meaningful interview of the child and investigating the issues relevant to the case at that time.

(B) In a manner and to the extent consistent with the child's age, level of maturity, and ability to understand, and consistent with the order of appointment for the case:

(i) Explain to the child at their first meeting counsel's role and the nature of the attorney-client relationship (including confidentiality issues);

(ii) Advise the child on a continuing basis of possible courses of action and of the risks and benefits of each course of action.

(C) Actively participate in the representation of the child at any hearings that affect custody and visitation of the child and attend and participate in any other hearings relevant to the child. In doing so, counsel must, as appropriate:

(i) Take positions relevant to the child on legal issues before the court;

(ii) Seek and advocate for services for the child;

(iii) Prepare for any hearings or trials;

- (iv) Work to settle contested issues and to define trial issues;
- (v) Prepare witnesses, including the child if the child is to testify;
- (vii) Introduce and examine witnesses on behalf of the child;
- (viii) Cross-examine other witnesses;
- (ix) Make appropriate evidentiary objections;
- (x) Review court files and other pertinent records;
- (xi) Prepare motions to advance the child's interest, including motions to quash subpoenas for the child and other protective orders;
- (xii) Present arguments to advance the child's interest;
- (xiii) Prepare trial briefs and other documents if appropriate; and
- (xiv) Request appointment of separate appellate counsel.

(D) Conduct thorough, continuing, and independent investigations and discovery to protect the child's interest, subject to the terms of the court's order of appointment, which should include:

- (i) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, education, and other records relevant to the case;
- (ii) Reviewing the court files of the child and his or her siblings, case-related records of the social service agency, and case-related records of other service providers;
- (iii) Contacting attorneys for other parties and nonlawyer guardians ad litem, Court Appointed Special Advocates (CASAs), and other service professionals, to the extent permitted by local rule, for background information;
- (iv) Contacting and meeting with the child's parents, legal guardians, or caretakers, with permission of their attorneys;
- (v) Obtaining necessary authorizations for the release of information;

1                   (vi) Interviewing witnesses and individuals involved with the child,  
2                   including school personnel, child welfare case workers, foster  
3                   parents and other caretakers, neighbors, relatives, coaches,  
4                   clergy, mental health professionals, physicians, law  
5                   enforcement officers, and other potential witnesses;

6  
7                   (vii) Reviewing relevant photographs, video or audio tapes, and  
8                   other evidence;

9  
10                  (viii) Developing written documentation of the results of these  
11                  investigations;

12  
13                  (ix) Monitoring compliance with court orders as appropriate,  
14                  including the provision for and effectiveness of any court-  
15                  ordered services; and

16  
17                  (x) Promoting the timely progression of the case through the  
18                  judicial system.

19  
20                  (E) Investigate the interests of the child beyond the scope of the  
21                  proceeding and report to the court other interests of the child that  
22                  may need to be protected by the institution of other administrative or  
23                  judicial proceedings. Counsel is not responsible for instituting those  
24                  proceedings or representing the child in them unless expressly  
25                  appointed by the court for that purpose.

26  
27                  (F) After learning of other existing administrative or judicial  
28                  proceedings involving the child, communicate and cooperate with  
29                  others to the extent necessary and appropriate to protect the child's  
30                  interest. Counsel must exercise this duty consistent with all ethical  
31                  responsibilities and legal privileges; and.

32  
33                  (G) Take all other appropriate steps to represent the child adequately,  
34                  including becoming knowledgeable in other legal areas affecting  
35                  minors including delinquency, dependency, probate, family law, and  
36                  other proceedings.

37  
38                  (3) Counsel is not required to assume the responsibilities of a social worker,  
39                  probation officer, or mediator and is not expected to provide nonlegal  
40                  services to the child.

41  
42                  **(j) Termination of appointment**

43  
44                  Upon entering an appearance on behalf of a child, counsel must continue to  
45                  represent that child until:

1  
2  
3  
4  
5  
6  
7  
8  
9

- (1) The conclusion of the proceeding for which counsel was appointed;
- (2) Relieved by the court;
- (3) Substituted; or
- (4) Removed upon the court's own motion or request of counsel or parties for good cause shown.

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

3  
4 **(a) — General**

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

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

13  
14 **(b) — Presumed inability to pay**

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

19  
20 **(c) — Individual determination required**

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

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

29  
30 **(d) — Time for determination**

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

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

37  
38  
39 **(e) — Payment of attorney**

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

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

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

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

9  
10

Repealed

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

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

5  
6 In any family law or other proceeding where two or more persons are  
7 disputing the division of time with (physical custody) or responsibility for  
8 (legal custody) a minor child, the court should consider the appointment of  
9 an attorney to represent the best interest of the child if requested to do so by  
10 either party, the attorney for either party, a mediator performing duties under  
11 Civil Code section 4607, a professional person making a custody  
12 recommendation under Civil Code section 4602, a court appointed guardian  
13 ad litem or special advocate, the child, or any relative of the child; and the  
14 court may also appoint counsel on its own motion.

15  
16 **(b) Guidelines**

17  
18 In considering the appointment of counsel for the minor, the court should  
19 take into account the following factors:

- 20  
21 (1) Whether the dispute is exceptionally intense or protracted;
- 22  
23 (2) Whether the child is subjected to stress on account of the dispute,  
24 which might be alleviated by the intervention of counsel representing  
25 the child;
- 26  
27 (3) Whether an attorney representing the child would be likely to provide  
28 the court with significant information not otherwise readily available or  
29 likely to be presented;
- 30  
31 (4) Whether the dispute involves allegations that a parent, a stepparent, or  
32 other person with the parent's knowledge has physically or sexually  
33 abused the child;
- 34  
35 (5) Whether it appears that neither parent is capable of providing a stable  
36 and secure environment;
- 37  
38 (6) Whether the child is capable of verbally expressing his or her views;
- 39  
40 (7) Whether attorneys are available for appointment who are sensitive to  
41 the needs of children and the issues raised in representing them; and  
42

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

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

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

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

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

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

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

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

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

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

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

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



|  |              |
|--|--------------|
| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARTY: | CASE NUMBER: |
|--|--------------|

- b.  I am a sole practitioner working in consultation with an attorney approved by the presiding or supervising judge of the local family court as qualified to represent parties in family law proceedings; or
- c.  I have demonstrated substantial equivalent experience (*please provide a summary of equivalent experience*).

**ANNUAL CONTINUING EDUCATION**

- 8.  I have completed 8 hours of annual continuing education and training in the subject areas described in rule 5.241(c) each consecutive year after I completed the 12 hours of initial education and training.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:



\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**NOTICE:** Attorneys appointed to represent a child must file a declaration with the clerk of the court indicating compliance with California Rules of Court, rule 5.241, no later than 10 days after each appointment and before beginning work on the case.

|   |  |
|---|--|
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | FOR COURT USE ONLY<br><br><b>Draft 3<br/>                 04/05/07 mec<br/>                 Not approved<br/>                 by the<br/>                 Judicial Council</b> |
| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARTY:  |  |
| <b>ORDER APPOINTING COUNSEL FOR A CHILD</b>   | CASE NUMBER:   |

1. The proceeding was heard  
 on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_ in Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 by Judge *(name)*: \_\_\_\_\_  Temporary Judge

Petitioner/Plaintiff present                       Attorney present *(name)*: \_\_\_\_\_  
 Respondent/Defendant present                       Attorney present *(name)*: \_\_\_\_\_  
 Other present     Attorney present *(name)*: \_\_\_\_\_

on the order to show cause or motion filed *(date)*: \_\_\_\_\_ by *(name)*: \_\_\_\_\_

**THE COURT FINDS** it is in the best interest of the child to appoint private counsel to represent the child under Family Code section 3150(a).

Counsel appointed for the child *(name of counsel)*:

Address:

Phone number:

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

| <u>Name</u> | <u>Birth date</u> | <u>Address</u> |
|-------------|-------------------|----------------|
|-------------|-------------------|----------------|

**3. REASON FOR APPOINTMENT *(specify)*:**

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

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

|  |              |
|--|--------------|
| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARTY: | CASE NUMBER: |
|--|--------------|

**5. COUNSEL FOR A CHILD HAS THE FOLLOWING RIGHTS**

- a. Reasonable access to the child;
- b. Standing to seek affirmative relief on behalf of the child;
- c. Notice of any proceeding and all phases of that proceeding affecting the child;
- d. Right to be heard in the proceeding and take any action available to a party in the proceeding;
- e. Access to the child's medical, dental, mental health, and other health-care records;
- f. Access to the child's school and educational records for the child;
- 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. Reasonable advance notice of and the right to refuse any physical or psychological examination for purposes of the proceedings, that has not been ordered by the court;
- k. To seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court;
- l. Upon noticed motion to all parties and the local child protective services agency, to request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency as provided by Family Code section 3152; and
- m. Not to be called as a witness in the proceeding. Family Code sections 3151(b) and 3151.5.

**6. DETERMINATION OF FEES AND PAYMENT**

- a. Counsel for the child shall 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 the 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 must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (2)  Respondent/Defendant must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (3)  Other party must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (4)  Other *(specify):* \_\_\_\_\_
  - (5)  The court reserves jurisdiction to reallocate attorney fees and costs between the parties.
- c. The court finds that both parties are unable to pay  all  a portion of the costs for the child's counsel. Counsel for the child shall be paid as follows:
  - (1)  Petitioner/Plaintiff must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (2)  Respondent/Defendant must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (3)  Other party must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (4)  The court must pay *(specify):* \_\_\_\_\_ until fully paid or modified by court order.
  - (5)  Other *(specify):* \_\_\_\_\_
  - (6)  The court reserves jurisdiction to reallocate attorney fees and costs between the parties.
  - (7)  The court may seek reimbursement from the parties if the court pays all or a portion of the compensation for the child's counsel.

|  |              |
|--|--------------|
| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARTY: | CASE NUMBER: |
|--|--------------|

**7. ADDITIONAL ORDERS**

- a. The parties and their counsel are ordered to cooperate with counsel for the child to permit the performance of his or her duties.
  - b. Counsel for the child shall be provided with complete copies of all relevant proceedings within 10 days of the appointment.
  - c. The parties shall provide complete information concerning the child's school, medical, psychological, psychiatric, and other pertinent records to the child's counsel upon request. The parties shall execute such waivers and releases requested to facilitate the child's counsel in securing access to records for the child.
  - d. The parties and/or their counsel shall not compromise, settle, dismiss, or otherwise remove from the court's calendar all or any portion of the issues, claims, or proceedings concerning which child's counsel has been appointed, without participation of child's counsel or advance notice to child's counsel.
8. Counsel must continue to represent the child until relieved by the court.

**THE COURT SO ORDERS.**

Date:

\_\_\_\_\_

JUDICIAL OFFICER

**CLERK'S CERTIFICATE**

I certify that the foregoing *Order Appointing Counsel for a Child* is a true and correct copy of the original on file in the court.

Clerk of the Superior Court, by \_\_\_\_\_ Deputy

## Item SPR07-25 Response Form

**Title:** Family Law: Rules Regarding Counsel Appointed to Represent a Child in Family Law Proceedings Under Family Code Section 3150 (adopt Cal. Rules of Court, rules 5.240 and 5.241; amend rule 5.10; repeal sections 5.10 and 5.11 of the Cal. Sts. Jud. Admin; and approve forms FL-322, and FL-323 for optional use)

- 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:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Camilla Kieliger,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Camilla Kieliger  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

|  |
|--|
| <b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007</b> |
|--|

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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