



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title	Agenda Item Type
Family Law: Legislative Addition of New Category of Child Custody Evaluator	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.225; revise forms FL-325 and FL-326	January 1, 2020
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 17, 2019
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Chris Cleary, Attorney
	415-865-8792
	christine.cleary@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending a rule of court and revising two Judicial Council forms for use in family law custody proceedings. These changes are necessitated by Assembly Bill 2296 (Stats. 2018, ch. 389), which added to Family Code section 3110.5(c)(5) an additional category of licensed child custody evaluator to those qualified to provide court-connected and private child custody evaluations.

Recommendation

The Family and Juvenile Law Advisory committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 5.225 of the California Rules of Court to add “Professional clinical counselor qualified to assess couples and families” to the category of evaluators; and
2. Revise item 4a on *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (form FL-325) and on *Declaration of Private Child Custody Evaluator*

Regarding Qualifications (form FL-326) to include “professional clinical counselor qualified to assess couples and families.”

The text of the amended rule and the revised forms are attached at pages 4–8.

Relevant Previous Council Action

Rule 5.225 of the California Rules of Court was adopted on January 1, 2002, to establish the education, experience, and training requirements for child custody evaluators. The rule was amended effective January 1, 2005, to further clarify the education, training, and experience requirements and certification procedures for court-appointed child custody evaluators. In addition, forms FL-325 and FL-326 were adopted at that time to implement the rule. The rule and forms were further amended effective January 2007, to better assist the courts and evaluators in understanding and complying with all the appointment requirements for child custody evaluators.

Analysis/Rationale

This recommendation to amend rule 5.225 and revise forms FL-325 and FL-326 is needed to respond to a recent change in the law (passage of AB 2296) to ensure that our rules and forms reflect the statutory change. It would add one additional category of child custody evaluator, “professional clinical counselor qualified to assess couples and families,” to those licensed evaluators qualified to provide court-connected and private child custody evaluations. The proposal would benefit the judicial branch, along with attorneys and self-represented litigants who use the forms, by making the forms current with recent law.

Policy implications

This proposal does not raise any policy implications; it simply ensures that Judicial Council forms remain consistent with current law.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle from April 11 to June 11, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

The committee received four comments on this proposal. Three of the four commenters agreed with the proposal and one did not state a position. None of the commenters provided additional comments.

Alternatives considered

No alternatives were considered because the proposed changes are now statutorily required by Family Code section 3110.5(c)(5).

Fiscal and Operational Impacts

Implementation requirements, costs, and operational impacts will be minimal because the only change to the rule and the forms is the addition of one new category of child custody evaluator.

Attachments and Links

1. Cal. Rules of Court, rule 5.225, at page 4
2. Forms FL-325 and FL-326, at pages 5–8
3. Chart of comments, at page 9
4. Link A: Assembly Bill 2296,

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2296

Rule 5.225 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 5.225. Appointment requirements for child custody evaluators**

2
3 (a)–(b) * * *

4
5 (c) **Licensing requirements**

6
7 A person appointed as a child custody evaluator meets the licensing criteria
8 established by Family Code section 3110.5(c)(1)–(5), if:

9
10 (1) The person is licensed as a:

11
12 (A) Physician and either is ~~either~~ a board-certified psychiatrist or has
13 completed a residency in psychiatry;

14
15 (B) Psychologist;

16
17 (C) Marriage and family therapist; ~~or~~

18
19 (D) Clinical social worker; or

20
21 (E) Professional clinical counselor qualified to assess couples and families.

22
23 (2) * * *

24
25 (d)–(o) * * *

EVALUATOR <i>(name and address)</i> : TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS <i>(optional)</i> : _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DECLARATION OF COURT-CONNECTED CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	

1. I, *(name)*: _____, declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. As of *(date)*: _____, I am a court-connected child custody evaluator or a person who supervises court-connected child custody evaluators for the above court.
3. I submit this form to indicate compliance with all applicable requirements for a court-connected child custody evaluator under rule 5.225 of the California Rules of Court for *(specify year)*: _____.

LICENSING REQUIREMENTS

4. a. I am licensed as a psychologist, marriage and family therapist, clinical social worker, **or professional clinical counselor qualified to assess couples and families**; or
- b. I am licensed as a physician and I am a board-certified psychiatrist, or I have completed a residency in psychiatry; or
5. a. I am not licensed, but I am eligible to be certified by the court to perform court-connected child custody evaluations under Family Code section 3110.5(c)(5) and rule 5.225(c)(2)(A) because
 - (1) I meet the requirements for a court-connected child custody evaluator under rule 5.225(j); and
 - (2) I am being supervised by a court-connected child custody evaluator who has complied with all the requirements for court-connected child custody evaluators under rule 5.225; and
- b. I request that the court certify that I meet all the requirements for a court-connected evaluator under rule 5.225.
6. I am not licensed or eligible for certification as indicated in item 4 or 5.

NOTICE: If item 6 is checked, the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B), all the following criteria have been met:

- (1) **The court determined that there are no licensed or certified evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;**
- (2) **The parties have stipulated that the person may conduct the child custody evaluation; and**
- (3) **The court approves the person's appointment.**

EDUCATION AND TRAINING REQUIREMENTS

7. I have completed
 - a. the basic and advanced domestic violence training requirements for a court-connected child custody evaluator under rule 5.225(e); and
 - b. the 40 hours of education and training requirements for a court-connected evaluator under rule 5.225(d); or
 - c. at least 20 of the 40 hours of the education and training requirements for a court-connected evaluator. I will complete the remaining hours of education and training required by rule 5.225(d) within 12 months of conducting my first evaluation as a court-connected child custody evaluator.

CONTINUING EDUCATION AND TRAINING REQUIREMENTS

8. a. I have recently completed the initial education and training in item 7. I must complete the continuing education and training requirements of rule 5.225(i) by *(specify date)*: _____ (within 18 months after completing the initial education and training described in items 7a and 7b).

EVALUATOR'S NAME:

- 8. b. I have completed the continuing education and training requirements within the 12-month period immediately preceding the date I signed this declaration, **as follows:**
 - (1) 8 hours of update training requirements covering the subjects described in rule 5.225(d)
 - (2) 4 hours of domestic violence update training under rule 5.230
- 9. I have complied with the experience requirements for a court-connected child custody evaluator specified in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years **as follows:**
 - a. I independently conducted and completed the child custody evaluations as stated in rule 5.225(g)(1)(A); or
 - b. I materially assisted another evaluator as stated in rule 5.225(g)(1)(B).
- 10. I have complied with the experience requirements for those who supervise court-connected child custody evaluators because I conducted or materially assisted in the completion of four court-connected child custody evaluations in the preceding three years as stated in rule 5.225(g)(3).
- 11. I have not complied with the experience requirements for child custody evaluators stated in rule 5.225(g)(1).

NOTICE: If item 11 is checked, the court may not appoint a court-connected evaluator to perform a child custody evaluation unless, under rule 5.225(g)(2), all the following criteria have been met:

- (1) **The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;**
- (2) **The parties have stipulated that the person may conduct the evaluation; and**
- (3) **The court approves the person's appointment.**

USE OF INTERNS

- 12. I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(m) and will work under my supervision at all times.

NOTICE

All court-connected child custody evaluators must submit this form to the court executive officer or his or her designee. Court-connected child custody evaluators appointed as of January 1 of a given year must submit this form by January 30 of that year. Court-connected evaluators beginning practice after January 1 must submit this form before beginning any work on the first child custody evaluation and by January 30 of every year thereafter. (Cal. Rules of Court, rule 5.225(l)(1)(A).)

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)

CERTIFICATION

BASED ON THE FOREGOING, THE COURT CERTIFIES THAT THE ABOVE PERSON IS A COURT-CONNECTED CHILD CUSTODY EVALUATOR WHO MEETS ALL THE QUALIFICATIONS FOR COURT-CONNECTED EVALUATORS AS SPECIFIED BY THE JUDICIAL COUNCIL IN RULE 5.225 OF THE CALIFORNIA RULES OF COURT.

Date:

JUDGE COMMISSIONER

EVALUATOR <i>(name and address)</i> : TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS <i>(optional)</i> : _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	CASE NUMBER: _____

1. I, *(name)*: _____, declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. As of *(date)*: _____, I was appointed by the court to perform a child custody evaluation in this case.
3. I submit this form to indicate compliance with all applicable requirements for a private child custody evaluator under rule 5.225 of the California Rules of Court at the time of my appointment to this case.

LICENSING REQUIREMENTS

4. a. I am licensed as a psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor qualified to assess couples and families; or
- b. I am licensed as a physician and I am a board-certified psychiatrist, or I have completed a residency in psychiatry; or
- c. I am not licensed as indicated in 4a or 4b.

NOTICE: If item 4c is checked the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B) of the California Rules of Court, all the following criteria have been met:

- (1) The court determined that there are no evaluators who meet the licensing requirements who are willing and available, within a reasonable period of time, to perform child custody evaluations;
- (2) The parties have stipulated that the person may conduct the child custody evaluation; and
- (3) The court approves the person's appointment.

EDUCATION AND TRAINING REQUIREMENTS

5. I have completed
 - a. the basic and advanced domestic violence training requirements under rule 5.225(e); and
 - b. the 40 hours of education and training requirements under rule 5.225(d).

CONTINUING EDUCATION AND TRAINING REQUIREMENTS

6. a. I have recently completed the initial education and training in item 5. I am required to complete the continuing education requirements of rule 5.225(i) by *(specify)*: _____ (within 18 months after completing the initial education and training described in item 5); or
- b. I have completed the continuing education and training requirements under rule 5.225(i) within the 12-month period immediately preceding my appointment to this case, as follows:
 - (1) 8 hours of update training requirements covering the subjects described in rule 5.225(d)
 - (2) 4 hours of domestic violence update training under rule 5.230

EVALUATOR'S NAME: PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
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7. I have complied with the experience requirements for a private child custody evaluator specified in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years **as follows:**
- a. I independently conducted and completed the child custody evaluations as required in rule 5.225(g)(1)(A); or
 - b. I materially assisted another evaluator as stated in rule 5.225(g)(1)(B).

8. I have not complied with the experience requirements for child custody evaluators stated in rule 5.225(g)(1).

NOTICE: If item 8 is checked, the court may not appoint an evaluator to perform a child custody evaluation unless, under rule 5.225(g)(2), all the following criteria have been met:

- (1) The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;
- (2) The parties have stipulated that the person may conduct the evaluation; and
- (3) The court approves the person's appointment.

USE OF INTERNS

9. I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(m) and will work under my supervision at all times.

NOTICE

Private child custody evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and before beginning any work on the child custody evaluation. (Cal. Rules of Court, rule 5.225(l)(1)(B).)

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)

SPRING 19-33**Family Law: Legislative Addition of New Category of Child Custody Evaluator** (Amend Cal. Rules of Court, rule 5.225; revise forms FL-325 and FL-326)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Hon. Amy K. Guerra Judge (Family Court) Superior Court of Fresno County	A	No specific comments.	No response required.
2.	Orange County Bar Association By Deirdre Kelly, President	A	No specific comments.	No response required.
3.	Superior Court of Orange County By: Cynthia Beltran, Administrative Analyst	NI	No specific comments.	No response required.
4.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	No specific comments.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated