



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-002

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Title

Family Law: Changes to Child Custody
Evaluation Rule and Forms

Agenda Item Type

Action Required

Effective Date

September 1, 2022

Date of Report

April 14, 2022

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 5.220;
revise forms FL-327, FL-327(A), FL-328,
and FL-329

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Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Stephanie E. Hulse, Cochair

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising four forms relating to child custody evaluations and reports. The revisions are needed to clarify the differences in the statutory requirements for child custody evaluations that are conducted under Family Code section 3111 and Family Code section 3118. The committee recommends other technical changes to make the language in the rule and forms consistent with each other.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2022:

1. Amend rule 5.220 to reflect the revised titles of forms FL-328 and FL-329 and the revised procedures for filing child custody evaluation reports under Family Code sections 3111 and 3118.

2. Revise *Order Appointing Child Custody Evaluator* (form FL-327) and *Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)) to reflect the revised titles of forms FL-328 and FL-329 and the revised procedures for filing child custody evaluation reports under Family Code sections 3111 and 3118.
3. Revise *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) to change the title and include a file-stamp box, as well as other changes.
4. Revise *Confidential Child Custody Evaluation Report* (form FL-329) to change the title and include a new first page that advises that the report is confidential and specifies the service requirements and limitations on access to the report under Family Code section 3118.

The proposed amended rule and the revised forms are attached at pages 12–25.

Relevant Previous Council Action

Effective January 1, 2021, the Judicial Council adopted *Confidential Child Custody Evaluation Report* (form FL-329) to serve as the standardized template for all information necessary to provide a full and complete analysis of a child custody evaluation involving serious allegations of child sexual abuse or child abuse under Family Code section 3118.¹ The Judicial Council also amended rule 5.220 of the California Rules of Court to differentiate between the requirements for child custody evaluations conducted under Family Code section 3111 and those under section 3118.²

Analysis/Rationale

Spring 2021 invitation to comment proposal deferred

Following the Judicial Council’s adoption of form FL-329, and after further review of section 3111 and rule 5.220, the committee circulated proposed changes to *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) in the spring 2021 invitation to comment cycle.³ The proposed changes reflect the amendments to rule 5.220 by requiring the cover sheet to be attached to child custody evaluation reports conducted under section 3111⁴ as well as those conducted under section 3118.⁵

¹ Judicial Council of Cal., Advisory Com. Rep., *Family Law: Changes to Child Custody Evaluations Rule and Forms* (Aug. 23, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8771124&GUID=146EBAE9-AD1F-4DD3-ACC0-CA59E7F6E939>.

² All further statutory references are to the Family Code.

³ The invitation to comment is available at <https://www.courts.ca.gov/documents/spr21-09.pdf>.

⁴ Section 3111 is available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3111&lawCode=FAM.

⁵ Section 3118 is available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3118&lawCode=FAM.

Specifically, the prior invitation to comment sought to revise form FL-328 to:

- List the persons or agencies that are permitted to access child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118.
- State that an unwarranted disclosure of the section 3118 report—like reports conducted under section 3111—could subject the person who made an unwarranted disclosure to fines and penalties.
- Include a file-stamp box on the form to help courts process the child custody evaluation report and focus attention on the confidentiality of the report attached to the cover sheet. (The committee also sought specific comment about whether a file-stamp box will help improve existing court procedures for filing the reports compared to the current version of form FL-328, which does not include one.)

The chart of comments received from the spring 2021 proposal is included as Attachment A.

Following the comment period for the spring 2021 proposal, the committee concluded against recommending the changes listed in the first two bullet points (above) regarding access and disclosure under section 3118. Ultimately, the committee determined that the proposed changes could be inconsistent with section 3118, and that other options should be considered instead of relying on one form to serve as a notice for two completely different child custody evaluation reports.

While section 3111 provides that *all* child custody evaluation reports are confidential and includes language prohibiting an unwarranted disclosure of the report, section 3118 does not specifically include any language about unwarranted disclosures. Further, the two statutes were written very differently with respect to those persons or agencies that are authorized to access the child custody evaluator's report and recommendations.

For example, section 3111(b) provides:

The report shall not be made available other than as provided in subdivision (a)^[6] or Section 3025.5, or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

⁶ Section 3111(a) provides, in pertinent part, that the child custody evaluation “shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150.”

In contrast, section 3118(b)(6) specifies that “this report may not be made available other than as provided by this subdivision.” However, it does not include as clear and extensive a list of those persons and agencies who may access the report as section 3111. The only guidance in this regard is provided in the following language:

(b) The evaluator or investigator shall ... [¶] (6) File a confidential written report with the clerk of the court in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. On and after January 1, 2021, this report shall be made on the form adopted pursuant to subdivision (i). This report may not be made available other than as provided in this subdivision.

It is clear from the above language that the clerk of the court, the parties, and the parties’ attorneys can access the report. Section 3118, however, does not incorporate the provisions of section 3150,⁷ which authorize the child’s attorney access to child custody evaluation reports by requiring compliance with rule 5.242(i)(13) of the California Rules of Court.⁸

As circulated for comment in the spring 2021 cycle, the proposed changes to form FL-328 would have expanded the list of persons eligible to access the report under section 3118 to include attorneys appointed to represent the child under section 3150, family court judicial officers, and family court employees. Those who commented on the proposal also requested changes to the list. However, the committee determined that the proposed changes could conflict with the statute. Given the specificity of the legislative language, the committee concluded that the proposed changes would best be addressed by statute.

Therefore, following public comment and further discussion with the committee and staff, the committee deferred the spring 2021 proposal to the winter 2022 cycle with directions to propose changes to rule 5.220 and the other forms in this proposal to reflect the language in sections 3111 and 3118 more closely. This included:

- Changing the titles to forms FL-328 and FL-329 to highlight that form FL-328 is required for section 3111 child custody evaluations and form FL-329 is to be used only in section 3118 child custody evaluations;
- Amending rule 5.220 and revising forms FL-327, FL-327(A), FL-328, and FL-329 to reflect the revised form titles and delete provisions that require form FL-328 to be used as the confidential cover sheet for child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118; and

⁷ Section 3150 is available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3150&lawCode=FAM.

⁸ Rule 5.242 is available at www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_242.

- Other changes to the rule and forms as specified below.

Rule 5.220, Court-ordered child custody evaluations

The committee recommends amendments to rule 5.220(g) to reflect changes in the titles of forms FL-328 and FL-329 and to strike the requirement to attach form FL-328 to reports under section 3118. Specifically:

- Subdivision (g)(1)(B) will be revised to provide that the evaluator who was appointed to conduct a child custody evaluation under section 3111 must attach *Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111* (form FL-328) as the cover page of the report;
- Subdivision (g)(2)(C), which requires form FL-328 to be attached as the cover page of the report completed under section 3118, will be stricken from the rule; and
- Subdivision (g)(2)(B) will be revised to reflect the proposed revised title of form FL-329, *Confidential Child Custody Evaluation Report Under Family Code section 3118*.

These proposed changes will make the rule consistent with the proposed changes to the titles of the forms, as well as the proposed new procedures for filing reports under sections 3111 and 3118.

Order Appointing Child Custody Evaluator (form FL-327)

Item 6 will be revised to reflect the proposed revised title of form FL-329. The title of item 7 will be revised to “Required Notice for Family Code section 3111 Evaluations” and the contents simplified to specify that form FL-328 must be attached as the cover page for child custody evaluations under section 3111. These changes will help to distinguish the requirements for evaluations completed under sections 3111 and 3118.

Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118 (form FL-327(A))

This form will be revised at item 3a to reflect the proposed revised title of form FL-329.

Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328)

The committee considered not making changes to the form because it currently does not reference child custody evaluations involving serious allegations of child sexual abuse. However, in light of the public comments received in the spring 2021 cycle about other proposed changes to the form, and a change that is mandated by statute (as noted below), the committee decided to recommend that the form:

- Be retitled *Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111*;
- Include a file-stamp box on the form to help courts process the child custody evaluation with the required cover sheet attached as the first page;

- Be made gender neutral by replacing the reference to “his or her evaluation” in the first sentence of the form with “the evaluation”; and
- Be redesigned and include content changes as noted below.

Mandated changes. The committee recommends that the form reflect statutory changes regarding access to child custody evaluation reports. Effective January 1, 2015, Assembly Bill 1843 (Stats. 2014, ch. 283) amended section 3025.5.⁹ In pertinent part, it added subdivision (b) to section 3025.5 to authorize the disclosure of confidential information in the child custody evaluator’s report (completed under section 3111) to the licensing entity of a child custody evaluator. The amendments also detail the manner in which the licensing entity is authorized to use the confidential information disclosed to it.¹⁰ The form will reflect this change by adding “the agency responsible for licensing and disciplining the child custody evaluator” to the list of those who may access the report by law.

Changes to design and organization. The committee recommends other changes regarding the form’s design and organization to improve readability and comprehension. The proposed changes include using a plain-language form layout for the notice, shortening and revising the language in some sections to allow room for a file-stamp box, and expanding language in other sections to better explain legal terms.

For example, the committee recommends deleting, in the first entry on the form, the phrase “If directed by the court” from “If directed by the court, the child custody evaluator must file a written, confidential report of the evaluation.” The phrase is not needed in cases in which form FL-328 is used because the court has already directed that the evaluator file a written report of the evaluation.

In addition, the entries for “Monetary Sanctions” and “Attorney’s Fees and Costs” will be moved under the heading “Possible sanctions for an unwarranted disclosure of the report” to avoid redundancy.

⁹ Assem. Bill 1843, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1843.

¹⁰ Section 3025.5(b) provides:

Confidential information contained in a report prepared pursuant to Section 3111 that is disclosed to the licensing entity of a child custody evaluator pursuant to subdivision (a) shall remain confidential and shall only be used for purposes of investigating allegations of unprofessional conduct by the child custody evaluator, or in a criminal, civil, or administrative proceeding involving the child custody evaluator. All confidential information, including, but not limited to, the identity of any minors, shall retain their confidential nature in a criminal, civil, or administrative proceeding resulting from the investigation of unprofessional conduct and shall be sealed at the conclusion of the proceeding and shall not subsequently be released. Names that are confidential shall be listed in attachments separate from the general pleadings. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the licensing entity decides that no further action will be taken in the matter of suspected licensing violations.

Further, prompted by the recommendations of the Elkins Family Law Task Force to “assess the usability or readability of family law forms,”¹¹ the committee recommends revising the language in the section titled “Unwarranted Disclosure of the Report” to better explain the definition of “unwarranted disclosure” and other terms such as “recklessly or maliciously,” and further directs the form user to read the section below to understand who can receive the report. The committee recommends that the section be revised as follows:

You must not make an “unwarranted disclosure” of the child custody evaluation report. [¶] A disclosure of the child custody evaluation report is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child. This means that you must not misuse or intentionally give the confidential report to someone who is not allowed to have it. The only people who are allowed access to the report are listed below.

The committee also considered changing the description of the Attorney Fees and Costs section by revising the current language in the first paragraph to align with the language of section 3111(d).¹² The code section allows the court to penalize or refrain from penalizing the person found to have made an unwarranted disclosure of the child custody evaluation report.

As to this area of form FL-328, the committee sought specific comment about how best to communicate the law regarding potential penalties for disclosure. Specifically, the committee sought comment about whether the warning should include the statutory language that penalties may be waived “if the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs will cause an unreasonable financial burden.”

The proposed revisions to form FL-328 are intended to make the form more user-friendly and easier for self-represented litigants to understand. They reflect the plain-language principles used in Judicial Council domestic violence forms, such as simplifying language, explaining legal concepts, eliminating unnecessary repetition, providing more white space on each page, minimizing the use of italicized font, using rounded boxes for instructions, and reorganizing content.

Confidential Child Custody Evaluation Report (form FL-329)

The committee recommends changing the title of the form to *Confidential Child Custody Evaluation Report Under Family Code Section 3118*. In addition, the committee recommends adding a new first page to this form to serve as a built-in cover sheet for the mandated report template.

¹¹ Recommendation V.A.1.f. on page 91 of the *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), <http://www.courts.ca.gov/documents/elkins-finalreport.pdf>.

¹² Section 3111(d) provides, in pertinent part, that “[t]he court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed.”

The new first page will include a notice about the confidentiality of the report, as well as specific language from section 3118 about service requirements and access to the report. Making these changes to the first page, instead of listing them as part of the form FL-328 cover sheet (and requiring form FL-328 to be attached to form FL-329), will streamline the process for filing the report and better ensure that the access provisions for section 3118 reports are not confused with those for reports under section 3111. Finally, in light of the above proposed changes, the current notice box will be deleted in its entirety to avoid redundancy.

Policy implications

There were no policy implications that contributed to controversy or intense debate within the committee about the proposal. The changes to the rule and forms will help the courts, the evaluators, and the parties and their attorneys understand and distinguish between the limitations on access to the child custody evaluation report under sections 3111 and 3118, and further protect the confidentiality of the report consistent with these two statutes.

Comments

The invitation to comment was circulated for public comment from December 10, 2021, to January 21, 2022, as part of the regular winter comment cycle. The committee received a total of 13 comments. Commenters included the Superior Courts of Orange and San Diego Counties, the Executive Committee of the Family Law Section of the California Lawyers Association, the California Association of Certified Family Law Specialists, the Legal Aid Association of California and four legal aid organizations, and three individuals. Nine organizations agreed with the proposal, suggested other revisions, and responded to specific questions from the committee. One organization and two individuals did not specifically indicate a position but suggested changes or responded to specific questions from the committee. One individual generally disagreed with the proposal but provided no specific comment about the rule or any of the forms.

No commenter suggested additional changes to rule 5.220 or to forms FL-327, FL-327(A), or FL-329.

Form FL-328

All organizations that responded to the specific question about how to present information in the form regarding sanctions stated their preference for the wording in option (a) (“The sanction may also include attorney’s fees, costs incurred, or both”) instead of option (b) (“The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs will cause an unreasonable financial burden”). One person who commented responded that the form should include a modified version of option (b), as it would be a better deterrent.

Some of the reasons that the commenters gave for supporting option (a) are as follows:

- Option (a) is best suited due to its brief statement allowing further discretion by each court.

- Option (b) might make a litigant feel they are justified in disclosing the report or might feel no sanction might be imposed.
- Option (b) would diminish the importance of the private nature of the reports.
- Option (b) may allow a person to believe that the court would not penalize them if the person felt justified in disclosing or if they would not have the ability to pay fees and costs under the statute.
- Option (a) does not take away the court's discretion to determine whether unwarranted disclosures of confidential information are justified or whether a fine would be an unreasonable burden.

After further discussion, the committee recommends that the form be revised to include the language in option (a), as it is a more concise statement that would help avoid confusing the parties and attorneys about the issue of unwarranted disclosure of the child custody evaluation report under section 3111.

General comments about form FL-329

Six organizations suggested changes to the form to ensure that all documents attached to the report are also private and confidential. Five organizations suggested that the Judicial Council adopt a new standard attachment to be used only for form FL-329 and change the numbering system on the form so that the evaluator can write in the number on each page (for example, “page __ of __”) instead of numbering each page 1 through 8. The sixth organization recommended that FL-329 reference that all attachments are considered confidential and subject to the same limited access as the report.

In support of their recommendation to create a new attachment form, the five organizations that commented in a joint statement indicated that, “[w]ithout being clearly and accurately marked, attachments could easily be lost and mistaken for non-confidential documents. By allowing for accurate page counts, this will aid in more efficient, organized, and accurate workflows for both litigants and the court.”

The committee does not agree that a new standard attachment form for form FL-329 would resolve the issue raised by the commenter. Form FL-329 requires that any attachments be made a part of the report and filed as one complete document. For example, item 13 requires that the evaluator specify the number of pages attached to the report. In addition, not all attachments will be written by the evaluator, as they may include written evaluations or reports from other professionals. Further, because Judicial Council forms must be numbered, the committee does not recommend revising the form to the page numbering system that the commenters suggest.

To respond to the issue raised by the commenters, the committee recommends revising the first page to include an entry for the evaluator to specify the total number of pages of the report. The new language would also include that the total count will include the cover page and all attachments, as well as a notice that “Attachments are confidential and must NOT be filed or served separately from the report.” These changes would underscore that all attachments to the

report are not separate and apart from the whole report. It would also allow the court to understand that the attachments in the report must be maintained as part of the confidential file.

Finally, one commenter expressed the belief that the form should be changed to remove the requirement for the evaluator to obtain information, materials, or the opinions of other professionals such as “various CPS and law enforcement investigators” and “suggest[ed] those opinions not be the initial focus and emphasized in the CCE Report, although they should be commented on.” However, the content of the form is mandated by Family Code section 3118 and cannot be changed to reduce the importance of the input obtained from any professional person or organization with whom the evaluator must consult in the course of the investigation into serious allegations of child sexual abuse or child abuse.

Responses to specific questions about form FL-329

All five organizations that commented agreed that, instead of requiring the evaluator to attach a separate cover sheet to the completed evaluation report, form FL-329 should be revised so the first page includes a notice about confidentiality, the service requirements, and the limitations on access to the report under section 3118. They generally agreed that, rather than requiring a separate cover page, the change will make the form more comprehensive, eliminate confusion for the parties, and help streamline the process of filing and serving the report.

One person commented that the burden should be on the court to specifically identify the form that must be included as the cover page to the report. The committee disagrees with this suggestion and does not recommend revising the rule and forms to place the burden on the judicial officer. The changes recommended to rule 5.220 and forms FL-328 and FL-329 eliminate any confusion about the cover pages that must be attached to child custody evaluations under section 3111 and 3118 and thus avoids the need for judicial intervention for the evaluator to understand the requirements for compiling the final reports.

Comments on other specific questions

The committee sought comment on seven specific questions about the form. The first four questions received short and unanimous responses.

- *Does the proposal appropriately address the stated purpose?*
Three commenters responded yes to this question without further comment.
- *Will the proposal provide cost savings? If so, please quantify.*
Two commenters responded no to this question without further comment.
- *Will 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*
Two commenters replied yes to this question without further comment.
- *How well will this proposal work in courts of different sizes?*
Two courts responded. One large court responded that the proposal would work for a

court of its size. The other responded “[t]he proposal appears to work for courts of different sizes.”

- *What would be the implementation requirements for courts?*

Two courts responded and identified the following: notification to staff and the public, training for staff, training the business office, and updating names in the case management system.

Alternatives considered

The committee considered proposing changes only to rule 5.220 and form FL-328; however, on further review, the committee determined that changes to the other forms are needed to fully implement the statute.

The committee also considered proposing revisions to *Child Custody Evaluation Information Sheet* (form FL-329-INFO)¹³ to distinguish between child custody evaluations completed under section 3111 and those completed under 3118. However, the committee determined that no changes are needed to the form based on the changes proposed to the rule and other forms in the present cycle. This is because form FL-329-INFO is written in a very general manner, includes no references to forms, and already includes a description on the second page that the evaluator may be appointed to investigate and make recommendations about safety issues, including the protection needs of the child in cases involving allegations of domestic violence and child sexual abuse.

Fiscal and Operational Impacts

The impact to the courts includes costs to copy the new and revised forms, as well as the cost to educate court-connected child custody evaluators about the changes to the rule and forms in the proposal. Courts may also need to update their case management systems and create new docket codes due to the new file-stamp area on form FL-328, which must remain attached to the child custody evaluator’s report under section 3111.

Attachments and Links

1. Cal. Rules of Court, rule 5.220, at page 12
2. Forms FL-327, FL-327(A), FL-328, and FL-329, at pages 13–25
3. Chart of comments, at pages 26–45
4. Attachment A: Spring 2021 chart of comments

¹³ Form FL-329-INFO, <https://www.courts.ca.gov/documents/fl329info.pdf>.

Rule 5.220 of the California Rules of Court is amended, effective September 1, 2022, to read:

Rule 5.220. Court-ordered child custody evaluations

(a)–(f) * * *

(g) Confidential written report; requirements

(1) *Family Code section 3111 evaluations.* An evaluator appointed under Family Code section 3111 must do all of the following:

(A) File and serve a report on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150; and

(B) Attach a *Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111* (form FL-328) as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(2) *Family Code section 3118 evaluations.* An evaluator appointed to conduct a child custody evaluation, investigation, or assessment based on (1) a serious allegation of child sexual abuse; or (2) an allegation of child abuse under Family Code section 3118 must do all of the following:

(A) Provide a full and complete analysis of the allegations raised in the proceeding and address the health, safety, welfare, and best interests of the child, as ordered by the court; and

(B) Complete, file, and serve *Confidential Child Custody Evaluation Report Under Family Code Section 3118* (form FL-329) on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150.

~~(C) Attach *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) as the first page of the child custody evaluation report in (B) to inform the parties or their attorneys of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.~~

(h)–(k) * * *

1. The court appoints:

a. ☐ a local court-connected child custody evaluation service (*specify*):

b. ☐ a private child custody evaluator (*specify*):

c. ☐ family court services

d. ☐ other (*specify*):

in this matter to perform (*check one*):

e. ☐ a full child custody evaluation

f. ☐ a partial child custody evaluation

under the statutory authority of:

g. ☐ Family Code section 3111.

h. ☐ Family Code section 3118.

(You must attach Additional Orders for Child Custody Evaluations Under Family Code Section 3118 (form FL-327(A)).

i. ☐ Evidence Code section 730.

j. ☐ Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

2. The names and dates of birth of the children are (*specify*):

☐ [See attachment.](#)

Name	Date of birth
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3. The purpose and scope of the evaluation is (*specify*):
☐ [See attachment.](#)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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4. DETERMINATION OF FEES AND PAYMENT

- ☐ See attached order on fees and costs.
- a. The evaluator will be compensated as follows:
 (Specify amount or rate and terms):
☐ The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.
- b. The court finds that the parties are able to pay the cost of the child custody evaluation. The parties are ordered to pay as follows:
 (1) ☐ Petitioner/plaintiff must pay % of the cost. ☐ Respondent/defendant must pay % of the cost.
 (2) ☐ The court reserves jurisdiction to reallocate the cost of the evaluation between the parties.
 (3) ☐ Other: *(specify):*
- c. Payment will be made as follows:
 (1) ☐ Petitioner/plaintiff must make installment payments of \$ per month until the cost of the evaluation is paid or modified by court order.
 (2) ☐ Respondent/defendant must make installment payments of \$ per month until the cost of the evaluation is paid or modified by court order.
 (3) ☐ Other: *(specify):*

5. NOTICE TO EVALUATOR

Within 10 court days of receipt of this order and before the evaluation, the child custody evaluator must file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) with the court unless the person is a court-connected employee who must annually file the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (FL-325).

6. EVALUATIONS UNDER FAMILY CODE SECTION 3118

Additional orders apply to evaluations conducted under Family Code section 3118. See attached *Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)). The evaluator must use *Confidential Child Custody Evaluation Report Under Family Code Section 3118* (form FL-329) to complete the report.

7. REQUIRED NOTICE FOR FAMILY CODE SECTION 3111 EVALUATIONS

Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111 (form FL-328) must be attached as the first page of the child custody evaluation report.

For more information, read Family Code section 3111 and *Child Custody Evaluation Information Sheet* (form FL-329-INFO). The form is available from the office of the court clerk or online at www.courts.ca.gov/forms.htm.

8. INSTRUCTIONS FOR INITIAL CONTACT

- a. ☐ The evaluator will contact each party.
- b. ☐ Each party must contact the evaluator.
- c. ☐ Additional instructions *(specify):*

9. OTHER

10. ☐ Additional orders attached.

Number of pages attached: _____

Date: _____

JUDICIAL OFFICER

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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**ADDITIONAL ORDERS REGARDING CHILD CUSTODY EVALUATIONS
UNDER FAMILY CODE SECTION 3118**

(Attachment to *Order Appointing Child Custody Evaluator* (form FL-327))

1. MANDATORY CONSIDERATIONS (Family Code section 3118(f))

The court has considered the best interests of the child and finds that:

- a. ☐ No temporary orders are needed to limit, suspend, or deny visitation (parenting time) with the parent against whom the allegations have been made.
- b. ☐ Temporary orders are needed and will issue or have issued in accordance with Family Code section 3011 that:
 - (1) ☐ limit visitation (parenting time) with the parent against whom allegations have been made to situations in which a third party specified by the court is present.
 - (2) ☐ suspend visitation (parenting time) with the parent against whom the allegations have been made.
 - (3) ☐ deny visitation (parenting time) with the parent against whom the allegations have been made.

2. MINIMUM REQUIREMENTS OF THE EVALUATION (Family Code section 3118(b))

The child custody evaluator, at a minimum, must do all of the following:

- a. **Consult with the agency providing child welfare services.**
Consult about the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.
- b. **Review and summarize the child welfare services agency file.**
 - (1) The evaluator must not photocopy any document contained in the child welfare services agency file.
 - (2) A summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded.
 - (3) The evaluator must not record the identity of the party who reported the information in (2).
 - (4) Keep in a separate file any notes summarizing the child welfare services agency information and release them to either party only by court order.
- c. **Consult with law enforcement.**
Consult with law enforcement about the allegations of child sexual abuse and obtain recommendations from those professionals regarding the child's safety and the child's need for protection.
- d. **Obtain information from a law enforcement investigator.**
Obtain from this professional all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.
- e. **Review the results of any multidisciplinary child interview team (MDIT) interview.**
- f. **Interview the child or request an MDIT interview of the child if:**
 - (1) The MDIT is not available or was not completed;
 - (2) The evaluator believes the MDIT is inadequate for purposes of the evaluation; or
 - (3) A repeated interview of the child cannot be avoided. The evaluator must, wherever possible, avoid repeated interviews of the child.
- g. **Request a forensic medical examination of the child.**
Request the examination from the appropriate agency or include in the required report a written statement about why the examination is not needed.
- h. **Do not disclose the identity of any person making a report of suspected child abuse.**
Do not disclose any information about the identity of any person making a report of suspected child abuse in accordance with Penal Code section 11167(d).

3. CONFIDENTIAL WRITTEN REPORT (Family Code section 3118(b)(6) and (d))

The child custody evaluator must:

- a. **Complete Confidential Child Custody Evaluation Report Under Family Code Section 3118** (form FL-329);
- b. File the completed report with the clerk of the court in which the child custody hearing will be conducted; and
- c. Serve the completed report on the parties or their attorneys and any attorney for the child at least 10 days before the hearing.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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4. **JUVENILE COURT RECORDS** (Family Code section 3118(a) and (g))

The child custody evaluator must:

- a. Have access to all juvenile court records pertaining to the child who is the subject of the evaluation.
- b. Keep confidential any juvenile court records or information gained from those records.
- c. Only release the records described above in b as specified in Family Code section 3111(b).
- d. Suspend the evaluation if a petition is filed to declare the child a dependent child of the juvenile court under Welfare and Institutions Code section 300.
- e. Make available to the juvenile court all information the evaluator gathered if a petition is filed as described above in d.

5. ☐ **ORDER FOR FURTHER EVALUATION** (Family Code section 3118(e))

The court orders further evaluation beyond the minimum requirements to determine the safety needs of the child as follows:

**Notice Regarding Confidentiality
of Child Custody Evaluation Report
Under Family Code Section 3111**

Clerk stamps date here when form is filed.

**Draft - Not
approved by the
Judicial Council
v. 3/09/2022**

Case name:

► At least 10 days before any hearing regarding custody of the child, the evaluator must (1) file the report with the clerk of the court, and (2) serve it on the parties or their attorneys and counsel appointed for the child.

► This form must be attached as the first page of the child custody evaluation report.

► The child custody evaluation report is private and confidential. It MUST NOT become part of the public court file.

Case Number:

THE ATTACHED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL

Unwarranted disclosure of the report	<p>You must not make an "unwarranted disclosure" of the child custody evaluation report.</p> <p>A disclosure of the child custody evaluation report is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child. This means that you must not misuse or intentionally give the confidential report to someone who is not allowed to have it. The only people who are allowed access to the report are listed below.</p>	
Possible sanctions for an unwarranted disclosure of the report	Monetary Sanctions:	The court may order that the person who made an unwarranted disclosure of the report pay a sanction (a fine) in an amount that is large enough to discourage future disclosures.
	Attorney's Fees and Costs:	The possible sanctions may also include reasonable attorney's fees, costs, or both.
Access to report	<p>Reports conducted under section 3111 may be made available to only the following:</p> <p>(1) The parties, their attorneys, and attorneys from whom the parties seek legal representation.</p> <p>(2) Any attorney appointed to represent the child under Family Code section 3150.</p> <p>(3) Court professionals who would receive it directly from the evaluator or the court to do their job, including:</p> <ul style="list-style-type: none"> Family court judicial officers Family court employees Family law facilitators Juvenile court judicial officers Juvenile probation officers Child protective services Probate court judicial officers Guardianship investigators Law enforcement officers <p>(4) The agency responsible for licensing and disciplining the child custody evaluator.</p> <p>(5) Others, but only by court order.</p>	
Information	<p>For information about child custody evaluations,</p> <ul style="list-style-type: none"> Read <i>Child Custody Evaluation Information Sheet</i> (form FL-329-INFO). Go to: https://selfhelp.courts.ca.gov/child-custody/evaluations. 	
Total Pages	<p>TOTAL NUMBER OF PAGES OF THE REPORT (specify): _____</p> <p>(Include in the total, the cover page and all attachments.)</p> <p>Attachments are confidential and must NOT be filed or served separately from the report.</p>	

EVALUATOR: _____ NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____		FOR COURT USE ONLY CONFIDENTIAL DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL V. 4.07.22
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____		
STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARENT/PARTY: _____		
CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT UNDER FAMILY CODE SECTION 3118		CASE NUMBER: _____

NOTICE

**This child custody evaluation report is private and confidential.
It must NOT become part of the public court file.**

- ▶ **At least 10 days before any hearing regarding custody of the child, the evaluator must file the report with the clerk of the court and serve it on the parties or their attorneys and the attorney appointed for the child.**
- ▶ **The report may not be made available to anyone other than the parties or their attorneys, the attorney appointed for the child, and the court.**

TOTAL NUMBER OF PAGES OF THE REPORT (specify): _____

(Include in the total the cover page and all attachments.)

Attachments are confidential and must NOT be filed or served separately from the report.

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1. The *Order Appointing Child Custody Evaluator* (form FL-327) filed on (date) _____ is attached (see Attachment 1).
2. The names and dates of birth of each child are (specify): ☐ Additional children are listed on Attachment 2.

Child's name

Date of birth

3. Dependency court orders

- a. ☐ There are no dependency court orders that might affect child custody. ☐ See Attachment 4
- b. ☐ There are dependency court orders that might affect child custody, as follows: ☐ See Attachment 3b(1).

(1) Court (county, state) Case number Date order filed

- (2) Any dependency court orders or findings that might have a bearing on the child custody dispute in family court are summarized (specify): ☐ Below: ☐ See Attachment 3b(2).

4. Summary of child welfare agency investigations and recommendations

- a. The children listed in 2 and the children's parents are or have been the subject of a child abuse investigation (specify):
☐ Yes ☐ No (Skip b through f; go to item 5.)
- b. I consulted with the agencies providing child welfare services about the serious allegation of child sexual abuse or the allegation of child abuse, reviewed the child welfare agencies' files, and obtained recommendations from social workers about each child's safety and need for protection. (You must not photocopy any document contained in the child welfare services agency file.)
- c. The status or disposition of the investigation about the safety of each child is (specify): ☐ Below: ☐ See Attachment 4c.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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d. The contact information for each social worker is (*specify*): ☐ See Attachment 4d.

Name:	Name:
Telephone No.:	Telephone No.:
Mailing Address:	Mailing Address:
City and Zip Code:	City and Zip Code:
Email address:	Email address:

e. A summary of all child welfare agency investigations about the safety of each child (including statements made by each child and the parents, information about child abuse, domestic violence, or substance abuse, and recommendations made or anticipated to be made regarding safety of each child) are (*specify*): ☐ Below: ☐ See Attachment 4e.

f. Recommendations made or anticipated to be made by each social worker to the juvenile court about the safety and need for protection of each child are (*specify*): ☐ Not applicable to this case. ☐ Below: ☐ See Attachment 4f.

5. Summary of law enforcement investigation and recommendations

a. I consulted with law enforcement about the serious allegation of child sexual abuse or the allegation of child abuse and obtained recommendations from these professionals about each child's safety and need for protection.

b. Recommendations from each law enforcement professional about each child's safety and need for protection are summarized (*specify*): ☐ Below: ☐ See Attachment 5b.

c. I obtained from a law enforcement investigator all available information obtained from criminal background checks of (*specify*): ☐ the parents ☐ any suspected perpetrator that is not a parent including information about child abuse, domestic violence, or substance abuse.

d. A summary of the information obtained from each law enforcement investigator is (*specify*): ☐ Below: ☐ See Attachment 5d.

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6. Multidisciplinary and forensic examinations; interview of the child

a. Multidisciplinary interview team (MDIT) interviews

- (1) ☐ I reviewed the results of the MDIT interview.
- (2) ☐ I requested an MDIT interview because (*select one*):
- (a) ☐ There was no MDIT interview of the child.
- (b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.
- (3) ☐ I interviewed each child because (*select one*):
- (a) ☐ There was no MDIT interview of the child.
- (b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.
- (4) Whenever possible, I avoided repeated interviews of the child.
- (5) A summary of ☐ the MDIT ☐ my interview of each child is: ☐ Below: ☐ See Attachment 6a(5).
- (6) Written documentation of ☐ the MDIT ☐ my interview of each child is attached (see Attachment 6a(6)).
- (7) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from (*specify*):
☐ the MDIT interview ☐ my interview with each child. A summary of the information is (*specify*):
☐ Below: ☐ See Attachment 6a(7).

b. Forensic examination of the child

- (1) ☐ I reviewed the forensic medical examinations of each child.
- (2) ☐ No forensic medical examination of the child or children was conducted, and (*select (a) or (b)*):
- (a) ☐ I requested a forensic medical examination of each child.
- (b) ☐ I did not request a forensic medication examination. The examination is not needed because (*explain*):
☐ Below: ☐ See Attachment 6b(2)(B).
- (3) A summary of the forensic medical examination of each child is (*specify*): ☐ Below: ☐ See Attachment 6b(3).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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- (4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
 A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 6b(4).

- (5) A copy of all written forensic medical reports is included with this report. ☐ See Attachment 6b(5).

7. Documentation of other material interviews; relevant background material

- a. ☐ I interviewed the parents.
 (1) A summary of each interview is (*specify*): ☐ Below: ☐ See Attachment 7a(1).

- (2) Written documentation of each interview is attached (see Attachment 7a(2)).

- (3) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
 A summary of the information is (*specify*): ☐ Below: ☐ see Attachment 7a(3).

b. Prior or currently treating therapists

- (1) ☐ I interviewed each child's ☐ current therapist ☐ prior therapist treating for suspected child abuse.
 A summary of each interview (excluding any privileged communication) is ☐ Below: ☐ See Attachment 7b(1).

- (2) ☐ I reviewed ☐ I obtained written reports from therapists treating each child for suspected child abuse.
 A summary of each report (excluding any privileged communication) is: ☐ Below: ☐ See Attachment 7b(2).

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- (3) ☐ All written reports from the therapists (excluding privileged communication) are attached (see Attachment 7b(3).)
- (4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
 A summary (excluding privileged communication) is (*specify*): ☐ Below: ☐ See Attachment 7b(4).

c. Medical personnel; other medical examinations

- (1) ☐ I interviewed other medical personnel who provided relevant information (*specify in summary*).
- (2) ☐ I reviewed ☐ I obtained all written results from other medical examinations or treatments that could help establish or disprove whether each child has been the victim of sexual abuse or other child abuse under Family Code section 3118.
- (3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7c(3).

- (4) ☐ All written reports from the above medical examinations are attached (see Attachment 7c(4)).
- (5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
 A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 7c(5).

d. Other professionals

- (1) ☐ I interviewed other professionals who provided relevant information (*specify in summary*).
- (2) ☐ I reviewed ☐ I obtained all written results from other professionals that could help establish or disprove whether the child has been the victim of sexual abuse or other child abuse under Family Code section 3118.
- (3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7d(3).

- (4) ☐ All written reports from other professionals are attached (see Attachment 7d(4)).

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- (5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources.
A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 7d(5).

e. Other witnesses

- (1) ☐ I interviewed other witnesses who provided relevant information (*specify in summary*).
(2) A summary of each interview is (*specify*): ☐ Below: ☐ See Attachment 7e(2).

- (3) Written documentation of each witness interviewed is attached (see Attachment 7e(3)).
(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources.
A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 7e(4).

8. Victims of Crime Program

List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence (*specify*): ☐ Below: ☐ See Attachment 8.

9. Limitations in the evaluation

Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews. ☐ Below: ☐ See Attachment 9.

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10. **Other**

Additional information that I believe would be helpful to the court in determining the best interests of the child under Family Code section 3011 (*specify*): ☐ Below: ☐ See Attachment 10.

11. **My recommendations** regarding the therapeutic needs of each child and how to ensure the safety of each child are (*specify*):

☐ Below: ☐ See Attachment 11.

12. **Summary of procedures**

I have summarized the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached. ☐ Below: ☐ See Attachment 12.

13. Number of pages attached: _____

Date:

(NAME OF EVALUATOR)

 _____
SIGNATURE OF EVALUATOR

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	Leslie A. Abbott, MA. MFCC CCRC, Investigator & Manager Family Court Services Superior Court of Kings County	NI	See specific comments below.	See specific responses below.
2.	California Association of Certified Family Law Specialists By: Justin O'Connell, Legislative Director Woodland	A	See specific comments below.	See specific responses below.
3.	Legal Aid Association of California by: Alison Corn, Legal Design Attorney <i>Jointly with:</i> Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney Community Legal Aid SoCal by: Sarah Reisman, Directing Attorney Neighborhood Legal Services of Los Angeles County by: Ana Maria Garcia, Vice President of Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs	A	See specific comments below.	See specific responses below.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
4.	Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	A	<p>Neighborhood Legal Services of Los Angeles County agrees with the intent behind the proposed changes and considerations for confidentiality for child custody evaluations ordered under Family Code section 31 18. We believe that there is a heightened need to protect minor children when allegations of child sexual abuse are involved. Child custody evaluation reports can contain information that is extremely sensitive and should not be distributed to any unauthorized persons or agencies and that the judicial forms should be revised to ensure confidentiality and limited access.</p> <p>We are generally in agreement with proposed changes as a whole. However, we provide feedback and comment regarding the following points:</p> <p>See specific comments below.</p>	See specific responses below.
5.	Cathy Marie Rodriguez Chaparral, New Mexico	N	I do not agree with any of the plans that are done indirectly with other sources and or people. Should be directed to the person it pertains to and not done in language that is not understood.	The committee is unable to respond to the comment, as it is not specific as to any rule or form included in the proposal.
6.	Superior Court of Orange County Family Law Division	NI	The proposed changes seem minimal but can make a greater impact to self-represented parties in their understanding of the evaluation process and the need to keep these reports confidential.	See specific responses below.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			The proposed changes appear to be acceptable and reasonable.	
7.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	See specific comments below.	See specific responses below.
8.	The Executive Committee of the Family Law Section of the California Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	A	See specific comments below.	See specific responses below.
9.	The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	NI	See specific comments below.	See specific responses below.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

1. Comments about rule 5.220		
Commenter	Comment	Committee Response
None.		

2. Comments about form FL-327		
Commenter	Comment	Committee Response
None.		

3. Comments about form FL-327(A)		
Commenter	Comment	Committee Response
None.		

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

3. General Comments About Form FL-328		
Commenter	Comment	Committee Response
Leslie A. Abbott, MA. MFCC CCRC, Investigator & Manager Family Court Services Superior Court of Kings County	I respectfully recommend the Judicial Council of California consider a modification of form FL-328 (please see attached) in conjunction of the modification in proposed revisions to the code section and the forms. It is respectfully suggested that a For Court Use Only box be provided on the form to allow a Civil Clerk to appropriately file stamp the form. Also, add the word 'evaluation' to the sentence following 'Important Notice:' That is, the form to read: This form must be attached as the first page of the child custody evaluation report. In some counties, CEOs, Clerks, FCS Directors, and FCS Managers interpret this to mean, this form is attached to each, and every mediation or child custody recommended counseling report, even though the information in the form specifies the form is for Evaluation Report. This results in the waste of paper and time for the submitter and the clerks.	<p>The committee thanks the commenter for submitting comments, and notes that the form the commenter attached to her response is the one currently published on the California Courts Web Site, not the proposed revised form that circulated for comment.</p> <p>The proposed revised form FL-328 that circulated for comment (page 14 of the proposal) included each of the changes that the commenter suggested. Therefore, no changes are recommended based on this comment.</p>

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

5. Responses to Specific Questions about form FL-328

Should the paragraph about “Attorney’s Fees & Costs” on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

- (a) The sanction may also include reasonable attorney’s fees, costs incurred, or both.
- (b) The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
California Association of Certified Family Law Specialists By: Justin O’Connell, Legislative Director Woodland	ACFLS agrees with the Judicial Council’s observation that such language should be excluded, so that a litigant will not feel they might be justified in disclosing the report or might feel no sanction would be imposed.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
Legal Aid Association of California by: Alison Corn, Legal Design Attorney <i>Jointly with:</i> Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney Community Legal Aid SoCal by: Sarah Reisman, Directing Attorney Neighborhood Legal Services of	Exclude Attorney’s Fees & Costs Language To best effectuate the purpose of form FL-328, which is to keep child custody evaluations confidential, it is our position that the language suggested in (a) “the sanction may also include reasonable attorney’s fees, costs incurred, or both,” excluding language from Family Code section 3111(d), should be used for two reasons. First, including language from Family Code section 3111(d) dilutes the legitimacy of the form’s purpose, and second, excluding the language from Family Code section 3111(d) does not remove the court’s discretion. Legitimacy of the Form’s Purpose The purpose of form FL-328 is to keep sensitive information contained in child custody evaluations confidential. Telling litigants that there is a justifiable expectation to the requirement of confidentiality, including that a person who	<p>The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.</p> <p>The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.</p>

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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- (a) The sanction may also include reasonable attorney’s fees, costs incurred, or both.
- (b) The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
Los Angeles County by: Ana Maria Garcia, Vice President of Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs	<p>exposed confidential information may not be fined for such exposure if the court determines the fine would pose an unreasonable burden, dilutes the legitimacy of the form’s purpose. Though a child custody evaluation may have been made confidential, disclosing this exception to confidentiality puts litigants on notice that that confidentiality is not guaranteed nor always punishable if not preserved: it gives litigants a way around keeping sensitive child custody evaluations confidential. Further, the language may confuse self-represented litigants more so than those who have the benefit of representation. As such, it is our position that including language from Family Code section 3111(d) will evidence an increase in litigants seeking justified exceptions to unwarranted disclosures of confidential information.</p> <p>Court’s Discretion Intact Critically, excluding the language from Family Code section 3111(d) on form FL-328 does not take away the court’s discretion to determine whether unwarranted disclosures of confidential information are justified or whether a fine would be an unreasonable burden. These are fact-based determinations which courts are well equipped to make and should not require a formal request from litigants.</p>	<p>The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.</p>

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

5. Responses to Specific Questions about form FL-328

Should the paragraph about “Attorney’s Fees & Costs” on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

- (a) The sanction may also include reasonable attorney’s fees, costs incurred, or both.
- (b) The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
	By excluding language from Family Code section 3111(d) on form FL-328, the purpose and usability of the form will be bolstered. Additionally, the court’s discretion to determine whether there is a justified exception to unwarranted disclosures of confidential information or whether a fine for such disclosures would pose an unreasonable burden will remain intact.	
Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	<p>The form FL-328 should exclude the language that authorizes the court to not penalize a party who makes an unwarranted disclosure of a child custody evaluation report. The purpose of the revisions is to make it clear that there are clear penalties and consequences imposed for unauthorized distribution of the reports. If the language from 31 I I (d) was included, it would diminish the importance of the private nature of the reports.</p> <p>To be clear, the form FL-328 should read to state that "The sanction may also include reasonable attorney's fees, costs incurred, or both." It should not include any language that explicitly states that the court has discretion to find that such distribution was justified or would cause unreasonable</p>	<p>The committee thanks the commenter for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.</p> <p>The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.</p>

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

5. Responses to Specific Questions about form FL-328

Should the paragraph about “Attorney’s Fees & Costs” on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

- (a) The sanction may also include reasonable attorney’s fees, costs incurred, or both.
- (b) The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
	financial burden on the person. The discretion would still remain with the court to order attorney's fees or costs as the language does not mandate such fees but allows for it if found by the court to warrant such.	
Superior Court of Orange County Family Law Division	It is suggested to utilize (a) as it is best suited due to its brief statement allowing further discretion by each court.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Option a, for the reason set forth in the report (i.e. A person may believe that the court would not penalize them if the person felt justified in disclosing or if they would not have the ability to pay fees and costs under the statute).	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
The Executive Committee of the Family Law Section of the California Lawyer’s Association (FLEXCOM) by Justin M. O’Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	FLEXCOM agrees with the observation in the Invitation to Comment that if option (b) were used, a litigant might feel they are justified in disclosing the report or might feel no sanction might be imposed, so such language should be excluded.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

5. Responses to Specific Questions about form FL-328

Should the paragraph about “Attorney’s Fees & Costs” on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

- (a) The sanction may also include reasonable attorney’s fees, costs incurred, or both.
- (b) The sanction may also include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	Instead of providing that Family Code § 3111(d) authorizes the court to not to penalize a party who made an unwarranted disclosure of a CCE report, I suggest Forms emphasize that the party will be sanctioned, including attorneys fees and costs, "unless" the Court finds the party made an unwarranted disclosure. I believe such language is a better deterrent.	The committee thanks the commenter for the response. However, the committee recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

6. General Comments About Form FL-329		
Commenter	Comment	Committee Response
<p>Legal Aid Association of California by: Alison Corn, Legal Design Attorney</p> <p><i>Jointly with:</i></p> <p>Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney</p> <p>Community Legal Aid SoCal by: Sarah Reisman, Directing Attorney</p> <p>Neighborhood Legal Services of Los Angeles County by: Ana Maria Garcia, Vice President of</p> <p>Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs</p>	<p>Form FL-329 Attachments Typically, child custody evaluations are long, thorough documents. With that in mind, we are concerned about attachments being noted as and kept confidential unless a standard attachment form specific to form FL-329 is created. Ideally, this standard attachment form would indicate its confidential nature.</p> <p>Further, both form FL-329 and the standard attachment form should include the following format for page numbers: page ___ of ___, to allow litigants to reflect the accurate number of pages. It is our position that this formatting change will aid in ease of use for litigants, as currently the form states there are a set number of pages, such as page 8 of 8, for example. Yet, this form will have attachments included with it. Without being clearly and accurately marked, attachments could easily be lost and mistaken for non-confidential documents. By allowing for accurate page counts, this will aid in more efficient, organized, and accurate workflows for both litigants and the court.</p>	<p>The committee does not agree that a new standard attachment form for form FL-329 would resolve the issue raised by the commenter. Form FL-329 requires that any attachments be made a part of the report and filed as one complete document. For example, item 13 requires that the evaluator specify the number of pages attached to the report. Further, not all attachments will be written by the evaluator, as they may include written evaluations or reports from other professionals.</p> <p>Because Judicial Council forms must be numbered, the committee does not recommend revising the form to the page numbering system that the commenter suggests.</p> <p>To respond to the issue raised by the commenter, the committee recommends revising the first page to include an entry for the evaluator to specify the total number of pages of the report. The new language would also include that the total count will include the cover page and all attachments, as well as a notice that “Attachments are confidential and must NOT be filed or served separately from the report.” These changes would underscore that all attachments to the report are not separate and apart from the whole report. It would also allow the court to understand that the attachments in the report are part of the confidential file.</p>
<p>Neighborhood Legal Services of Los Angeles County by: Minyong Lee, Senior Attorney</p>	<p>Form FL-329 should also be revised to ensure that all attached documents also be included as private and confidential. The form FL-329 allows for the evaluator to attach many different reports and information that are also confidential and private on its own merits. Thus, form FL-329 should be referred to</p>	<p>Same as above response to Legal Aid Association of California.</p>

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

6. General Comments About Form FL-329		
Commenter	Comment	Committee Response
	with all attachments to be considered confidential and with limited access.	
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	<p>Proposal as a Whole: First, having reviewed various material, Form FL-329 Confidential Child Custody Evaluation Report ("CCE Report") appears to place great emphasis on the opinions of others, such as various CPS and law enforcement investigators. I suggest those opinions not be the initial focus and emphasized in the CCE Report, although they should be commented on.</p> <p>The risk of "confirmation bias" cannot be over-stated. Confirmation bias is the tendency of people to favor information that confirms their existing beliefs or hypotheses. It happens when a person gives more weight to evidence that confirms their beliefs and undervalues evidence that could disprove it. People display this bias when they gather or recall information selectively, or when they interpret it in a biased way. The effect is stronger for emotionally charged issues and for deeply entrenched beliefs. My concern is bolstered since CPS and law enforcement investigators are often not specially trained to evaluate complex emotional abuse. The Forms should not pressure or cause an Evaluator to conform to others thinking. It is especially dangerous in cases of parental alienation; that is, emotional abuse. Emotional abuse is as serious as other forms abuse, including physical abuse.</p>	<p>In response, the committee disagrees with the suggested changes. The content of the form is mandated by Family Code section 3118, and cannot be changed to reduce the importance of the input obtained from any professional person or organization whom the evaluator must consult in the course of the investigation into serious allegations of child sexual abuse or child abuse.</p> <p>See above response.</p>

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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6. General Comments About Form FL-329		
Commenter	Comment	Committee Response
	<p>The Diagnostic and Statistical Manual of Mental Disorders Fifth Edition defines "child psychological abuse" as any "non-accidental verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child." American Psychiatric Association, DSM-5, 719 (2013). The DSM-5 created two specific codes for diagnosing and treating parental alienation: On page 715 of the DSM-5 manual, the code V61.20 (Z62.820) is to be used in clinical or forensic settings whenever a child presents with "unwarranted feelings of estrangement" within the target parent-child relationship due to the use of "excessive parental pressure" and/or "parental overprotection" and/or "hostility toward or scapegoating [the target parent]" within the alienating parent-child relationship. It is important to note that unwarranted feelings of estrangement due to excessive parental pressure are specific diagnostic indicators of parental alienation. On page 716 of the DSM-5 manual, the code V61.29 (Z62.898) is to be used to help mental health professionals identify, treat, and prevent parental alienation symptoms and sequelae in cases where "the negative effects of parental relationship discord (e.g., high levels of conflict, distress, or disparagement)" involved a concerted effort by one parent to harm or destroy the children's relationship with the other parent. It is important to note that when children are negatively affected by parental relationship distress the reactions of</p>	<p>The information included with this response is not relevant to the proposal that circulated for comment. Therefore, no committee response is required.</p>

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

6. General Comments About Form FL-329		
Commenter	Comment	Committee Response
	the child may include the onset or exacerbation of psychological symptoms, somatic complaints, an internal loyalty conflict, and, in the extreme, parental alienation, leading to loss of a parent-child relationship. Behavioral problems include compositionality and the child's reluctance or refusal to have a relationship with a parent without a good reason (parental alienation).	

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

7. Responses to specific questions about form FL-329,

Should form FL-329 be revised so that the first page includes a notice about confidentiality, the service requirements of the report, and the limitations on access to the report, instead of requiring the evaluator to attach a separate coversheet to the report similar to form FL-328?

Commenter	Comment	Committee Response
California Association of Certified Family Law Specialists By: Justin O'Connell, Legislative Director Woodland	ACFLS agrees that such language and streamlining would be helpful, in that FL-329 would be comprehensive in its advisements and there would not be an additional form that must be used.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.
Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	Form FL-329 should be revised slightly so as to include some additional language that is contained in form FL-328. However, it should not mirror all of the advisements that is contained in the form FL- 328 so as to not lose the simplicity of the first page of the form FL-329. The large and bold print on the first page should be maintained as much as possible. It serves as a natural visual warning and caution to those accessing the report. As an alternative, the form FL-329 may want to refer to the form FL-328 and the advisements contained within. Advisements on the form FL-329 should not replace the form FL-328 and both are needed to ensure protection and confidentiality for the minor child/children.	On further review of the content of form FL-328 compared with form FL-329, the committee recommends that one additional advisement that is contained on form FL-328 be included in form FL-329. Specifically, the committee recommends that form FL-329 include that the child custody evaluation report must NOT become part of the public court file. Other language, apart from the "Information" section on form FL-328 reflects the Family Code section 3111, and does not apply to child custody evaluations involving serious allegations of child sexual abuse or child abuse under Family Code section 3118.
Superior Court of Orange County Family Law Division	It is Orange County's preference to add the notice to the FL-329. Parties will not confuse the cover sheets for FL-328 and FL-329 and would help be more efficient.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.

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Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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Commenter	Comment	Committee Response
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.
The Executive Committee of the Family Law Section of the California Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	FLEXCOM agrees that such language and streamlining would be helpful, in that FL-329 would be comprehensive in its advisements and there is not one more form that must be completed and attached.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed.
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	The burden placed on the Evaluator to determine which Form to place on the CCE Report is problematic. There can be confusion or ambiguity in orders, or mistakes made as to which Form FL-328 (Section 3111) or Form FL-329 (Section 3118) is required to be attached as the cover page/sheet of the report. The burden should be on the Court to specifically identify in the Order Appointing Child Custody Evaluator which Form must be included as the cover page to the report.	The committee disagrees with this suggestion and does not recommend revising the rules and forms to place the burden on the judicial officer. The changes recommended to rule 5.220, form FL-328, and form FL-329 eliminate any confusion about the cover pages that must be attached to child custody evaluations under section 3111 and 3118, and thus, avoids the need for judicial intervention for the evaluator to understand the requirements for compiling the final reports.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

8. Does the proposal appropriately address the stated purpose?		
Commenter	Comment	Committee Response
Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	The proposal does appropriately address the stated purpose. We agree that a specific list of persons or agencies that are permitted to access child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118 makes it clear as to which persons and agencies are allowed access. This is an improvement from the previous language which was vague and unclear as to who was allowed to obtain such reports.	The committee appreciates this information. No response is required.
Superior Court of Orange County Family Law Division	Yes.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee appreciates this information. No response is required.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

9.Would the proposal provide cost savings? If so, please quantify.		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law Division	The outcome of the proposal would not be a cost savings for Orange County.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	No.	The committee appreciates this information. No response is required.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

10. What would the implementation requirements be for courts?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law Division	If a coversheet for FL-329 is created, implementation requirements would just be notification to staff and the public and training for staff. Notification of file stamp area for staff. Minimal impact.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Notifying/training business office staff and updating form names in the case management system.	The committee appreciates this information. No response is required.

W22-04**Family Law: Changes to Child Custody Evaluation Rules and Forms** (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

11. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law Division	Yes, this time should be sufficient.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee appreciates this information. No response is required.

12. How well would this proposal work in courts of different sizes?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law Division	Our court is a large court, and this process can work for a court of our size.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	The proposal appears to work for courts of different sizes.	

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	Clerk's Association of the California Courts of Appeal by Charles D. Johnson, Clerk/Executive Officer Court of Appeal, First Appellate District San Francisco	NI	The Courts of Appeal will have to develop a process for screening Family Law appeals that include "Report conducted under Family Code section 3118" as this would be included in the record as well as the briefing so we'd want to make sure the cases were flagged confidential and the briefs didn't get sent to the Law Library. We will amend our category codes in our case management system accordingly.	No response required.
2.	Orange County Bar Association by Larisa M. Dinsmoor, President Newport Beach	A	No specific comments.	No response required.
3.	Superior Court of Los Angeles County by Brian Borys, Senior Advisor	A	See specific comments below.	See specific responses below.
4.	Superior Court of Orange County Family Law Division	NI	See specific comments below.	See specific responses below.
5.	Superior Court of Riverside County by: Susan D. Ryan, Chief Deputy of Legal Services	A	See specific comments below.	See specific responses below.
6.	Superior Court of San Diego County by Michael Roddy, Executive Officer	AM	See specific comments below.	See specific responses below.
7.	The Executive Committee of the Family Law Section of the California	A	No specific comments.	No response required.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
	Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento			

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)**

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

1. Comments requesting changes to form FL-328		
Commenter	Comment	Committee Response
Superior Court of Riverside County by: Susan D. Ryan, Chief Deputy of Legal Services	<p>We suggest that the FL-328 form be further modified to add a section to identify what type of evaluation is attached.</p> <p>For instance, after</p> <ol style="list-style-type: none"> 1. Case name 2. Case number <p>add</p> <p>3: Child Custody Evaluation Report</p> <p><input type="checkbox"/>Family Code 3111</p> <p><input type="checkbox"/>Family Code 3118</p>	<p>The committee agrees with the commenter and recommends adding check boxes to the top of the form for the evaluator to indicate whether the report was completed under Family Code section 3111 or 3118.</p>
Superior Court of San Diego County by Michael Roddy, Executive Officer	<p>A check box option under “Access to Report” to designate whether the report was conducted under Family Code section 3111 or 3118 may be a good addition. Having a checkbox with this designation would help anyone receiving or processing the report to identify who can access it without having to review other orders from the file to make that determination.</p> <p>The references to Fam. Code sections 3025.5, 3111 under the first bullet point does not include a reference to California Rules of Court, rule 5.220(g)(1), whereas a reference to California Rule of Court, rule 5.220(g)(1) is included in the second bullet point. Since the California Rule of Court applies to both reports conducted under Family Code section 3111 and 3118, it is recommended that both bullets points reference the rule.</p>	<p>The committee agrees with the commenter that the form should include check boxes to designate whether the report was conducted under section 3111 or 3118; however, the committee recommends adding the check boxes at the top of the form for greater prominence.</p> <p>The committee appreciates the comment that the references apply to each of reports. However, to save space and avoid redundancies in the citations to the applicable law in the form, the committee recommends that they only appear in the footer of the page and that the final section of the form be changed to include a reference to other materials relating to child custody evaluations, including a reference and link to <i>Child Custody Evaluation Information Sheet</i> (form FL-329-INFO) and information about evaluations that at https://selfhelp.courts.ca.gov/child-custody/evaluations</p>

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

2. Does the proposal appropriately address the stated purpose?

Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Yes.	No response required.
Superior Court of Orange County Family Law Division	Yes.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	No response required.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)**

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

3. Are there any concerns about the proposed language in form FL-328 regarding those persons who may have access to the evaluation report under Family Code section 3118 (for example, are the proposed revisions consistent with statute)?		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	No concerns.	No response required.
Superior Court of Orange County Family Law Division	No, the language is consistent with FC 3118 which states the report must be filed as confidential with the clerk of the court and shall be served on the parties or their attorneys.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Although Family Code section 3118 does use the term “family court employees[,]” it may be construed too broadly without further specification. Consider using similar language to the section on the form related to Family Code section 3111 such as: “Family court employees <u>who receive the report directly from the evaluator, investigator, or the court to do their job.</u> ”	Instead of proposing revisions to form FL-328 that would include notices for child custody evaluations under Family Code section 3118, the committee circulated a new proposal to revise form FL-329 to include a new first page with the notice requirements of section 3118.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)**

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

4. Would including a file stamp box help improve existing court procedures for filing the reports compared to the current version of form FL-328, that does not include one?)		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor Los Angeles	Recommend that there should be a place to stamp the document cover page as “Filed.” The current version works for electronically-filed reports in Los Angeles because the electronic filing platform places filing information at the top margin of the document, but if staff needs to file stamp the form when it is submitted at the clerk’s office counter rather than via the electronic filing system, the cover page does not leave sufficient space to file stamp the document cover page as the first page of the report.	The committee agrees with the comment and recommends revising the form to include a file-stamped box because form FL-328 is required to be attached as the cover page of the child custody evaluation report.
Superior Court of Orange County Family Law Division Orange	No, since the existing form does not have a file stamp box, the updated version of the form doesn't need one either. The form acts as a coversheet. The existing business practice is to file the report itself and image the report with the coversheet on top. The cover sheet does not get filed or docketed in the case, so it does not need a file stamp. Adding a space for a file stamp might actually be more confusing and cause the form to be filed on its own in error, rather than being included on top of the confidential report.	Rule 5.220(g) of the California Rules of Court requires that form FL-328 be the first page of the child custody evaluator’s report. It must, therefore, be filed and docketed along with the attached report of the evaluation. To help courts comply with rule 5.220(g), the committee has decided to recommend that form FL-328 be revised to include a file stamp box.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes. It will ensure that the Notice becomes part of the confidential portion of the case file.	Please see response to comments of Superior Court of Los Angeles County, above.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

5. Would the proposal provide cost savings? If so, please quantify.		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	No.	No response required.
Superior Court of Orange County Family Law Division	No.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	No.	No response required.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

6. What would the implementation requirements be for courts?

Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Minor programming and training costs.	No response required.
Superior Court of Orange County Family Law Division	Minimal training would be required to implement the updated form. There is an existing procedure and process for confidential reports conducted under FC 3118, so an email communication to staff from the training team would be sufficient to make them aware of the updates. No new docket codes would be required because the FL-328 does not get filed or docketed. There is already an existing docket code for confidential reports filed on form FL-329.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Implementation would be limited to notifying staff of change and potentially file stamping the Notice, if the Committee elects to add a file stamp box.	No response required.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

7. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Yes.	No response required.
Superior Court of Orange County Family Law Division	Yes.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	No response required.

SPR21-09**Family Law: Child Custody Evaluation Report Cover Sheet** (revise form FL-328)

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

8. How well would this proposal work in courts of different sizes?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law Division	The proposal should work well for a court of any size. The only actions that are required are to replace previously printed versions of the form, if any, and communicate the update to staff.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	There should be no disparate impact between courts of different sizes.	No response required.