



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-134

For business meeting on: September 20, 2022

Title

Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony

Rules, Forms, Standards, or Statutes Affected

Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341

Recommended by

Family and Juvenile Law Advisory Committee

Hon. Stephanie E. Hulsey, Cochair

Hon. Amy M. Pellman, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Date of Report

September 2, 2022

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending four California Rules of Court and revising three forms to comply with Senate Bill 654 (Stats. 2021, ch. 768). The bill amended Family Code section 3011 by extending the requirement that a court state its reasons when granting sole or joint custody to someone despite allegations of abuse or substance abuse against that person to orders granting unsupervised visitation to someone against whom there are allegations of abuse or substance abuse. The bill also amended Family Code section 3042 regarding child testimony to prohibit allowing the child to testify in front of the parties unless specific findings are made, and to require that certain court professionals provide notice if a child changes their choice about addressing the court.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2023:

1. Amend rule 5.210 of the California Rules of Court, *Court-connected child custody mediation*, to include the obligations of a child custody recommending counselor to give notice about a child's desire to provide input and a child's change of choice about addressing the court under section 3042.
2. Amend rule 5.220, *Court-ordered child custody evaluations*, to include the obligations of a child custody evaluator to give notice about a child's desire to provide input and a child's change of choice about addressing the court under section 3042.
3. Amend rule 5.242, *Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings*, to update counsel's obligations to give notice about a child's desire to provide input and include counsel's obligation to give notice if the child has changed their choice about addressing the court under section 3042.
4. Amend rule 5.250, *Children's participation and testimony in family court proceedings*, to include the obligations of all court professionals required to give notice under Family Code section 3042.
5. Revise *Child Custody and Visitation (Parenting Time) Application Attachment* (form FL-311) to add a request for child custody and unsupervised visitation orders involving allegations of a history of abuse or substance abuse under Family Code section 3011, and make other formatting changes.
6. Revise *Order Appointing Counsel for a Child* (form FL-323) to include counsel's duties under Family Code section 3042 to give notice about a child's desire to provide input and a child's change of choice about addressing the court, and make other formatting changes.
7. Revise *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341) to make formatting changes, and include a new section for the court to make orders on a request for child custody and unsupervised visitation orders involving allegations of a history of abuse or substance abuse under Family Code section 3011.

The rules and forms are attached at pages 18–33.

Analysis/Rationale

Effective January 1, 2022, SB 654 (see Link A) amended Family Code section 3011(a)(5)(A) and (B) to require the court to follow specific procedures when it makes an order for child custody to a parent who is alleged to have a history of abuse or substance abuse. Before the amendment, absent a stipulation, the court was required to state its reasons in writing or on the record if it ordered sole or joint custody to a parent alleged to have a history of abuse or

substance abuse. The legislation extended that requirement to include orders for unsupervised visitation for a parent alleged to have a history of abuse or substance abuse.

To help courts comply with these changes, the committee proposes revising two forms, *Child Custody and Visitation (Parenting Time) Application Attachment* (form FL-311) and *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341).

SB 654 also amended Family Code section 3042, relating to a child's testimony in court, in two significant ways. The first major change prohibits the court from permitting a child addressing the court regarding child custody or visitation to do so in the presence of the parties, unless the court determines that doing so is in the best interest of the child and states its reasons for that finding on the record. It also requires the court to provide an alternative to having the child address the court in the presence of the parties to obtain input directly from the child.

The second major change is to require the attorney appointed to represent the child, a child custody evaluator or investigator, or a child custody recommending counselor to inform the judge, the parties or their attorneys, and other professionals serving on the case if the child informs them that they have changed their choice with respect to addressing the court.

Family Code section 3042(j) specifically requires that the Judicial Council, "no later than January 1, 2023, develop or amend rules as necessary to implement this section." The committee proposes amending rules 5.210, 5.220, 5.242, and 5.250, and revising form FL-323 to implement the requirements of the statute.

Family Code section 3011

Forms FL-311 and FL-341 will be revised to incorporate the requirements of Family Code section 3011(a)(5)(A).

Section 3011(a)(5)(A) and (B) provide:

(A) When allegations about a parent pursuant to paragraphs (2)¹ or (4)² have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as

¹ Paragraph (2) relates to a history of abuse by one parent or any other person seeking custody against: (a) a child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary; (b) the other parent; or (c) a parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

² Paragraph (4) relates to the habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent.

to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Section 6323.

(B) This paragraph does not apply if the parties stipulate in writing or on the record regarding custody or visitation.

The statute describes the requirements for *court orders* in cases in which a party is alleged to have a history of abuse or substance abuse. Therefore, the committee initially only considered revising the custody order attachment (form FL-341). After further consideration, the committee decided that it was important to also recommend revisions to form FL-311, the form for requesting court orders relating to child custody and visitation.

Child Custody and Visitation (Parenting Time) Application Attachment (form FL-311)

Form FL-311 may be used by the parties to request court orders relating to child custody and visitation. It is attached to a petition for divorce or legal separation, a response to a petition, a request for order form, or a responsive declaration to a request for order.

The revisions to form FL-311 will give the parent the opportunity to state the reasons why they believe the court should grant child custody or unsupervised visitation to a parent alleged to have a history of abuse or substance abuse. The parent requesting the order would either write the reasons (their declaration) in the blank space provided on the form or attach a separate declaration.

The above revisions will allow the court to assess whether the reasons that the parent specified are sufficient to grant the parent's request for an interim order, a default judgment, or a judgment for child custody and visitation. In the case of a petitioner's request to enter a default judgment against a nonresponding party, the new content will further allow the judicial officer to better assess whether the judgment could be entered based exclusively on the declarations of the petitioner or whether the matter should be set for a hearing so that the court can consider evidence about the allegations of abuse or substance abuse before ruling on the request.

The specific changes in form FL-311 include two new sections on the form: the first, on page 1 (item 1b), will be titled "Custody with allegations of a history of abuse or substance abuse"; the other, on page 2 (item 3), will be titled "Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns."

In new item 1b, the party requesting custody orders will:

- Specify that the case involves allegations of a history of abuse or substance abuse against parent(s) of the minor children;
- Ask the court to either grant or not grant an order for sole or joint custody of the minor children to a parent or parents who are alleged to have a history of abuse or substance abuse; and

- Specify the reasons why the court should grant the request for sole or joint custody to the person(s) alleged to have a history of abuse or substance abuse.

Similarly, in item 3, the party requesting visitation orders will be able to ask the court to order:

- Supervised visitation for cases involving abuse, domestic violence, child abuse or neglect;
- Supervised visitation for reasons other than abuse, domestic violence, child abuse or neglect (including substance abuse or other parenting concerns); or
- Unsupervised visitation to the person(s) alleged to have a history of abuse or substance abuse.

The second bullet point will apply to cases in which a party seeks supervised visitation for reasons such as to help introduce a parent and a child when there has been no existing relationship between them or to help reintroduce a parent and a child after a long absence.

Finally, the form will:

- Include the following statutory language under the request for unsupervised visitation: “The orders for visitation (parenting time) that you request must be specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.”
- Require the party to indicate the reasons why the court should make the orders in each of the situations in item 3. (Note: instead of requiring the party to respond by attaching a separate declaration in response to the item, the revised form will allow the party to choose to use the blank space on the form to write a declaration or attach a declaration.)
- Include a general note under item 4, “Transportation for visitation (parenting time) and place of exchange” to indicate that, “In cases of domestic violence, the court must have enough information to make orders that are specific as to time, place, and manner of transfer (exchange) of the child for custody and visitation under Family Code section 6323(c).” The new language mirrors the note in item 3b(5) regarding the need for specificity in the transportation or exchange of the child.

Formatting changes

The committee recommends formatting changes to accommodate the new content. Specifically, form FL-311 will be expanded to four pages and include additional rows to list up to six children in item 1a. In addition:

- Item 2e regarding visitation (parenting time) will be moved to the second page.
- The request for supervised visitation will be moved under new item 3.

- To avoid confusion, the request that includes specific information about the supervised visitation provider will be incorporated into item 3, rather than appear as a separate item 4 (as in the version that circulated for comment).
- Hyperlinks to other Judicial Council forms will be updated. For example, the reference and hyperlink to repealed *Declaration of Supervised Visitation Provider* (form FL-324) will be deleted and replaced with references to the current forms completed by the professional or nonprofessional supervised visitation provider (form FL-324(P)) and FL-324(NP)), which were adopted effective January 1, 2021.
- Items 7 through 10 will include more blank, fillable space to help parties who prefer to write complete answers directly on the form.

Other changes that the committee recommends to both forms FL-311 and FL-341 are described in the following section.

Child Custody and Visitation (Parenting Time) Order Attachment (form FL-341)

As indicated by the title, form FL-341 may be used by the court to write its orders relating to requests for child custody and visitation orders.

Form FL-341 will reflect the substantive changes to form FL-311 by including a new item 7 titled “Child custody orders with allegations of a history of abuse or substance abuse” and a new item 9 titled “Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns.”

Additional changes include the following: expanding the form to four pages, changing the sequence of the orders regarding child abduction from item 7 to item 5, moving the orders regarding visitation to page 2, and increasing the blank space made available to complete orders on page 4.

The committee also recommends minor changes in the language in various parts of the order attachment. For example, instead of stating that a party “will have visitation” in items 9a and 9b, the form will provide that the party “has visitation.” And, instead of a statement to the judicial officer, such as “You must attach form FL-341(A)” in 9a, the committee proposes better highlighting the fact that additional orders apply with respect to the visitation orders made in this item. To this end, item 9a will be divided into subitems (1) and (2), with item (2) providing: “In addition, *Supervised Visitation Order* (form FL-341(A)) is attached.”

Miscellaneous changes

In addition to the statutory changes and formatting changes, the committee proposes revisions to other items in both forms FL-311 and FL-341.

Two of the recommended changes will align content with the changes currently being proposed to domestic violence forms in the same cycle. For example, the definition of physical custody on the first page of the forms will be changed to “person the child regularly lives with.” The

definition of legal custody will be changed to “person who decides about the child’s health, education, and welfare.”

The final change recommended to both forms is to the item about transportation for visitation (parenting time). Item 4a on form FL-311 and item 10a on form FL-341 will be changed as follows:

The children must be driven only by a licensed and insured driver. The ~~car or truck~~ vehicle must be legally registered with the Department of Motor Vehicles, and must have child restraint devices properly installed, as required by law.

The above language will more accurately reflect the orders that judicial officers make in family court on the issue of transportation for child visitation (parenting time).

Family Code section 3042

Section 3042(g) provides:

To assist the court in determining whether the child wishes to express a preference or to provide other input regarding custody or visitation to the court, a minor’s counsel, an evaluator, an investigator, or a child custody recommending counselor shall indicate to the judge that the child wishes to address the court, or the judge may make that inquiry in the absence of that request. A party or a party’s attorney may also indicate to the judge that the child wishes to address the court or judge.

In addition, section 3042(h) provides:

If a child informs the minor’s counsel, an evaluator, an investigator, or a child custody recommending counselor at any point that the child has changed their choice with respect to addressing the court, the minor’s counsel, evaluator, investigator, or child custody recommending counselor shall, as soon as feasible, indicate to the judge, the parties or their attorneys, and other professionals serving on the case that the child has changed their preference.

The committee recommends that the Judicial Council amend rules 5.210, 5.220, 5.242, and 5.250 to reflect the duties of child custody recommending counselors, child custody evaluators and investigators, and attorneys appointed to represent the child under both sections 3042(g) and (h).

It should be noted that the committee considered using other terms instead of “child’s choice” in the rules and forms, including “child’s position,” “child’s preference,” or “child’s desire,” but decided to recommend that the rules reflect the actual language in section 3042(h), which is “child’s choice.”

Rule 5.210, Court-connected child custody mediation

The committee recommends amending rule 5.210 to include new subdivision (d)(3) under “Responsibility for mediation services.” Because the obligation to notify under section 3042 affects child custody recommending counselors³ and not confidential mediators, the committee proposed amending the rule as follows:

- (3) If so informed by the child at any point, each child custody recommending counselor must notify the parties, other professionals serving on the case, and then the judicial officer:
 - (A) About the child’s desire to provide input and address the court; and
 - (B) As soon as feasible, that the child has changed their choice about addressing the court.

Rule 5.220, Court-ordered child custody evaluations

In the invitation to comment, the committee initially proposed amending rule 5.225, *Appointment requirements for child custody evaluators*, by adding subdivisions (1)(7) and (8) to provide that a person appointed as a child custody evaluator must:

- (7) Inform the parties, other professionals serving on the case, and then the judicial officer about the child’s desire to provide input and address the court;
- (8) If so informed by the child at any point, provide notice that the child has changed their choice about addressing the court. Notice must be provided as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.

However, because rule 5.225 relates specifically to the *appointment* requirements of child custody evaluators, the committee has decided to recommend that the Judicial Council amend rule 5.220, *Court ordered child custody evaluations*, rather than rule 5.225. The committee believes it is more appropriate to include the evaluator’s responsibilities under Family Code section 3042 with the other responsibilities of the evaluator already listed in rule 5.220 under subdivision (d)(2).⁴

Although rule 5.220 did not circulate for comment, the committee believes it is necessary that it be included among the other recommendations in the report. Amending rule 5.220, instead of

³ Under Family Code section 3183, mediators who make those recommendations (also known as child custody recommending counselors) are considered mediators for purposes of chapter 11 of the Family Code (commencing with section 3160) and are subject to all requirements for mediators for all purposes under the Family Code and the California Rules of Court.

⁴ Rule 5.220 is found online at www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_220.

rule 5.225, would not be controversial and would avoid any confusion about the evaluator's duties with respect to children testifying in family court.

Rule 5.242, Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

The committee recommends that the rule be amended at subdivision (j)(4)(D). Currently, the subdivision includes counsel's obligation under section 3042(g) to inform the parties and the court about the child's desire to provide input. The amendment will provide that the obligation extends to "other professionals serving on the case" and replace "court" with "judicial officer."

In addition, subdivision (j)(4)(E) will be added to provide that, in any case in which counsel is representing a child who is called to testify in the proceedings, counsel must:

If so informed by the child at any point, provide notice that the child has changed their choice about addressing the court. Notice must be provided as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.

Rule 5.250, Children's participation and testimony in family court proceedings

The committee recommends that the rule be amended in several areas to comply with section 3042, as follows:

- A new subdivision (b) will reflect the statutory prohibition against permitting a child to address the court about child custody or visitation in the presence of the parties, and the exceptions that are included in the statute.
- Former subdivision (b) will be relettered as (c) and retitled "Determining if the child wishes to address, or has changed their choice about addressing, the court."
- Subdivision (c)(2) will be added to the rule to include the responsibility for an evaluator, investigator, minor's counsel, or child custody recommending counselor to provide notice if the child informs them, or changes their choice, about addressing the court.
- Other technical changes will avoid redundancy and make the rule internally consistent. These will include renaming subdivision (a) "Authority and overview" and transferring most of the language in (a) to subdivision (b) as it relates to the court's responsibilities in these matters, as well as adjusting the lettering of the subdivisions following (b).

Order Appointing Counsel for a Child (form FL-323)

Finally, the committee recommends revising *Order Appointing Counsel for a Child* (form FL-323). Specifically, item 8a(6) will be added under "Duties of Counsel for a Child" so that the form reflects counsel's obligation in rule 5.242(j)(4)(D) to "Inform the parties, other professionals serving on the case, and then the court about the child's desire to provide input and address the court." This duty was inadvertently left out of the form when it was initially adopted.

In addition, item 8a(7) will be added to specify counsel's duty to provide prompt notice when a child changes their choice about addressing the court under Family Code section 3042(h).

To make space for the new language in the form, the committee also recommends technical and organizational changes to form FL-323. Specifically, the section titled "Determination of Fees and Payment" will appear on the form as item 5 on page 1. In addition, the sections titled "Duties of Counsel for a Child" and "Counsel for a Child Has the Following Rights" will be grouped on the final page of the order. The items on the form will be renumbered to reflect the reorganized content.

Policy implications

There were no policy implications that contributed to controversy or intense debate within the committee about the proposal or the recommendations to amend the rules and revise the forms. The committee, though, emphasized the importance of revising forms FL-311 and FL-341 so that they are easy to understand and complete, and clearly reflect the requirements of section 3011 in cases involving allegations of a history of abuse or substance abuse.

Comments

The invitation to comment was circulated for public comment from April 1, 2022, to May 13, 2022, as part of the regular spring comment cycle. The committee received a total of seven comments. Court commenters included the Superior Courts of Orange, Los Angeles, and San Diego Counties. The committee also received comments from the following organizations: California Partnership to End Domestic Violence, Family Violence Appellate Project (FVAP), Harriet Buhai Center for Family Law (HBCFL), and the Orange County Bar Association (OCBA).

Two commenters agreed with the proposal, three commenters agreed with the proposal if modified, and two commenters did not specifically indicate a position but suggested changes or responded to specific questions from the committee. No one disagreed with the proposal. The complete comments and the committee's responses are included in the attached comment chart, at pages 34–52.

Comments about rules 5.210, 5.220, 5.242, 5.250

One commenter stated that proposed changes to these rules achieved their stated purpose and will be helpful to effectuate the changes to Family Code section 3042.

Comments about form FL-311

Two commenters (FVAP and HBCFL) proposed specific changes to item 1b on the form. The major substantive comments from FVAP and HBCFL and committee responses are noted below:

- “[t]he proposed changes to form FL-311 would not be helpful to parties or attorneys, and in fact will be confusing to self-represented litigants. It is not clear, for instance, that

items 1(b) and 3 do not have to be completed by everyone completing the parenting time application.”

In response, the committee recommends specific revisions to item 1b to make the child custody request part of the form easier to understand and complete. One change would be to add a check box for the party to indicate that they do not want the court to order sole or joint custody to a person alleged to have a history of abuse or substance abuse. In addition, the committee recommends that item 3b include an instruction that the party should **only** complete it if they want the court to make orders for unsupervised visitation to a party alleged to have a history of abuse. The instruction would bring attention to the differences between a request for supervised visitation in 3a and unsupervised visitation in 3b.

- “[t]he language in both items 1(b) and 3 is misleading in that it does not seem to encompass the situation where the parent who is alleged to have a history of abuse would be asking for custody or unsupervised parenting time for themselves.”

In response, the committee disagrees that the form is misleading and not appropriate for use by a parent with an alleged history of abuse who seeks custody or unsupervised parenting time. Form FL-311 is a multiuse form, which serves as an attachment to a petition, response, request for order, or responsive declaration to request for order. As such, the committee developed items 1b and 3 to be completed by either the party alleging a history of abuse or the party alleged to have a history of abuse. For example, if the petitioner is alleged to be the party with a history of abuse and is asking for custody for themselves, the party would check “petitioner” is alleged to have a history of abuse. If all parties are alleged in the pleadings to have a history of abuse, the petitioner would be able to check “petitioner,” “respondent,” or “other parent/party.”

- “[t]here is already space in the form asking parties to provide their facts and argument for their requests, so the information gathered in these two items 1(b) and 3 is already being gathered elsewhere on the form. Redundancy in the forms should be avoided when possible.”

In response, the committee does not agree that the proposed revisions to form FL-311 are redundant. No existing item includes specific statutory requirements of Family Code section 3011(a)(5)(A). Revising the form to include language from the statute allows a party to provide notice to the other parent that they are seeking those orders. It also gives a party the opportunity to state the reasons why they believe the court should grant child custody or unsupervised visitation to a parent alleged to have a history of abuse or substance abuse.

- “[w]e are VERY concerned that including these questions on the form would cause judicial officers to wrongly rely solely on the request forms to decide whether they need

to comply with Family Code section 3011, subdivision (a)(5)(A). Abuse does not need to be alleged in any specific place or form for those requirements to apply; abuse just has to be alleged in the case in general—it could be raised at the hearing, in the initial request, in a response, in a supplemental declaration, in a mediation report, in exhibits attached to a declaration, etc.

In response, the committee notes that resolving the issue raised by the commenter involves educating judicial officers about the requirements of Family Code section 3011, as well as other statutes relating to cases involving a history of abuse or substance abuse. For this reason, the committee continues to recommend placing items 1b and 3 on form FL-311 to bring awareness to the duties that judicial officers must comply with in section 3011. To address the specific concern raised by the commenter, the committee recommends revising the *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341), item 7a to provide that the judicial officer has considered allegations of abuse from sources that are not limited to those made in form FL-311 before making the order for child custody or unsupervised visitation under section 3011(a)(5)(A).

- By placing these items 1(b) and 3 on this request form, it strongly suggests to courts and litigants that this is their one and only chance to bring up these allegations, and if not brought up here, the statutory requirements would not apply.”

The committee disagrees with the commenter on this point. There is no language in form FL-311 to suggest to courts and litigants that a party will be prevented from seeking the protections of the statute in the future if they do not check items 1(b) and 3. This is true for any item on the form. Unlike other forms that require the party to acknowledge that they are waiving a right under the law (for example, *Appearance, Stipulations, and Waivers* (form [FL-130](#)) and *Advisement and Waiver of Rights Re: Determination of Parental Relationship* (form [FL-235](#))), this is not the purpose of form FL-311.

- “Before SB 654, there was no need to add items 1(b) and 3 to the form, so why is there a need now with SB 654? SB 654 did not affect the court’s duty to state its reasons when allegations are raised, and SB 654 didn’t place any duties on the parties. NO bill, statute, or law requires adding these items 1(b) and 3 to the form. And doing so would cause confusion and potential misapplication of the law.”

In response, it was the recent adoption of SB 654 that brought to the committee’s attention the need to provide for the practice and procedures that cover *both* the recent amendments to Family Code section 3011 relating to unsupervised visitation and the previously enacted provisions of section 3011 relating to requests for child custody under allegations of a history of abuse. The forms revisions will help educate parties, attorneys, and the court about the law in cases involving allegations of a history of abuse and substance abuse, thereby avoiding confusion and the potential misapplication of the law.

Specific changes to items 1b and 3

After considering the specific suggestions from FVAP and HBCFL, the committee recommends that the Judicial Council revise item 1b on form FL-311, as follows:

- b. ☐ **Custody with allegations of a history of abuse or substance abuse**
- (1) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to.
- (2) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.
- (3) ☐ I ask that the court NOT order sole or joint custody of the minor child to the person(s) alleged to have a history of abuse or substance abuse.
- (4) ☐ Even though there are allegations, I ask that the court make the child custody orders in item 1a.
(Write the reasons why you think it would be good for the children that the person(s) be granted custody, even though there are allegations against them of a history of abuse or substance abuse)
☐ Below: ☐ [Attachment 1b.](#) ☐ Other (specify):

Based on the above recommendations to item 1b, the committee recommends that item 3 regarding supervised and unsupervised visitation be revised where appropriate to align with the content of item 1b, as shown on pages 2 and 3 of form FL-311.

Further, although no concerns were raised by commenters about revising form FL-311 to include the informational parenthetical in items 1b and 3, the committee decided to not recommend the change. The parenthetical that circulated for comment specified “*(If you have an agreement in writing or stated in court about child custody and visitation, do not complete item b. It does not apply to your case.)*.” It was intended to reflect the language of section 3011(a)(5)(B), which specifies that “This paragraph does not apply if the parties stipulate in writing or on the record regarding custody or visitation.”

The committee decided not to recommend that form FL-311 be revised to include the informational parenthetical to allow for the various ways that parties or attorneys use the form. For example, parties who have reached an agreement about child custody and visitation sometimes complete and incorporate form FL-311 into their agreement. The proposed note, however, could have deterred them from doing so.

In addition, the committee believed that the note could also cause confusion to parties who are asking the court to modify a current agreement (stipulation and order) for child custody and visitation. Parties who would have otherwise attached form FL-311 to a *Request for Order* (form FL-300) may believe that having an existing agreement would make them ineligible to ask for the orders under section 3011 that would protect their child from a parent alleged to have a history of abuse or substance abuse.

Finally, the committee believed that an instructional parenthetical is more appropriate for use in the court’s order (form FL-341). Therefore, the committee decided to recommend the changes described in the section below to form FL-341.

Comments about form FL-323

One commenter stated that proposed changes to the form achieved their stated purpose and will be helpful to effectuate changes to Family Code section 3042.

Comments about form FL-341

Two commenters suggested changes to the order.

- FVAP commented that the “...proposed changes will be helpful to judicial officers by both reminding them of the requirements of Family Code section 3011, subdivision (a)(5)(A), and providing space to indicate the reasons for ordering child custody or unsupervised visitation when the statute applies. They also noticed a technical correction that was needed to item 9(a) to replace the reference to page 1 to page 2. The committee made this correction.
- HBCFL suggested new language for the order to allow the court to state that it does not grant sole or joint custody of a minor child or that it grants sole or joint custody of the minor child, even though there are allegations of a history of abuse or substance abuse. The committee agreed with the suggestions.

In response to both comments, the committee recommends that items 7 (child custody orders) and 9b (unsupervised visitation orders) on form FL-341 be revised, as illustrated below:

7. ☐ **Child custody orders with allegations of a history of abuse or substance abuse**
(Do not complete this section if the parties have entered or will enter into an agreement on child custody and/or visitation (parenting time), in writing or stated in court.)
- a. Allegations have been raised in form FL-311, other documents filed in the court, or in a court hearing that
☐ petitioner ☐ respondent ☐ other parent/party has (or have) either:
- (1) a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to; or
- (2) the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.
- b. ☐ The court does NOT grant sole or joint custody of the minor children to ☐ petitioner ☐ respondent ☐ other parent/party
- c. ☐ Even though there are allegations of a history of abuse or substance abuse, the court GRANTS sole or joint custody of the minor child as set out in item 6 for the following reasons: ☐ [Attachment 7c.](#)
- b. ☐ **Unsupervised visitation (parenting time)**
(Do not complete this section if the parties have entered or will enter into an agreement on child custody and/or visitation (parenting time), in writing or stated in court.)
- (1) Even though there are allegations of a history of abuse or substance abuse under Family Code section 3011, the
☐ petitioner ☐ respondent ☐ other parent/party (name):
has (or have) unsupervised visitation (parenting time) with the minor children as set forth in 8.
- (2) The reasons for granting unsupervised visitation to the person(s) alleged to have a history of abuse or substance abuse are: ☐ as follows: ☐ [Attachment 9b.](#)
- (3) The orders for visitation (parenting time) are specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.

The above illustrations include the recommendations for an informational parenthetical in items 7 and 9b to specify: “*(Do not complete this section if the parties have entered or will enter into an agreement on child custody and/or visitation (parenting time), in writing or stated in court.)*” The recommendations for the two items are based on the understanding that parties use the order to memorialize their agreements and judicial officers also use it to draft the order following a court hearing, which may include an agreement stated on the record. Revising the order to include these instructions promotes judicial economy and compliance with the requirements of section 3011(a)(5)(B).

Comments on other specific questions

The committee asked the public and the courts specific questions about the proposed changes to forms FL-311 and FL-341.

- The committee asked if it would be helpful to the parties and attorneys to provide space on form FL-311 to state the reasons why sole or joint custody, or unsupervised visitation,

should be granted if Family Code section 3011(a)(5)(A) applies to the case, especially in a potential default situation?

The committee received three responses. One court responded yes to this question. One organization stated that a place for the information would be helpful, but the proposed version is confusing. Another organization also responded that the changes would be helpful and expressed appreciation for the changes to the court forms.

- The committee asked the courts the following three questions:
 1. Would the proposed changes to form FL-341 be helpful to judicial officers in providing space to indicate the reasons for ordering child custody and visitation if Family Code section 3011(a)(5)(A) applies to the case?

The two courts responding to the question indicated that the proposal would be helpful.

2. Are the proposed changes to forms FL-311 and FL-341 helpful in reminding judicial officers about the requirements of Family Code section 3011(a)(5)(A) when reviewing requests and proposed orders and judgments relating to child custody and visitation?

One court responded yes. The other court also responded yes, but added that the optional forms are not frequently used in their court, and suggested making a standalone form for the language in item 9 on form FL-341. Given the few changes required to the form under section 3011(a)(5)(A), the committee did not recommend that the Judicial Council adopt a new, standalone form. Courts can use form FL-341 to inform the revisions they make to their orders relating to child custody and visitation.

3. Would the proposed changes in (1) and (2) be best handled by judicial education?

One court responded yes to the question. The other commenter stated that judicial education would be helpful but "...it does seem beneficial to have these set forth in form."

Alternatives considered

Along with amending rule 5.225, the committee considered revising *Order Appointing Child Custody Evaluator* (form FL-327) to include the evaluator's duty to inform others if the child has indicated a change in choice about addressing the court. However, the committee decided not to include form FL-327, as it does not specify each of the child custody evaluator's duties in the same way as form FL-323 lists the specific duties of counsel appointed to represent a child. Thus, the committee decided that revising form FL-327 is not necessary to implement AB 654.

The committee also considered proposing only the mandatory changes to the rules to comply with the mandate of Family Code section 3042. The Legislature did not specify that the Judicial Council must adopt a rule of court or form to implement the amendments to section 3011. Therefore, the committee considered not revising forms FL-311 and FL-341 to reflect the amendments to section 3011.

However, as previously noted, the committee believes that revising forms FL-311 and FL-341 will help parties ask for orders and help judicial officers comply with the requirements of Family Code section 3011, respectively, in child custody and visitation cases involving allegations of abuse or substance abuse. The committee decided to ask for specific comments from the public and the courts to determine if they find the revisions to forms FL-311 and FL-341 helpful in cases involving requests for child custody and visitation under Family Code section 3011(a)(5)(A). Feedback about the proposed changes has helped inform the committee's recommendations to the Judicial Council about the forms.

Fiscal and Operational Impacts

Generally, the impact to the courts includes costs to (1) copy the revised forms, (2) educate judicial officers about the new procedure for specific orders made under section 3011, and (3) educate the court and court professionals about their expanded duties under section 3042(h). Specific responses included: training case processing staff, self-help staff, and courtroom clerks (approximately one hour each position); staff meeting agenda to inform staff of revisions; revising case processing and courtroom procedures; revising Self-Help Center packets to include updated forms; revising activities in case management systems to reflect appropriate order language.

Attachments and Links

1. Cal. Rules of Court, rules 5.210, 5.220, 5.242, and 5.250, at pages 18–22
2. Forms FL-311, FL-323, and FL-341, at pages 23–33
3. Chart of comments, pages 34–51
4. Link A: SB 654,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB654

Rules 5.210, 5.220, 5.242, and 5.250 of the California Rules of Court are amended, effective January 1, 2023, to read:

Rule 5.210. Court-connected child custody mediation

~~(a)–(c)~~ * * *

(d) Responsibility for mediation services

(1) * * *

(2) Each court-connected mediator must:

~~(A)–(C)~~ * * *

(3) If so informed by the child at any point, each child custody recommending counselor must notify the parties, other professionals serving on the case, and then the judicial officer:

(A) About the child’s desire to provide input and address the court; and

(B) As soon as feasible, that the child has changed their choice about addressing the court.

~~(e)–(h)~~ * * *

Rule 5.220. Court-ordered child custody evaluations

~~(a)–(c)~~ * * *

(d) Responsibility for evaluation services

(1) * * *

(2) The child custody evaluator must:

(A) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

(B) Strive to minimize the potential for psychological trauma to children during the evaluation process; ~~and~~

- 1 (C) Include in the initial meeting with each child an age-appropriate
2 explanation of the evaluation process, including limitations on the
3 confidentiality of the process;
4
5 (D) Inform the parties, other professionals serving on the case, and then the
6 judicial officer about the child's desire to provide input and address the
7 court; and
8
9 (E) If so informed by the child at any point, provide notice that the child
10 has changed their choice about addressing the court. Notice must be
11 provided as soon as feasible to the parties or their attorneys, other
12 professionals serving on the case, and then to the judicial officer.
13

14 (e)–(k) * * *

15
16
17 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
18 **represent a child in family law proceedings**
19

20 (a)–(i) * * *

21
22 **(j) Responsibilities of counsel for a child**
23

24 Counsel is charged with the representation of the child's best interest. The role of
25 the child's counsel is to gather evidence that bears on the best interest of the child
26 and present that admissible evidence to the court in any manner appropriate for the
27 counsel of a party. If the child so desires, the child's counsel must present the
28 child's wishes to the court.
29

30 (1)–(3) * * *

31
32 (4) In any case in which counsel is representing a child who is called to testify in
33 the proceeding, counsel must:
34

35 (A)–(B) * * *

36
37 (C) Provide procedures relevant to the child's participation and, if
38 appropriate, provide an orientation to the courtroom where the child
39 will be testifying; ~~and~~
40

41 (D) Inform the parties, other professionals serving on the case, and then the
42 court judicial officer about the client's desire to provide input and
43 address the court; and

(E) If so informed by the child at any point, provide notice that the child has changed their choice about addressing the court. Notice must be provided as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.

(k) * * *

Rule 5.250. Children's participation and testimony in family court proceedings

(a) Children's participation Authority and overview

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

(b) Children's participation

When a child wishes to participate in a court proceeding involving child custody and visitation (parenting time):

(1) The court should find a balance between protecting the child, the statutory duty to consider the wishes of and input from the child, and the probative value of the child's input while ensuring all parties' due process rights to be aware of and to challenge evidence relied on by the court in making custody decisions.

(2) The court must:

(A) Consider a child's participation in family law matters on a case-by-case basis; and

(B) Not permit a child addressing the court about child custody or visitation (parenting time) to do so in the presence of the parties. The court must provide an alternative to having the child address the court in the presence of the parties to obtain input directly from the child.

1 (3) Notwithstanding the prohibition in (b)(2)(B), the court:

2
3 (A) May permit the child addressing the court about child custody or
4 visitation (parenting time) to do so in the presence of the parties if the
5 court determines that doing so is in the child's best interests and states
6 its reasons for that finding on the record; and

7
8 (B) Must, in determining the best interests of the child under (b)(2)(A),
9 consider whether addressing the court regarding child custody or
10 visitation (parenting time) in the presence of the parties is likely to be
11 detrimental to the child.

12
13 **(b) (c) Determining if the child wishes to address, or has changed their choice about**
14 **addressing, the court**

15
16 (1) The following persons must ~~inform the court~~ notify the persons in (c)(2) if
17 they have information indicating that a child in a custody or visitation
18 (parenting time) matter either wishes to address the court or has changed their
19 choice about addressing the court:

20
21 (A) ~~An minor's counsel~~ attorney appointed to represent the child in the
22 case;

23
24 (B) An evaluator;

25
26 (C) An investigator; ~~and~~

27
28 (D) A child custody recommending counselor who provides
29 recommendations to the ~~judge~~ judicial officer under Family Code
30 section 3183; and

31
32 (E) Other professionals serving on the case.

33
34 (2) The notice described in (c)(1) must be given, as soon as feasible, to the
35 following:

36
37 (A) The parties or their attorneys;

38
39 (B) The attorney appointed to represent the child;

40
41 (C) Other professionals serving on the case; and then

42
43 (D) The judicial officer.

1
2 ~~(2)~~ (3) The following persons may inform the court if they have information
3 indicating that a child wishes to address the court:
4

5 (A)–(B) * * *

6
7 ~~(3)~~ (4) In the absence of information indicating a child wishes to address the court,
8 the judicial officer may inquire whether the child wishes to do so.
9

10 ~~(e)~~ (d) * * *

11
12 ~~(d)~~ (e) **Guidelines for receiving testimony and other input**
13

14 (1)–(4) * * *

15
16 (5) In any case in which a child will be called to testify, the court may consider
17 the appointment of minor’s counsel for that child. The court may consider
18 whether such appointment will cause unnecessary delay or otherwise
19 interfere with the child’s ability to participate in the process. In addition to
20 adhering to the requirements for minor’s counsel under Family Code section
21 3151 and rules 5.240, 5.241, and 5.242, and subdivision (c) of this rule,
22 minor’s counsel must:
23

24 (A)–(C) * * *

25
26 ~~(D) — Inform the parties and then the court about the client’s desire to provide~~
27 ~~input~~
28

29 (6) * * *

30
31 ~~(e)~~ (f) **Additional responsibilities of court-connected or appointed professionals**
32

33 In addition to the duties in (c), a child custody evaluator, a child custody
34 recommending counselor, or ~~a mediator~~ an investigator assigned to meet with a
35 child in a family court proceeding must:
36

37 (1)–(3) * * *

38
39 ~~(f)~~ (g) * * *

40
41 ~~(g)~~ (h) * * *

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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CHILD CUSTODY AND VISITATION (PARENTING TIME) APPLICATION ATTACHMENT

—This is not a court order—

TO ☐ Petition ☐ Response ☐ Request for Order ☐ Responsive Declaration to Request for Order
☐ Other (specify):

1. a. ☐ **Custody.** Custody of the minor children of the parties is requested as follows: ☐ [Attachment 1a.](#)

<u>Child's Name</u>	<u>Date of Birth</u>	<u>Legal Custody to</u> (person who decides about the child's health, education, and welfare)	<u>Physical Custody to</u> (person the child regularly lives with)

b. ☐ **Custody with allegations of a history of abuse or substance abuse**

- (1) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to.
- (2) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.
- (3) ☐ I ask that the court NOT order sole or joint custody of the minor child to the person(s) alleged to have a history of abuse or substance abuse.
- (4) ☐ Even though there are allegations, I ask that the court make the child custody orders in item 1a.
(Write the reasons why you think it would be good for the children that the person(s) be granted custody, even though there are allegations against them of a history of abuse or substance abuse.)
☐ Below: ☐ [Attachment 1b.](#) ☐ Other (specify):

2. ☐ **Visitation (Parenting Time).**

Note: Unless specifically ordered, a child's holiday schedule order has priority over the regular parenting time.

- a. ☐ Reasonable right of parenting time (visitation) to the party without physical custody (**not appropriate in cases involving domestic violence**).
- b. ☐ See the attached _____-page document dated (specify date):
- c. ☐ The parties will go to child custody mediation or child custody recommending counseling at (specify date, time, and location):
- d. ☐ No visitation (parenting time).

☐ **Petitioner's** ☐ **Respondent's** ☐ **Other Parent's/Party's** parenting time (visitation) will be as follows:

(Note: The first weekend of the month is the first weekend with a Saturday.)

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

(a) ☐ The parties will alternate the fifth weekends, with the ☐ petitioner ☐ respondent ☐ other parent/party having the initial fifth weekend, which starts (date):

(b) ☐ The ☐ petitioner ☐ respondent ☐ other parent/party will have the fifth weekend in ☐ odd ☐ even numbered months.

from at a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

from _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

(4) ☐ Other visitation (parenting time) days and restrictions are: ☐ [listed in Attachment 2e\(4\)](#)
☐ as follows:

a. ☐ **Supervised visitation (parenting time)**

(1) I ask that ☐ petitioner ☐ respondent ☐ other parent/party have supervised visitation with the minor children according to the schedule in item 2 because of (specify):

(a) ☐ Domestic violence, child abuse, or neglect.

(b) ☐ Substance abuse: the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.

(c) ☐ Other parenting concerns (specify below):

(2) The reasons why the court should make the orders are (specify):

(Write the reasons why you think unsupervised visitation (parenting time) would be bad for the children.)

☐ Below ☐ in Attachment 3a(2) ☐ Other (specify):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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(3) I ask for the following orders about the supervised visitation provider:

(a) Visitation (parenting time) be monitored by (name, if known):

(i) ☐ The person or agency is a professional provider. A professional provider must meet the requirements listed in *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) and sign the declaration.

(ii) ☐ The person is a nonprofessional provider. That person must meet the requirements listed in *Declaration of Supervised Visitation Provider (Nonprofessional)* (form FL-324(NP)) and sign a declaration.

(iii) The provider's phone number is (specify):

(b) Any costs of supervision be paid as follows: petitioner: _____ percent; respondent: _____ percent.
other parent/party: _____ percent.

b. ☐ **Unsupervised visitation (parenting time)**

(Complete 3b only if you want the court to order unsupervised visitation to a person alleged to have a history of abuse or substance abuse.)

(1) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to.

(2) ☐ Petitioner ☐ Respondent ☐ Other parent/party is (or are) alleged to have the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.

(3) Even though there are allegations of a history of abuse or substance abuse, I request that the court order unsupervised visitation to (specify): ☐ Petitioner ☐ Respondent ☐ Other parent/party

(4) The reasons why the court should make the orders are (specify):

(Write the reasons why you think it would be good for the children that the person(s) be granted unsupervised visitation (parenting time) even though there are allegations against them of a history of abuse or substance abuse.)

☐ Below: ☐ in Attachment 3b. ☐ Other (specify):

(5) The orders for visitation (parenting time) that you request must be specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.

4. ☐ **Transportation for visitation (parenting time) and place of exchange**

Note: In cases of domestic violence, the court must have enough information to make orders that are specific as to the time, place, and manner of transfer (exchange) of the child for custody and visitation under Family Code section 6323(c).

a. The children must be driven only by a licensed and insured driver. The vehicle must be legally registered with the Department of Motor Vehicles and must have child restraint devices properly installed, as required by law.

b. ☐ Transportation to begin the visits will be provided by (name):

c. ☐ Transportation from the visits will be provided by (name):

d. ☐ The exchange point at the beginning of the visit will be (address):

e. ☐ The exchange point at the end of the visit will be (address):

f. ☐ During the exchanges, the party driving the children will wait in the car and the other party will wait in the home (or exchange location) while the children go between the car and the home (or exchange location).

g. ☐ Other (specify):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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5. ☐ **Travel with children** The ☐ Petitioner ☐ Respondent ☐ Other parent/party **must** have written permission from the other parent or party, or a court order, to take the children out of the following places:
 - a. ☐ the state of California.
 - b. ☐ the following counties (*specify*):
 - c. ☐ other places (*specify*):

6. ☐ **Child abduction prevention.** There is a risk that one of the parties will take the children out of California without the other party's permission. I request the orders set out on attached [form FL-312](#).

7. ☐ **Children's holiday schedule.** I request the holiday and vacation schedule set out ☐ below ☐ [on form FL-341\(C\)](#)

8. ☐ **Additional custody provisions.** I request the additional orders for custody set out ☐ below ☐ [on form FL-341\(D\)](#)

9. ☐ **Joint legal custody provisions.** I request joint legal custody and want the additional orders set out ☐ below ☐ [on form FL-341\(E\)](#)

10. ☐ **Other.** I request the following additional orders (*specify*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: <hr/> PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	FOR COURT USE ONLY DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL
ORDER APPOINTING COUNSEL FOR A CHILD	CASE NUMBER:

1. The proceeding was heard:

On *(date)*: at *(time)*: in Dept.: Room:

Judge *(name)*: ☐ Temporary Judge

☐ Petitioner/Plaintiff present ☐ Attorney present *(name)*:

☐ Respondent/Defendant present ☐ Attorney present *(name)*:

☐ Other parent/party present ☐ Attorney present *(name)*:

☐ On the request for order, order to show cause, or motion filed *(date)*: by *(name)*:

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

a. Counsel appointed for the child <i>(name of counsel)</i> : b. Address: c. Phone number:	d. Email address (optional):
--	------------------------------

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

<u>Name</u>	<u>Date of birth</u>	<u>Address(es) (if appropriate)</u>
-------------	----------------------	-------------------------------------

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

5. **DETERMINATION OF FEES AND PAYMENT**

a. Counsel for the child will be compensated as follows:

(1) *(Specify amount or rate and terms)*:

(2) ☐ The court reserves jurisdiction to determine compensation payable to counsel for the child.

(3) The court reserves jurisdiction to modify the compensation payable to counsel for the child retroactively.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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5. b. The court finds that the parties are able to pay the compensation and expenses for the child's counsel.
 The parties are ordered to pay counsel for the child as follows:
- (1) ☐ Petitioner/Plaintiff % ☐ Respondent/Defendant: % ☐ Other parent/party: %
- (a) ☐ Petitioner/Plaintiff must make installment payments of \$ per month until paid or modified by court order.
- (b) ☐ Respondent/Defendant must make installment payments of \$ per month until paid or modified by court order.
- (c) ☐ Other parent/party must make installment payments of \$ per month until paid or modified by court order.
- (2) The court reserves jurisdiction to reallocate attorney's fees and costs between the parties.
- c. The court finds that the parties are unable to pay ☐ all ☐ a portion of the costs for child's counsel.
 The child's counsel must be paid as follows:
- (1) ☐ The court will pay all the fees and expenses for the child's attorney.
- (2) ☐ Petitioner/Plaintiff % ☐ Respondent/Defendant: % ☐ Other parent/party: %
- ☐ Payable by court: %
- (a) ☐ Petitioner/Plaintiff must make installment payments of \$ per month until paid or modified by court order.
- (b) ☐ Respondent/Defendant must make installment payments of \$ per month until paid or modified by court order.
- (c) ☐ Other parent/party must make installment payments of \$ per month until paid or modified by court order.
- (3) The court reserves jurisdiction to reallocate attorney fees and costs between the parties.
- (4) The court may seek reimbursement from the parties if the court pays all or a portion of the compensation for the child's counsel.
- d. Other:

6. ADDITIONAL ORDERS

- a. No later than 10 court days after being appointed by the court and before beginning work on the case, counsel for a child must file a declaration with the court indicating compliance with the requirements of rule 5.242 of the California Rules of Court. *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) or other local court forms may be used for this purpose.
- b. The parties and their counsel are ordered to cooperate with counsel for the child to permit the performance of his or her duties.
- c. Counsel for the child must be provided with complete copies of all relevant documents and records filed in the proceeding within 10 days of the appointment.
- d. The parties must provide complete information concerning the child's school, medical, psychological, psychiatric, and other pertinent records to the child's counsel on request. The parties must execute such waivers and releases necessary to facilitate the child's counsel in securing access to records for the child.
- e. The parties and/or their counsel must not compromise, settle, dismiss, or otherwise remove from the court's calendar all or any portion of the issues, claims, or proceedings concerning which the child's counsel has been appointed, without participation of the child's counsel or advance notice to the child's counsel.
- f. Counsel must continue to represent the child until the appointment terminates, as provided in rule 5.240(f) of the California Rules of Court, or as stated below in item 7.

7. OTHER ORDERS:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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8. **DUTIES OF COUNSEL FOR A CHILD**

- a. Counsel for a child must:
 - (1) Represent the child's best interests.
 - (2) Gather evidence that bears on the best interest of the child and present that admissible evidence to the court in any manner appropriate for the counsel of a party.
 - (3) Present the child's wishes to the court if the child so desires.
 - (4) Serve notices and pleadings on all parties consistent with rules and laws applicable to parties.
 - (5) Unless under the circumstances it is inappropriate to exercise the duty:
 - (a) Interview the child;
 - (b) Review the court files and all accessible relevant records available to both parties; and
 - (c) Make any further investigations child's counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.
 - (6) If so informed by the child at any point, provide notice that the child:
 - (a) Wishes to address the court; or
 - (b) Has changed their choice about addressing the court.
 - (7) Provide the notice in (6) as soon as feasible to the parties or their attorneys, other professionals serving on the case, and then to the judicial officer.
- b. Counsel may introduce and examine witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

9. **COUNSEL FOR A CHILD HAS THE FOLLOWING RIGHTS:**

- a. To have reasonable access to the child;
- b. To have standing to seek affirmative relief on behalf of the child;
- c. To receive notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child;
- d. To be heard in the proceeding and take any action available to a party in the proceeding;
- e. To have access to the child's medical, dental, mental health, and other health-care records;
- f. To have access to the child's school and educational records;
- g. To interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child;
- h. To interview mediators subject to the provisions of Family Code sections 3177 and 3182;
- i. To assert or waive any privilege on behalf of the child;
- j. To receive reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation that has not been ordered by the court;
- k. On approval of the court, to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding;
- l. On noticed motion to all parties and the local child protective services agency, to request the court to authorize the relevant local child protective services agency to release relevant reports or files concerning the child represented by the counsel as provided by Family Code section 3152; and
- m. Not to be called as a witness in the proceeding. (Family Code section 3151(b)).

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER

NOTICE

Any party required to pay court-ordered attorney fees or reimburse the court for attorney fees paid on a party's behalf must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year. Failure to pay court-ordered attorney fees or reimburse the court for fees paid on a party's behalf may result in a legal action being initiated to collect overdue payments and interest on overdue amounts.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT

TO ☐ **Findings and Order After Hearing** (form FL-340) ☐ **Judgment** (form FL-180) ☐ **Judgment** (form FL-250)
☐ **Stipulation and Order for Custody and/or Visitation of Children** (form FL-355)
☐ Other (specify):

- Jurisdiction.** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Family Code sections 3400–3465).
- Notice and opportunity to be heard.** The responding party was given notice and an opportunity to be heard, as provided by the laws of the State of California.
- Country of habitual residence.** The country of habitual residence of the child or children in this case is
☐ the United States ☐ Other (specify):
- Penalties for violating this order.** If you violate this order, you may be subject to civil or criminal penalties, or both.
- ☐ **Child abduction prevention.** There is a risk that one of the parties will take the children out of California without the other party's permission. (Child Abduction Prevention Order Attachment (form FL-341(B)) is attached and must be obeyed.)
- ☐ **Child custody.** Custody of the minor children of the parties is awarded as follows:

Child's Name

Birth Date

Legal custody to:
(person who decides about the child's
health, education, and welfare)

Physical custody to:
(person the child
regularly lives with)

- ☐ **Child custody orders with allegations of a history of abuse or substance abuse**
(Do not complete this section if the parties have entered, or will enter into, an agreement on child custody and/or visitation (parenting time), in writing or stated in court.)
 - Allegations have been raised in form FL-311, other documents filed in the court, or in a court hearing that
☐ petitioner ☐ respondent ☐ other parent/party has (or have) either:
 - a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to; or
 - the habitual or continual illegal use of controlled substances, or the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances.
 - ☐ The court does NOT grant sole or joint custody of the minor children to ☐ petitioner ☐ respondent ☐ other parent/party
 - ☐ Even though there are allegations of a history of abuse or substance abuse, the court GRANTS sole or joint custody of the minor child as set out in item 6 for the following reasons: ☐ Attachment 7c.

THIS IS A COURT ORDER.

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a. ☐ Reasonable right of visitation to the party without physical custody **(not appropriate in cases involving domestic violence)**

b. ☐ See the attached _____-page document

c. ☐ The parties will go to child custody mediation or child custody recommending counseling at *(specify date, time, and location)*:

d. ☐ No Visitation (parenting time)

e. ☐ Visitation (parenting time) for the ☐ petitioner ☐ respondent ☐ other *(name)*:
will be as follows:

(Note: The first weekend of the month is the first weekend with a Saturday.)

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

(b) ☐ The ☐ petitioner ☐ respondent ☐ other parent/party will have the fifth weekend in ☐ odd ☐ even numbered months.

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

to _____ at _____ a.m. p.m./ if applicable, specify: start of school
(day of week) (time) after school

FL-341 [Rev. January 1, 2023]

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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9. ☐ Visitation (parenting time) with allegations of a history of abuse, substance abuse, or other parenting concerns

a. ☐ Supervised visitation (parenting time).

- (1) Until ☐ further order of the court ☐ other (specify): _____, the
☐ petitioner ☐ respondent ☐ other parent/party (name): _____
 will have supervised visitation (parenting time) with the minor children according to the schedule on page 2.
- (2) In addition, **Supervised Visitation Order (form FL-341(A) is attached.**

b. ☐ Unsupervised visitation (parenting time)

(Do not complete this section if the parties have entered or will enter into an agreement on child custody and/or visitation (parenting time), in writing or stated in court.)

- (1) Even though there are allegations of a history of abuse or substance abuse under Family Code section 3011, the
☐ petitioner ☐ respondent ☐ other parent/party (name): _____
 has (or have) unsupervised visitation (parenting time) with the minor children as set forth in 8.
- (2) The reasons for granting unsupervised visitation to the person(s) alleged to have a history of abuse or substance abuse are: ☐ as follows: ☐ [Attachment 9b.](#)

- (3) The orders for visitation (parenting time) are specific as to time, day, place, and manner of transfer of the child, as Family Code section 6323(c) requires.

10. ☐ Transportation for visitation (parenting time) and place of exchange

- a. The children must be driven only by a licensed and insured driver. The vehicle must be legally registered with the Department of Motor Vehicles, and must have child restraint devices properly installed, as required by law.
- b. ☐ Transportation **to** begin the visits will be provided by the ☐ petitioner ☐ respondent
☐ other (specify): _____
- c. ☐ Transportation **from** the visits will be provided by the ☐ petitioner ☐ respondent
☐ other (specify): _____
- d. ☐ The exchange point at the beginning of the visit will be at (address): _____
- e. ☐ The exchange point at the end of the visit will be at (address): _____
- f. ☐ During the exchanges, the party driving the children will wait in the car and the other party will wait in the home (or exchange location) while the children go between the car and the home (or exchange location).
- g. ☐ Other (specify): _____

11. ☐ Travel with children. The ☐ petitioner ☐ respondent ☐ other parent/party(name): _____

must have written permission from the other parent or a court order to take the children out of

- a. ☐ the state of California.
- b. ☐ the following counties (specify): _____
- c. ☐ other places (specify): _____

THIS IS A COURT ORDER.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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12. ☐ **Holiday schedule.** The children will spend holiday time as listed ☐ below ☐ in the attached schedule. (*Children's Holiday Schedule Attachment (form FL-341(C))* may be used for this purpose.)

13. ☐ **Additional custody provisions.** The parties will follow the additional custody provisions listed ☐ below ☐ in the attached schedule. (*Additional Provisions—Physical Custody Attachment (form FL-341(D))* may be used for this purpose.)

14. ☐ **Joint legal custody.** The parties will share joint legal custody as listed ☐ below ☐ in the attached schedule. (*Joint Legal Custody Attachment (form FL-341(E))* may be used for this purpose.)

15. **Access to children's records.** Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children.

16. ☐ **Other (specify):**

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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.	California Partnership to End Domestic Violence By Christine Smith Public Policy Coordinator Sacramento	AM	See specific comments below.	See committee's response below.
2.	Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	NI	See specific comments below.	See committee's response below.
3.	Harriet Buhai Center for Family Law By Rebecca L. Fisher, Senior Staff Attorney Los Angeles	AM	See specific comments below.	See committee's response below.
4.	Orange County Bar Association By Daniel S. Robinson, President Newport Beach	A	See specific comments below.	See committee's response below.
5.	Superior Court of Los Angeles County	A	See specific comments below.	See committee's response below.
6.	Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	NI	See specific comments below.	See committee's response below.
7.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	AM	See specific comments below.	See committee's response below.

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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

1. Comments about rule 5.210		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	The proposed changes to California Rules of Court, rule 5.210 achieve their stated purpose and will be helpful to effectuate changes to Family Code section 3042.	No response required.

2. Comments about rule 5.225		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	The proposed changes to California Rules of Court, rule, 5.225 achieve their stated purpose and will be helpful to effectuate changes to Family Code section 3042.	Because rule 5.225 relates to the appointment requirements of child custody evaluators, the committee has decided to recommend the same amendments to rule 5.220. <i>Court ordered child custody evaluations</i> under item (d)(2) rather than to rule 5.225.

3. Comments about rule 5.242		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	The proposed changes to California Rules of Court, rule, 5.242 achieve their stated purpose and will be helpful to effectuate changes to Family Code section 3042.	No response required.

4. Comments about rule 5.250		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	The proposed changes to California Rules of Court, rules 5.250 achieve their stated purpose and will be helpful to effectuate changes to Family Code section 3042.	No response required.

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	<p>The proposed changes to form FL-311 would not be helpful to parties or attorneys, and in fact will be confusing to self-represented litigants. It is not clear, for instance, that items 1(b) and 3 do not have to be completed by everyone completing the parenting time application.</p> <p>Moreover, the language in both items 1(b) and 3 is misleading in that it does not seem to encompass the situation where the parent who is alleged to have a history of abuse would be asking for custody or unsupervised parenting time for themselves.</p> <p>In addition, there is already space in the form asking parties to provide their facts and argument for their requests, so the information gathered in these two items 1(b) and 3 is already being gathered elsewhere on the form. Redundancy in the forms should be avoided when possible.</p>	<p>Based on the comments, the committee recommends specific revisions to item 1b to make the child custody request part of the form easier to understand and complete. One change the committee recommends is adding a check box for the party to indicate that they do not want the court to order sole or joint custody to a person alleged to have a history of abuse or substance abuse. In addition, the committee recommends that item 3b include a notice that the party should ONLY complete it if they want the court to make orders for unsupervised visitation to a party alleged to have a history of abuse.</p> <p>The committee specifically drafted items 1b and 3 to be completed by either the party alleging a history of abuse or the party alleged to have a history of abuse. For example, if the petitioner is alleged to be the party with a history of abuse and is asking for custody for themselves, the party would check “petitioner” is alleged to have a history of abuse. If all parties are alleged in the pleadings to have a history of abuse, the petitioner would be able to check “petitioner,” “respondent,” or “other parent/party.”</p> <p>The committee does not agree that the proposed revisions to form FL-311 are redundant. No existing item provides the parties with the specific statutory requirements of Family Code section 3011 that would allow a party the specific opportunity to state the reasons why they believe the court should grant child custody or</p>

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
	Finally, and perhaps most importantly, we are VERY concerned that including these questions on the form would cause judicial officers to wrongly rely solely on the request forms to decide whether they need to comply with Family Code section 3011, subdivision (a)(5)(A). Abuse does not need to be alleged in any specific place or form for those requirements to apply; abuse just has to be alleged in the case in general—it could be raised at the hearing, in the initial request, in a response, in a supplemental declaration, in a mediation report, in exhibits attached to a declaration, etc.	<p>unsupervised visitation to a parent alleged to have a history of abuse or substance abuse.</p> <p>The committee appreciates the commenter’s concerns. In response, the committee notes that resolving the issue raised by the commenter involves more than changing the forms in the report. It will involve educating judicial officers about the requirements of Family Code section 3011, as well as other statutes relating to cases involving a history of abuse or substance abuse.</p> <p>Including items 1b and 3 on form FL-311 will also bring awareness to the duties that judicial officers have to comply with section 3011. Further, providing an opportunity for the parties to present facts in writing on form FL-311 improves the ability of the court to better assess whether the reasons that the parent specified are sufficient to grant the parent’s request for child custody or visitation (parenting time) orders on allegations of a history of abuse.</p> <p>Based on this comment, the committee also recommends changing the court order (form FL-341) item 7a, to provide that the judicial officer has considered allegations of abuse from sources that are not limited to those made in form FL-311 before making the order for child custody or unsupervised visitation under section 3011(a)(5)(A).</p>

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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

5. Comments about form FL-311		
Commenter	Comment	Committee Response
	<p>By placing these items 1(b) and 3 on this request form, it strongly suggests to courts and litigants that this is their one and only chance to bring up these allegations, and if not brought up here, the statutory requirements would not apply.</p> <p>Family Code section 3011 places the onus on the court, not the parties, to determine whether allegations of abuse have been raised, and, if so, to state its reasons on the record for granting the allegedly abusive parent custody or unsupervised visitation. Parents may not realize their reasons for a particular custody arrangement qualify as domestic violence under the law, or parents may allege facts they think are abuse but are not abuse under the law. It is incumbent on judicial officers to apply the law to the facts before them, however and whenever those facts have been raised in the case, and regardless whether a parent expressly invokes Family Code section 3011.</p> <p>In FVAP's experience, we have found it incredibly difficult to get judicial officers to comply with basic requirements for</p>	<p>The committee disagrees with the commenter on this point. The comment does not reflect an understanding of the purpose of form FL-311. Unlike other forms (for example, <i>Appearance, Stipulations, and Waivers</i> (for FL-130) and <i>Advisement and Waiver of Rights Re: Determination of Parental Relationship</i> (form FL-235)), form FL-311 does not require a party to waive any rights or remedies under the law.</p> <p>There is no language in form FL-311 to suggest that to courts and litigants that a party will be prevented from seeking the protections of the statute in the future if they do not check items 1(b) and 3. This is true for any item on the form. Parties with questions about the form may get help from the local court's Family Law Facilitator's Office or Self-Help Center, or the self-help portal of the California Courts website.</p> <p>The committee believes that the changes to form FL-311 and FL-341 will serve to educate judicial officers about the mandate under Family Code section 3011. This increases compliance with the law because the parties' responses to the specific item would allow the judicial officer to better assess if child custody or unsupervised visitation should be granted and make the required findings.</p> <p>See above response.</p>

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
	<p>stating their reasons (e.g., Fam. Code, §§ 3011, subd. (a)(5)(A), 3044, subd. (f)), so it is very important to us that the forms courts use do not cause judicial officers to think they do not have to comply with certain requirements when in fact they do.</p> <p>It is also noteworthy that the court was, before SB 654 was enacted, already required to state its reasons if it grants custody to an alleged abuser, per Family Code section 3011, subdivision (a)(5)(A). SB 654 just expanded the universe of cases where that requirement applies, to now include unsupervised visitation as well as custody (since there is sometimes little practical difference between significant unsupervised visitation and custody). Before SB 654, there was no need to add items 1(b) and 3 to the form, so why is there a need now with SB 654? SB 654 did not affect the court's duty to state its reasons when allegations are raised, and SB 654 didn't place any duties on the parties. NO bill, statute, or law requires adding these items 1(b) and 3 to the form. And doing so would cause confusion and potential misapplication of the law.</p> <p>We STRONGLY suggest removing items 1(b) and 3 from proposed revised form FL-311 form and instead adding item 2(f) as follows:</p> <p>f. <input type="checkbox"/> Visitation should be supervised by <input type="checkbox"/> professional <input type="checkbox"/> nonprofessional supervisor.</p>	<p>The recent adoption of SB 654 brought to the committee's attention the need to provide for the practice and procedures that cover <i>both</i> the recent amendments to Family Code section 3011 relating to unsupervised visitation and the previously enacted provisions of section 3011 relating to requests for child custody under allegations of a history of abuse.</p> <p>Revising form FL-311 as recommended will help to alert judicial officers and self-represented litigants about the law. Therefore, the committee recommends that the Judicial Council provide by rule for the practice and procedure in these proceedings to avoid confusion and the potential misapplication of the law. The committee appreciates the commenter's suggestions for achieving this end.</p> <p>For reasons previously stated, the committee does not agree to remove items 1b and 3 from the recommendations it is making to the Judicial Council.</p> <p>Because the commenter's suggestion does not fully address the provisions under Family Code section 3011 relating to child custody and unsupervised visitation to a parent alleged to have a history of abuse or substance</p>

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
	<p>If not removed, items 1(b) and 3 should be modified extensively to clarify all of the following:</p> <ol style="list-style-type: none"> 1) they should only be completed if there are allegations of abuse/substance abuse against a parent, and the person completing the form thinks the allegedly abusive/substance abusing parent should have custody in item 1(b) or unsupervised visitation in item 3, because absent these allegations these parts of form should not be completed; and 2) item 1(b) or 3 should be completed by the parent who is alleged to have committed abuse/abused substances, if that parent wants custody or unsupervised visitation; and 	<p>abuse, the committee does not agree to revise the form to remove new items 1(b) and 3 and instead add the proposed language regarding professional or nonprofessional supervised visitation.</p> <p>Because the committee recommends that item 1b be included on the form as a check box (like item 1a above it, regarding child custody), the committee believes that additional notices on the form are not needed to provide that item 1b only needs to be completed if there are allegations of a history of abuse or substance abuse. The party will not check the box if the custody case does not involve allegations of a history of abuse or substance abuse. However, the committee does recommend that the California Courts Self-Help portal be updated to provide information that reflects the new practice and procedures in the revisions to form FL-311 and FL-341.</p> <p>The committee does not agree to limit the application of item 1b to the person who is alleged to have a history of abuse or substance abuse. As previously indicated, the committee specifically drafted items 1b and 3 to be completed by either party. Generally, form FL-311 is a multi-use attachment. It can be attached to a Petition, Response, Request for Order, or Responsive Declaration to Request for Order.</p>

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
	3) notice should be provided on the form that failing to complete these items does NOT mean allegations of abuse/substance abuse cannot be raised in another way, and indeed the court MUST still follow Family Code section 3011(a)(5)(A) if allegations are made, even if these boxes are not checked.	To address the specific concern raised by the commenter, the committee recommends revising the <i>Child Custody and Visitation (Parenting Time) Order Attachment</i> (form FL-341) to provide that the judicial officer has considered allegations of abuse from sources that are not limited to those made in form FL-311, as previously described.
Harriet Buhai Center for Family Law By Rebecca L. Fisher, Senior Staff Attorney Los Angeles	<p>On the proposed FL-311, many litigants would likely mark item 1b in order to show that there have been allegations against the other party even if the proposed custody arrangement does not award custody to the other person. If they do so, it will be unclear whether they should provide information in 1(b)(2) or not because they may be asking for sole legal and sole physical custody in 1a and so view 1(b)(2) as not applying.</p> <p>If the goal of the form changes is to help courts comply with the changes to FL 3011 (particularly in default cases), it is critical that the form flags all cases with the FC 3011 allegations; that is the best way to make sure the orders comply with FC 3011(a)(5)(A).</p> <p>The visitation sections are much clearer on the FL-311 and FL-341 than the custody sections.</p> <p>Proposed changes: FL-311: 1b. <input type="checkbox"/> Allegations of abuse or substance abuse</p>	<p>After considering all comments about the proposed changes to form FL-311, and following further discussion, the committee recommends that the Judicial Council revise item 1b of form FL-311 provide, as follows:</p> <p>1b. <input type="checkbox"/> Custody with allegations of a history of abuse or substance abuse</p> <p>(1) <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other parent/party is (or are) alleged to have a history of abuse against any of the following persons: a child, the other parent, their current spouse, or the person they live with or are dating or engaged to.</p> <p>(2) <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other parent/party is (or are) alleged to have the habitual or continual use of controlled substances, alcohol, or prescribed drugs.</p> <p>(3) <input type="checkbox"/> I ask that the court NOT order sole or joint custody of the minor child to the person(s) alleged to have a history of abuse or substance abuse.</p> <p>(4) <input type="checkbox"/> Even though there are allegations, I ask that the court make the child custody orders in 1a. <i>(Write</i></p>

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5. Comments about form FL-311		
Commenter	Comment	Committee Response
	<p><input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other Party/ Parent has a history of (mark all that apply): <input type="checkbox"/> history of abuse <input type="checkbox"/> habitual or continual use of controlled substances, alcohol, or prescribed substances</p> <p>Information regarding the above allegations are (specific): <input type="checkbox"/> as follows <input type="checkbox"/> attachment 1b</p>	<p>the reasons why you think it would be <i>good for the children that the person(s) be granted custody, even though there are allegations against them of a history of abuse or substance abuse.</i></p> <p><input type="checkbox"/> Below <input type="checkbox"/> Attachment 1b. <input type="checkbox"/> Other (<i>specify</i>)__</p> <p>The committee believes that the above language will facilitate a more complete application for orders in cases involving allegations of a history of abuse or substance abuse by either party.</p>
Orange County Bar Association By Daniel S. Robinson, President Newport Beach	Additional space on the form FL-311 would be appreciated to explain the requests for specific custody and visitation orders.	The committee recommends and has expanded blank space wherever feasible on the form for the party to explain requests for specific custody and visitation orders.

6. Comments about form FL-323		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff Attorney Oakland	The proposed changes to form FL-323 achieve their stated purpose and will be helpful to effectuate changes to Family Code section 3042.	No response required.

7. Comments about form FL-341		
Commenter	Comment	Committee Response
Family Violence Appellate Project By Cory Hernandez, Staff	The other proposed changes to Form FL-341 will be helpful to judicial officers by both reminding them of the requirements of	No response required.

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7. Comments about form FL-341		
Commenter	Comment	Committee Response
Attorney Oakland	<p>Family Code section 3011, subdivision (a)(5)(A), and providing space to indicate the reasons for ordering child custody or unsupervised visitation when the statute applies.</p> <p>In addition, judicial education on when the statute applies, why it exists, and what are good reasons for ordering custody or unsupervised visitation when allegations of abuse are made would be extremely helpful in addressing the purpose of the law.</p> <p>In item 9(a) of revised Form FL-341, there is a mistake, in the phrase “will have supervised visitation (parenting time) with the minor children according to the schedule on page 1,” page 1 needs to be revised to “page 2.”</p>	<p>The committee appreciates the response and will refer the issue of judicial education to the Center for Judicial Education and Research.</p> <p>The committee has corrected the mistake in item 9.</p>
Harriet Buhai Center for Family Law By Rebecca L. Fisher, Senior Staff Attorney Los Angeles	<p>FL-341: we propose modifying item 7: Keep 7a.</p> <p>New 7b. [] The court’s order does not grant sole or joint custody of the minor child to the person(s) alleged to have a history of abuse or substance abuse.</p> <p>New 7c. [] Even though there are allegations of a history of abuse or substance use, the court grants sole or joint custody of the minor child as set out in item 6. The reasons for making the custody orders to the person(s) alleged to have a history of abuse or substance abuse are [etc. as drafted]</p>	<p>The committee agrees and recommends that the Judicial Council adopt the changes to item 7 on form FL-341.</p> <p>Same as above response.</p>

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

8. Does the proposal appropriately address the stated purpose?		
Commenter	Comment	Committee Response
California Partnership to End Domestic Violence By Christine Smith Public Policy Coordinator Sacramento	Yes.	No response required.
Harriet Buhai Center for Family Law By Rebecca L. Fisher, Senior Staff Attorney Los Angeles	In general, yes.	No response required.
Orange County Bar Association By Daniel S. Robinson, President Newport Beach	The proposal appropriately addresses the stated purpose.	No response required.
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	Yes, the proposal addresses the stated purpose.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Yes.	No response required.

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9. Would it be helpful to the parties and attorneys to provide space on form FL-311 to state the reasons why sole or joint custody, or unsupervised visitation, should be granted if Family Code section 3011(a)(5)(A) applies to the case, especially in a potential default situation?		
Commenter	Comment	Committee Response
California Partnership to End Domestic Violence by Christine Smith Public Policy Coordinator Sacramento	This change would be helpful. Because so many family law litigants are self-represented, we appreciate the changes to court forms that give self-represented litigants the opportunity to more fully express why they are making certain requests of the court, especially since they often don't know to file declarations and other important documents.	No response required.
Harriet Buhai Center for Family Law By Rebecca L. Fisher, Senior Staff Attorney Los Angeles	A place for this information would be helpful, but the proposed version is confusing. [The commenter's proposed changes to form FL-311 are found in table 5.]	See the committee's response in table 5.
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	Yes, this would be helpful for all parties and the court.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Yes.	No response required.

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10. What is the impact of these changes to the forms on low income people?		
Commenter	Comment	Committee Response
California Partnership to End Domestic Violence by Christine Smith Public Policy Coordinator Sacramento	It is unclear what the specific impact will be on low-income people, but if the comment section is left blank, the court might assume that no 3011 presumption applies, and this is more likely to happen in the case of self-represented litigants, a large percentage of whom are low-income.	No response required.
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	The changes do not appear to have an impact on low-income people.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Unknown.	No response required.

SP22-09**Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony** (Amend rules 5.210, 5.220, 5.242, and 5.250; revise forms FL-311, FL-323, and FL-341)

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

11. Would the proposed changes to form FL-341 be helpful to judicial officers in providing space to indicate the reasons for ordering child custody and visitation if Family Code section 3011(a)(5)(A) applies to the case?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	The proposed changes would be helpful for the judicial officer's review and consideration.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Yes.	No response required.

12. Are the proposed changes to forms FL-311 and FL-341 helpful in reminding judicial officers about the requirements of Family Code section 3011(a)(5)(A) when reviewing requests and proposed orders and judgments relating to child custody and visitation?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	Yes, the proposed changes are helpful.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Yes, although these optional forms are not frequently used in the San Diego Superior Court. Therefore, making the contents of item 9 [on form FL-341] a standalone mandatory form might be ideal.	Proposing a new standalone order form is a substantive change and would require that a different proposal be circulated for additional comment. The committee will consider this for a future cycle.

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13. Would the proposed changes indicated the preceding tables 13 and 14 be best handled by judicial education?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	Yes.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Judicial education will certainly be helpful, but given the myriad of findings and factors judicial officers must make and consider for custody orders, it does seem beneficial to have these set forth in a form.	No response required.

14. Would the proposal provide cost savings? If so, please quantify.		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	The proposal does not appear to provide any cost savings.	No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	No.	No response required.

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15. What would the implementation requirements be for courts?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	<ul style="list-style-type: none">• Training case processing staff, Self-Help staff, and courtroom clerks (approximately 1 hour each position).• Staff meeting agenda to inform staff of revisions.• Revising case processing and courtroom procedures.• Revising Self-Help Center packets to include updated forms.• Revising activities in case management system to reflect appropriate order language	The committee appreciates receiving this information. No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Updating local packets and training staff.	The committee appreciates receiving this information. No response required.

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16. 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	These changes will take longer than 3 months to implement.	<p>Senate Bill 654 requires that the Judicial Council develop or amend rules to implement the provisions of Family Code section 3011 no later than January 1, 2023. Therefore, the committee is unable to recommend that the Judicial Council delay the effective date of the changes to the forms that implement the bill.</p> <p>The Judicial Council will provide training to self-help staff, family court services mediators, and judicial officers regarding the change in the law.</p>
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	No, six months will be needed to make the necessary update in procedures, and training needs.	See above response to Superior Court of Los Angeles County.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	Yes, if the final versions of the forms are provided to the court by that time. This will ensure that the court is able to provide training to staff, modify local packets and obtain printed stock.	The committee endeavors to publish the forms and make them available to the courts with sufficient time to allow courts to modify packets and obtain printed stock.

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17. How well would this proposal work in courts of different sizes?		
Commenter	Comment	Committee Response
Superior Court of Orange County Family Law and Juvenile Division By Vivian Tran Operations Analyst	This proposal would work for Orange County.	The committee appreciates receiving this information. No response required.
Superior Court of San Diego County By Michael M. Roddy Executive Officer	It appears that the proposal would work for courts of all sizes.	The committee appreciates receiving this information. No response required.