



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-187*  
For the business meeting on September 25, 2020

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Title	Agenda Item Type
Family Law: Changes to Child Custody Evaluations Rule and Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.220; revise form FL-327; and adopt forms FL-327(A) and FL-329	January 1, 2021
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	August 23, 2020
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Gabrielle D. Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a> Gregory Tanaka, 415-865-7671 <a href="mailto:gregory.tanaka@jud.ca.gov">gregory.tanaka@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of court and adopting a new mandatory child custody evaluation report form to comply with recent statutory changes to Family Code section 3118. Effective January 1, 2021, Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127) creates new requirements for the confidential written report that is filed with the court and served on the parties following a child custody evaluation, assessment, or investigation in which the court has determined that there is a serious allegation of child sexual abuse or an allegation of child abuse in any other circumstance. To comply with other requirements for Family Code section 3118 evaluations, the committee further recommends revising the order that appoints the child custody evaluator and adopting a new attachment that enumerates the rights and responsibilities of the evaluator.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.220 to refer to the general requirements for evaluations under Family Code section 3118 and identify the new confidential report that the evaluator must use in these cases;
2. Revise *Order Appointing Child Custody Evaluator* (form FL-327) to indicate that there are additional orders that apply to evaluators appointed under Family Code section 3118 and to refer to the attachment with those additional orders, new proposed form FL-327(A);
3. Adopt *Additional Orders for Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)) as the mandatory attachment to form FL-327 that states the rights and responsibilities of the evaluator and includes further court orders; and
4. Adopt *Confidential Child Custody Evaluation Report* (form FL-329) to serve as the statutorily mandated form that is a standardized template for all information necessary to provide a full and complete analysis relating to a serious allegation of child sexual abuse or an allegation of child abuse in the proceeding under Family Code section 3118.

The text of the proposed amended rule and proposed new and revised forms are attached at pages 9–11.

## Relevant Previous Council Action

Effective July 1, 2003, the Judicial Council amended rule 5.220 to conform to the requirements under Family Code section 3118 for evaluations in cases where the court has determined that there is a serious allegation of child sexual abuse or an allegation of child abuse.

Effective January 1, 2002, the Judicial Council approved *Order Appointing Child Custody Evaluator* (form FL-327) to facilitate uniform statewide implementation of rule 1257.4 (now rule 5.220), which includes evaluations under Family Code section 3118. The form was revised, effective January 1, 2010, to reference a new mandatory form (form FL-328) under Family Code section 3111 and to conform to case law by adding provisions regarding the scope and purpose of the evaluation and the determination of fees and costs of the evaluation.

## Analysis/Rationale

In contested proceedings in family court involving child custody or visitation rights, a judicial officer may appoint a court-connected or private evaluator under Family Code section 3111 to provide recommendations to the court if the judicial officer determines the appointment is in the best interests of the child. Under section 3118, in cases involving a serious allegation of child sexual abuse, the court *must* appoint an evaluator to conduct an evaluation, investigation, or assessment. For allegations of child abuse that arise in a proceeding for child custody and

visitation rights, the court is not required to, but may appoint an evaluator or investigator to conduct an evaluation, investigation, or assessment under section 3118.

Family Code section 3118(b)(6)(A)–(H) lists the minimum information that the evaluator or investigator must cover in the confidential written report, summarized as follows:

- Documentation of material interviews of the child, parents, and other witnesses;
- A summary of any law enforcement investigator’s investigation;
- Relevant background material, including but not limited to a summary of written reports from any therapist treating the child for suspected child sexual abuse;
- The written recommendations of the evaluator or investigator about the therapeutic needs of the child and how to ensure the child’s safety;
- A summary of other child abuse investigations, if any, and disposition and any relevant dependency court orders or findings;
- Any information from a child protective agency or law enforcement agency about the presence of domestic violence or substance abuse in the family;
- Whether any family members are known to be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence; and
- Any other information believed to be helpful for the court in determining what is in the best interests of the child.

Effective January 1, 2021, Family Code section 3118(b)(6) requires that the report with the above information be made on a form adopted by the Judicial Council. To comply with the legislation, the council must adopt one new form and amend rule 5.220 as described in the following section. In addition, the committee recommends that the Judicial Council revise *Order Appointing Child Custody Evaluator* (form FL-327) and approve a new attachment to that order (form FL-327(A)) so that the order includes the statutorily required content for these appointments.

#### **Rule 5.220 (Court-ordered child custody evaluations)**

Rule 5.220 is proposed to be reorganized to differentiate the requirements for confidential evaluation reports written to comply with Family Code section 3111 and those that must comply with Family Code section 3118. Specifically, the rule is proposed to include a new subdivision (g) titled “Confidential written report; requirements,” in which (g)(1) would list the requirements for section 3111 reports and (g)(2) would list the requirements for section 3118 reports. Subdivision (g)(2) is proposed to reference the name and number of the proposed new Judicial Council form FL-329, among other requirements. In addition, because both new subdivisions would include the language in current subdivision (i) relating to another required form, subdivision (i) would be deleted to avoid redundancy in the rule.

Other technical changes would include re-lettering affected subdivisions in the rule and updating subdivision (b) by deleting the reference to section 2032 of the Code of Civil Procedure and updating it to section 2032.010.

***Confidential Child Custody Evaluation Report (form FL-329)***

This new mandatory form is proposed to comply with Family Code section 3118 by serving as the standardized template for all information necessary to provide a full and complete analysis of the allegations raised in the proceeding. To this end, the form is proposed to include all actions listed in section 3118(b)(6)(A)–(H).

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

This form is proposed to be revised to specify that the court must complete and attach a separate, more extensive form (form FL-327(A)) when the appointment relates to a case involving a serious allegation of child sexual abuse or an allegation of child abuse under Family Code section 3118. Along with other minor changes, the revisions are needed in order to comply with all requirements under the statute in these proceedings.

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

This new mandatory attachment is proposed to fill a need for a court order that complies with each requirement under Family Code section 3118 each time a child custody evaluator is appointed in these proceedings.

***Policy implications***

There were no policy implications that contributed to controversy or intense debate within the committee about any form in the proposal.

The decision to recommend extensive changes to form FL-329, made in response to comments, serves the policy of access and fairness to the parties in family court. Providing a form that helps the evaluator organize and present summaries and recommendations about the child under Family Code section 3118 will help the parties overcome barriers to understanding the evaluator's process; specifically, how the evaluator reached the stated recommendations. This will help the parties prepare any arguments supporting or opposing the recommendations. Further, this will help the judicial officer make decisions on the parties' positions relating to the evaluator's recommendations. Thus, with respect to the court, the revised form also serves the policy goal to modernize management and administration by implementing effective practices to foster the fair, timely, and efficient processing and resolution of all cases.

The committee's recommendation to add two forms to the proposal in response to comments (form FL-327 and its attachment, form FL-327(A)) serves the policy goal of maintaining forms that are consistent with the requirements of the Family Code. Recently amended Family Code section 3118 brought to the committee's attention that the current order form is incomplete as it relates to appointments in cases involving a serious allegation of child sexual abuse or an allegation of child abuse. For example, an evaluator commented that they experienced difficulty obtaining copies of juvenile court records because the current order does not reflect the evaluator's right to obtain those records. The proposed new attachment will clearly state that the evaluator has access to those records. It will also include the evaluator's responsibilities as to the information obtained from those records, as well as the evaluator's responsibilities to the juvenile

court. Ultimately, the committee’s recommendations will also help implement effective practices in family court by eliminating the need for evaluators to seek additional orders to allow access to juvenile court records.

## **Comments**

This proposal was circulated for public comment from April 10 through June 9, 2020, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Two commenters agreed with the proposal. Four organizations agreed if the proposal is modified; one did not agree; and four did not indicate a position but provided comments on the proposal.

### ***Rule 5.220***

Four organizations submitted comments about the rule. Some requested additional changes, one approved of the changes as circulated, and none disapproved of the proposed changes.

One organization requested that the rule include specific language in Family Code section 3118 to further describe the obligations of the evaluator. The committee concluded that this change was not necessary, because the proposed new form FL-329 includes the specific language that the commenter requested appear in rule 5.220. Under rule 5.7 of the California Rules of Court, “[a]ll forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL ... series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law.”

Another commenter requested that subdivision (g)(1)(A) of the rule be changed to include that the evaluator must also serve the report on any counsel appointed for the child pursuant to Family Code section 3150. The committee agreed with the comment and proposes to include this language in the rule in subdivision (g)(1)(A) and (2)(A), as the change applies equally to evaluations under Family Code section 3111 and section 3118.

A final commenter requested removing all references to child custody evaluations under Evidence Code section 730. The committee did not agree with this suggestion because Family Code section 3110.5(b)(1) requires the rule to include “730 evaluations.” Specifically, it provides that

[o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

The same organization requested that the rule include language about the evaluator’s compensation. The committee did not agree with the suggestion because the issue of the

evaluator's fees is already covered in *Order Appointing Child Custody Evaluator* (form FL-327), and because the change is not required to implement AB 1179.

### ***Form FL-329***

Several commenters expressed significant concern about the draft form FL-329, in its entirety as circulated for comment, generally stating that it does not address the stated purpose. For example:

- The Association of Certified Family Law Specialists stated that the form needs to be modified “to ensure that the proposal adequately addresses the stated purpose to adopt a new mandatory form to comply with recent statutory changes to Family Code § 3118”;
- The Legislative Coalition to Prevent Child Abuse suggested specific changes to 13 items in the form to conform them to the language in Family Code section 3118;
- The California Partnership to End Domestic Violence and the Family Violence Appellate Project expressed concern about the form and suggested specific changes to the item on the form relating to the Victims of Crime Program; and
- Mothers of Lost Children and the Legislative Coalition to Prevent Child Abuse called for a major revision of the form so that it better reflects all requirements of Family Code section 3118. They submitted a draft form to illustrate the changes being requested (see Attachment A), and also requested that the form include the language from section 3118 that authorizes the evaluator to access juvenile court records.

In response to the comments, the committee proposes a completely new version of the form. The proposed form:

- Reframes the report template in the first person “voice” of the evaluator;
- Includes each requirement of the statute using the same statutory language;
- Includes the same headings found in the statute;
- Adds check boxes in certain items in the report to specify if the evaluator reviewed the reports being summarized or obtained copies of the reports being summarized, which is a distinction that may be needed because the evaluator is prohibited from photocopying documents in the child welfare agency's file, and that file might contain information about reports from therapists, medical personnel, and other professionals who treated the child for suspected child abuse;
- Consolidates requirements where possible to avoid redundancy in the report; and
- Is expanded from 3 to 7 pages to indicate the statutorily required acts that the evaluator must complete and to include blank space to summarize information obtained from investigations, documents, or interviews.

### ***Addition of forms FL-327 and FL-327(A) to proposal***

While conducting additional research in response to a comment, the committee discovered that Family Code section 3118(b) authorizes evaluators to access juvenile court records. Moreover, the statute *requires* that (1) the order appointing the evaluator provide that the evaluator have access to all juvenile records pertaining to the child who is the subject of the evaluation and (2) the evaluator maintain confidential any juvenile court records or information gained from those records and only release those records or information as specified in section 3111.

In addition, Family Code section 3118(g) requires that the evaluator suspend the evaluation, investigation, or assessment if a petition is filed to declare the child a dependent of the juvenile court and make available to the juvenile court all information that the evaluator gathered.

Further, the statute requires that the court do the following:

- Order further evaluations beyond the minimum requirements of evaluation when necessary to determine the safety needs of the child (Fam. Code, § 3118(e)); and
- Consider whether the best interests of the child require that a temporary order be issued that limits, suspends, or denies visitation with the parent against whom the allegation of child sexual abuse has been made (Fam. Code, § 3118(f)).

All of the above-mentioned subdivisions of Family Code section 3118 predate the amendments recently enacted by AB 1179; however, none of the requirements are reflected in the mandatory form used to appoint all child custody evaluators, *Order Appointing Child Custody Evaluator* (form FL-327). Thus, form FL-327 is not complete as it relates to child custody evaluations conducted under section 3118.

The committee proposes to revise form FL-327 by including the language of Family Code section 3118(b) and (e)–(g). To accommodate the amount of information required to be included in the order relating exclusively to evaluations involving a serious allegation of child sexual abuse and an allegation of child abuse under section 3118, the committee further proposes that the Judicial Council adopt a new attachment form to the order, *Additional Orders for Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)).

### **Alternatives considered**

With respect to forms FL-327 and FL-327(A), the committee considered whether to include them in this proposal to the Judicial Council without circulating them for public comment or circulating them for comment in a separate invitation to comment in the winter cycle. After discussion, the committee decided that it is imperative that forms FL-327 and FL-327(A) be included in this proposal to thoroughly comply with all of the requirements of Family Code section 3118, and not only comply with the recent amendments enacted by AB 1179. Taking this action will provide legally complete and accurate court orders along with a comprehensive report template for evaluations under section 3118, effective January 1, 2021.

Although forms FL-327 and FL-327(A) will not have circulated for comment before being recommended for adoption, they were developed directly in response to comments received in the spring 2020 cycle. Further, the proposed revisions to form FL-327 are minor and the entire content of form FL-327(A) so closely mirrors the language in Family Code section 3118 that the forms are unlikely to create controversy.

To address the fact that forms FL-327 and FL-327(A) did not circulate for comment, the committee recommends that staff from the Center for Families, Children & the Courts educate the courts, including Family Court Services directors, about the changes to the report template (form FL-329), revised form FL-327, and the new attachment (form FL-327(A)).

### **Fiscal and Operational Impacts**

The impacts to the courts include costs to copy the new and revised forms, as well as the cost to educate court-connected child custody evaluators and judicial officers on the new procedures for issuing orders and completing a child custody evaluation, investigation, or assessment under Family Code section 3118. Courts would also need to update their case management systems. However, these impacts would be outweighed by the benefit of producing court orders as well as reports that satisfy the requirements of section 3118.

### **Attachments and Links**

1. Cal. Rules of Court, rule 5.220, at pages 9–11
2. Forms FL-327, FL-327(A), and FL-329, at pages 12–19
3. Chart of comments, at pages 20–44
4. Attachment A: Draft of form FL-329 submitted by commenters for consideration
5. Link A: Assem. Bill 1179,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1179](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1179)



Rule 5.220 of the California Rules of Court is amended, effective January 1, 2021, to read:

**Rule 5.220. Court-ordered child custody evaluations**

**(a) Authority**

This rule of court is adopted under Family Code sections 211 and 3117.

**(b) Purpose**

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interests of children with regard to disputed custody and visitation issues. This rule governs both court-connected and private child custody evaluators appointed under Family Code section 3111, Family Code section 3118, Evidence Code section 730, or ~~Code of Civil Procedure section 2032~~, chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

**(c)–(d) \* \* \***

**(e) Scope of evaluations**

All evaluations must include:

(1)–(2) \* \* \*

~~(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:~~

~~(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;~~

~~(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;~~

~~(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and~~

1           ~~(D) Provide clear, detailed recommendations that are consistent with the~~  
2           ~~health, safety, welfare, and best interest of the child if making any~~  
3           ~~recommendations to the court regarding a parenting plan.~~  
4

5   **(f) Presentation of findings**  
6

7       All evaluations must include a written or oral presentation of findings that is  
8       consistent with Family Code section 3111, Family Code section 3118, or Evidence  
9       Code section 730. In any presentation of findings, the evaluator must do all of the  
10       following:  
11

- 12       (1) Summarize the data-gathering procedures, information sources, and time  
13       spent, and present all relevant information, including information that does  
14       not support the conclusions reached;  
15  
16       (2) Describe any limitations in the evaluation that result from unobtainable  
17       information, failure of a party to cooperate, or the circumstances of particular  
18       interviews;  
19  
20       (3) Only make a custody or visitation recommendation for a party who has been  
21       evaluated. This requirement does not preclude the evaluator from making an  
22       interim recommendation that is in the best interests of the child; and  
23  
24       (4) Provide clear, detailed recommendations that are consistent with the health,  
25       safety, welfare, and best interests of the child if making any  
26       recommendations to the court regarding a parenting plan.  
27

28   **(g) Confidential written report; requirements**  
29

- 30       (1) Family Code section 3111 evaluations. An evaluator appointed under Family  
31       Code section 3111 must do all of the following:  
32  
33           (A) File and serve a report on the parties or their attorneys and any attorney  
34           appointed for the child under Family Code section 3150; and  
35  
36           (B) Attach a Notice Regarding Confidentiality of Child Custody Evaluation  
37           Report (form FL-328) as the first page of the child custody evaluation  
38           report when a court-ordered child custody evaluation report is filed  
39           with the clerk of the court and served on the parties or their attorneys,  
40           and any counsel appointed for the child, to inform them of the  
41           confidential nature of the report and the potential consequences for the  
42           unwarranted disclosure of the report.  
43

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

5  
6       (A) Provide a full and complete analysis of the allegations raised in the  
7       proceeding and address the health, safety, welfare, and best interests of  
8       the child, as ordered by the court;

9  
10       (B) Complete, file, and serve Confidential Child Custody Evaluation  
11       Report (form FL-329) on the parties or their attorneys and any attorney  
12       appointed for the child under Family Code section 3150; and

13  
14       (C) Attach Notice Regarding Confidentiality of Child Custody Evaluation  
15       Report (form FL-328) as the first page of the child custody evaluation  
16       report in (B) to inform the parties or their attorneys of the confidential  
17       nature of the report and the potential consequences for the unwarranted  
18       disclosure of the report.

19  
20       (i) **~~Service of the evaluation report~~**

21  
22       ~~A Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-~~  
23       ~~328) must be attached as the first page of the child custody evaluation report when~~  
24       ~~a court-ordered child custody evaluation report is filed with the clerk of the court~~  
25       ~~and served on the parties or their attorneys, and any counsel appointed for the child,~~  
26       ~~to inform them of the confidential nature of the report and the potential~~  
27       ~~consequences for the unwarranted disclosure of the report.~~

28  
29       ~~(f)-(j)~~ **(h)-(k)**       \* \* \*

PARTY WITHOUT ATTORNEY or ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>  <b>08/12/2020xyz</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: <div style="background-color: yellow; padding: 2px;">OTHER PARENT/PARTY:</div>	
<b>ORDER APPOINTING CHILD CUSTODY EVALUATOR</b>	
CASE NUMBER:	

**THE COURT ORDERS AS FOLLOWS:**

## 1. The court appoints:

- a. ☐ a local court-connected child custody evaluation service (*specify*):  
 b. ☐ a private child custody evaluator (*specify*):  
 c. ☐ family court services  
 d. ☐ other (*specify*):

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

- e. ☐ a full child custody evaluation  
 f. ☐ a partial child custody evaluation

under the statutory authority of:

- g. ☐ Family Code section 3111.  
 h. ☐ Family Code section 3118.

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

- i. ☐ Evidence Code section 730.  
 j. ☐ Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.

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

☐ See attachment.

Name
Date of birth

 3. The purpose and scope of the evaluation is (*specify*):

☐ See attachment.

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

☐ See attached order on fees and costs.

a. The evaluator will be compensated as follows:

(Specify amount or rate and terms):

☐ The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.

b. The court finds that the parties are able to pay the cost of the child custody evaluation. The parties are ordered to pay as follows:

(1) ☐ Petitioner/plaintiff must pay % of the cost. ☐ Respondent/defendant must pay % of the cost.

(2) ☐ The court reserves jurisdiction to reallocate the cost of the evaluation between the parties.

(3) ☐ Other:

c. Payment will be made as follows:

(1) ☐ Petitioner/plaintiff must make installment payments of \$ per month until the cost of the evaluation is paid or modified by court order.

(2) ☐ Respondent/defendant must make installment payments of \$ per month until the cost of the evaluation is paid or modified by court order.

(3) ☐ Other:

**5. NOTICE TO EVALUATOR**

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

**6. NOTICE REGARDING EVALUATIONS UNDER FAMILY CODE SECTION 3118**

Additional orders apply to evaluations conducted under Family Code section 3118. See attached *Additional Orders for Child Custody Evaluations Under Family Code section 3118* (form FL-327(A)). You must complete your report using *Confidential Child Custody Evaluation Report* (form FL-329).

**7. NOTICE REGARDING CONFIDENTIALITY OF EVALUATION REPORT**

The child custody evaluation report is confidential. You must not make an unwarranted disclosure of the contents of the child custody evaluation report. By law, a court can order a penalty for the unwarranted disclosure of the child custody evaluation report, which can include an order that the disclosing party pay a fine and attorney fees and costs.

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

**8. INSTRUCTIONS FOR INITIAL CONTACT**

a. ☐ The evaluator will contact each party.

b. ☐ Each party must contact the evaluator.

c. ☐ Additional instructions (specify):

**9. OTHER**

10. ☐ Additional orders attached.

Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

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

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

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

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

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

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

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

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

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

The child custody evaluator must:

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

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

The child custody evaluator must:

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

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

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

EVALUATOR: _____ NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____		FOR COURT USE ONLY <b>CONFIDENTIAL</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARENT/PARTY: _____		
<b>CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT</b>		
		CASE NUMBER: _____

**NOTE: (1) This form must be used for a child custody evaluation, investigation, or assessment based on a serious allegation of child sexual abuse or an allegation of child abuse under Family Code section 3118. (2) Notice Regarding Confidentiality of Child Custody Evaluation Report (form FL-328) must be attached as the cover page of this report.**

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

Child's name

Date of birth

### 3. Dependency court orders

- a. ☐ There are no dependency court orders that might affect child custody.
- b. ☐ There are dependency court orders that might affect child custody, as follows: ☐ See Attachment 3b(1).
- (1) Court (county, state) Case number Date order filed
- (2) Any dependency court orders or findings that might have a bearing on the child custody dispute in family court are summarized (specify): ☐ Below: ☐ See Attachment 3b(2).

### 4. Summary of child welfare agency investigations and recommendations

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



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

Name:

Name:

Telephone No.:

Telephone No.:

Mailing Address:

Mailing Address:

City and Zip Code:

City and Zip Code:

Email address:

Email address:

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

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

#### 5. Summary of law enforcement investigation and recommendations

- a. I consulted with law enforcement about the serious allegation of child sexual abuse or the allegation of child abuse and obtained recommendations from these professionals about each child's safety and need for protection.
- b. Recommendations from each law enforcement professional about each child's safety and need for protection are summarized (*specify*): ☐ Below: ☐ See Attachment 5b.
- c. I obtained from a law enforcement investigator all available information obtained from criminal background checks of (*specify*): ☐ the parents ☐ any suspected perpetrator that is not a parent including information about child abuse, domestic violence, or substance abuse.
- d. A summary of the information obtained from each law enforcement investigator is (*specify*): ☐ Below: ☐ See Attachment 5d.

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**6. Multidisciplinary and forensic examinations; interview of the child**

**a. Multidisciplinary interview team (MDIT) interviews**

- (1) ☐ I reviewed the results of the MDIT interview.
- (2) ☐ I requested an MDIT interview because (*select one*):
- (a) ☐ There was no MDIT interview of the child.
- (b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.
- (3) ☐ I interviewed each child because (*select one*):
- (a) ☐ There was no MDIT interview of the child.
- (b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.
- (4) Whenever possible, I avoided repeated interviews of the child.
- (5) A summary of ☐ the MDIT ☐ my interview of each child is: ☐ Below: ☐ See Attachment 6a(5).

- (6) Written documentation of ☐ the MDIT ☐ my interview of each child is attached (see Attachment 6a(6)).
- (7) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from (*specify*): ☐ the MDIT interview ☐ my interview with each child. A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 6a(7).

**b. Forensic examination of the child**

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

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- (4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.  
 A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 6b(4).

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

**7. Documentation of other material interviews; relevant background material**

- a. ☐ I interviewed the parents.

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

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

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

**b. Prior or currently treating therapists**

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

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

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

**c. Medical personnel; other medical examinations**

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

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

**d. Other professionals**

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

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

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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- (5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources.  
 A summary of the information is (*specify*): ☐ Below: ☐ See Attachment 7d(5).

**e. Other witnesses**

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

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

**8. Victims of Crime Program**

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

**9. Limitations in the evaluation**

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

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**10. Other**

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

☐

Below:

☐

See Attachment 10.

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

Below:

☐

See Attachment 11.

**12. Summary of procedures**

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

☐

Below:

☐

See Attachment 12.

13. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
(NAME OF EVALUATOR)\_\_\_\_\_  
SIGNATURE OF EVALUATOR

**SPR20-20****Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)**

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

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	AM	ACFLS agrees with the proposed changes if modified to ensure that the proposal adequately addresses the stated purpose to adopt a new mandatory form to comply with recent statutory changes to Family Code Family Code §3118 and addresses the concerns specified in provisions below.	See responses to specific provisions below.
2.	California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento	AM	See specific comments on provisions below.	See responses to specific provisions below.
3.	California Protective Parents Association by Catherine Campbell Executive Director Los Altos	NI	Comments submitted are duplicative of comments received from Mothers of Lost Children.	See responses to Mothers of Lost Children below.
4.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Saul Berkovitch Director of Governmental Affairs	A	No specific comment.	No response required.
5.	Seth L. Goldstein Attorney at Law Monterey	NI	See specific comments about form FL-329 below.	See responses to specific provisions below.
6.	Family Violence Appellate Project by Cory Hernandez, Staff Attorney Oakland	N	The invitation to comment queries whether the proposal appropriately addresses the stated purpose. Because of a concerning flaw in item 12 of the Proposed Form FL-329, it does not.	See responses to specific provisions below.

**SPR20-20****Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)**

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			See specific comments about form FL-329 below	
7.	Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park	AM	I offer the additions or amendments below to make the proposed rule 5.220 and form FL-329 consistent with Family Code section 3118, the statute they are implementing. Some of my recommendations are to increase clarity for those utilizing the form. With these changes, the proposal would appropriately address the stated purpose of assisting the court to determine the safety needs of children at-risk in family court cases.	See responses to specific provisions below.
8.	Mothers of Lost Children by Connie Valentine, M.S.	AM	See comments on specific provisions below. See also Attachment A for a draft form produced by the commenter.	See responses to specific provisions below.
9.	Orange County Bar Association By Scott B. Garner, President Newport Beach	A	No specific comment.	No response required.
10.	Superior Court of Orange County Family Law Division Orange	NI	See comments on specific provisions below.	No response required.
11.	Superior Court of San Diego County by Michael Roddy, Executive Director	NI	<p>* The proposal appropriately addresses the stated purpose.</p> <p>* The proposal does not provide cost savings.</p> <p>* The implementation requirements for courts would be updating case management system, internal procedures, and notifying staff.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>



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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>* Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation, provided the final version of the form is provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff.</p> <p>It appears that the proposal will work for courts of various sizes.</p>	<p>It is the Judicial Council's goal to post the revised forms to the Judicial Resources Network within three months of their approval. The actual date of posting depends on many factors, including the number of forms in the cycle and the time required to program each form to meet accessibility requirements.</p> <p>No response required.</p>

## SPR20-20

### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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

Rule 5.220		
Commenter	Comment	Committee Response
Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park	<p>Add underlined text and remove text with strikeout.</p> <p>Rule 5.220 subdivision (g)(2)</p> <p>(A) <u>Provide documentation of material interviews, results of forensic medical exams, reports of other professionals and a full and complete analysis of the allegations raised in the proceeding and address the health, safety, welfare and best interests of the child. (Authority cited: Family Code 3118 (b)(6)(A) and (C).)</u></p> <p>(B) Comply with (A) by filing and serving Confidential <del>Child Custody Evaluation Report</del> <u>Custody Investigation and Report</u> (form FL-328) on the parties or their attorneys as required by section 3118. (Authority cited: Family Code Section 3118 Chapter 6. Custody Investigation and Report [3110-3118].)</p>	<p>Based on many of the comments received, including this one, the committee recommends substantial changes to the proposal and believes its recommended changes to form FL-329 will address the suggestions about rule 5.220 and will avoid redundancy. Under rule 5.7, all forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL...series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution, and other applicable law.</p> <p>For reasons stated in the response to Mothers of Lost Children, the committee does not recommend changing the title of the form as suggested by the commenter.</p>
Mothers of Lost Children by Connie Valentine, M.S.	<p>1. Although the terms “evaluator” and “investigator” are used interchangeably, it would be useful to include “investigations” in the title, since that term is used as the title in Chapter 6, FC 3110-3118 “Child Custody Investigation and Report”.</p> <p>2. It would be clarifying to further define “court connected” as pertaining also to court employees, in addition to private contractors. Courts often use private contractors for evaluations</p>	<p>1. The proposed change is not required to implement the amendments to Family Code section 3118 under Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127). Further, such a change would require extensive technical changes to other rules of court and forms, and potentially local court rules as well that reference the current title of the rule. For these reasons, the committee does not agree to recommend that the Judicial Council change the title of rule 5.220, as the commenter proposes.</p> <p>2. The committee does not recommend further defining the term “court-connected” in subdivision (b). The change is not within the scope of the proposal and is not</p>

**SPR20-20****Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)**

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

<b>Rule 5.220</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>or investigations, which places a financial burden on litigants who may be required to repay the court or incorrectly ordered to directly pay professionals. This would remind courts that trained and qualified public employees can readily perform the same function of gathering and summarizing information without the burden of potential extra costs to litigants.</p> <p>(b) Purpose.</p> <p>1. The purpose and compensation under each code section need further clarification to reduce confusion over roles and methods of payment for services.</p> <ul style="list-style-type: none"> <li>• The procedure and reporting requirements for Family Code sections 3110.5-3118 were jointly developed by Judicial Council, County Welfare Directors, District Attorney Association, the Legislative Coalition to Prevent Child Abuse and Senator Deborah Ortiz, author of SB 1716 to establish these sections in the year 2000.</li> <li>• The first focus of Family Code section 3110.5 is on domestic violence and child abuse training. The training on child sexual abuse is particularly important since not only is it a crime, but there are usually no witnesses, so children's statements may be the only evidence. The reason for the legislation was that these issues are often minimized in custody disputes, despite their overwhelming negative effects on children. This problem continues to date.</li> <li>• The intent of SB 1716 was for all child custody</li> </ul>	<p>required to implement the amendments to Family Code section 3118.</p> <p>The committee does not recommend that the Judicial Council amend the rule as the commenter proposes. The issues of purpose and compensation are already addressed in the <i>Order Appointing Child Custody Evaluator</i> (form FL-327).</p> <p>No response required.</p> <p>No response required.</p>

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### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Rule 5.220		
Commenter	Comment	Committee Response
	<p>evaluations to be conducted under Family Code section 3111, and all child sexual abuse and other child abuse investigations to be conducted under Family Code section 3118, as clarified by Senator Ortiz in 2010 (see letter below)</p> <ul style="list-style-type: none"><li>Family Code section 3112 was written to ensure a fair, neutral billing process and cost containment for evaluators and investigators under Family Code sections 3111 and 3118, in which litigants with resources may be required to repay the court, but do not pay professionals directly.</li></ul> <p>Senator Deborah Ortiz has stated and written that it was never the intent of her bill for custody evaluations or investigations to be conducted under Evidence Code section 730 or to be paid for directly by litigants.</p> <ul style="list-style-type: none"><li>Evidence Code section 730 refers to expert witnesses who are recognized by their profession for their depth of knowledge in a subject that is not common knowledge.</li></ul>	<p>No response required.</p> <p>Family Code sections 3111, 3112, and 3118 do not require the Judicial Council to amend rule 5.220 to include specific language about fees payable to the evaluator or investigator or arrangements for the parties to repay the court. The issue of fees payable to the evaluator are addressed in Order Appointing Child Custody Evaluator (form FL-327)</p> <p>Rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.</p> <p>See above response.</p>

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### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Rule 5.220		
Commenter	Comment	Committee Response
	<ul style="list-style-type: none"><li>Evidence Code 731(2) provides that the expert shall be compensated by the court if the court needs the information, or by the party calling the expert if the individual needs an expert witness. However, a sometimes predatory practice has become embedded in California family courts.</li><li>The first issue is that litigants in custody disputes who have resources are essentially coerced into stipulating to a private child custody evaluator by being told that the court would not be happy with or favorable toward them if they did not hire a professional. Litigants do not want child custody evaluations, but they, out of fear of upsetting the court, select and stipulate to a professional from a court-approved list. They sign a contract and pay a portion of the cost in advance directly to the professional.</li><li>The second issue is that the child custody evaluator, who is hired as an independent private contractor by the litigants, is then appointed under Evidence Code 730 by the court that wants the child custody evaluator “to assist them in determining the health, safety, welfare, and best interests of children with regard to disputed custody and visitation issue” (ROC 5.220). In fact, the child custody evaluator should be appointed under Family Code section 3111 or 3118, as intended by SB 1716.</li></ul>	<p>The issue of an evaluator’s compensation is outside the scope of the proposal and is not within the purview of the Judicial Council.</p> <p>The issue of an evaluator’s compensation is outside the scope of the current proposal and is not within the purview of the Judicial Council to address in the rule of court.</p> <p>Rule 5.220 specifies when the court should appoint a child custody evaluator or investigator to conduct an evaluation based on Family Code section 3111 or 3118. The reference in the rule to Evidence Code section 730 child custody evaluations is required under Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.</p>
	<ul style="list-style-type: none"><li>The court appointment gives the “730 evaluator” quasi-</li></ul>	<p>The issue of quasi-judicial immunity is not within the</p>

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### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Rule 5.220		
Commenter	Comment	Committee Response
	<p>judicial immunity, which essentially precludes litigants from suing if they receive a shoddy product. When litigants agree to pay a professional, they assume the professional is like any other expensive contractor who can be fired or held accountable for poor performance. They are shocked to discover that is not the case after court appointment.</p> <ul style="list-style-type: none"><li>• The third issue is that a “730 evaluator” charges litigants whatever the market will bear, often many tens of thousands of dollars. There is no fee cap. Sometimes the “730 evaluator” exceeds the original budget and litigants must pay the now appointed professional even more, or their case cannot move forward.</li></ul> <p>If litigants wanted or needed an expert to assist in a case, they would appropriately hire and pay for one, which is often done. In this case, it is the court that wants or needs the child custody evaluation. Litigants only agree to hire and pay the evaluator to keep from displeasing the court. This practice may have come about because courts do not have the resources, or do not wish to pay for child custody evaluations under Family Code section 3112, but it does not serve litigants well. In addition, the assumption that “730 evaluators” are to be paid by litigants when the court wants the professional is not necessarily correct. Evidence Code 731(2) states that if the court needs the expert, the court shall pay the expert.</p> <ul style="list-style-type: none"><li>• The fourth issue is that “730 evaluators” often do poor quality work, sometimes even mixing up cases and names of litigants and children, or misquoting them or others they interview. Attorneys and litigants say the reports</li></ul>	<p>scope of the current proposal and is not required to implement the mandate of Assembly Bill 1179.</p> <p>The issue of an evaluator’s compensation is outside the scope of the proposal and is not within the purview of the Judicial Council.</p> <p>Further, rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.</p> <p>No response required as to the opinions expressed by the commenter.</p>

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### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Rule 5.220		
Commenter	Comment	Committee Response
	<p>demonstrate a marked lack of knowledge about topics covered by required training. Recommendations may be contrary to law and common sense, yet they are almost always relied upon and followed by courts.</p> <ul style="list-style-type: none"><li>• The fifth issue is that the high fees may financially bankrupt less-resourced parents, leaving them without funds for attorneys. This places the litigant at a disadvantage in court. Furthermore, if one litigant pays because the other does not have sufficient funds, there is likely a natural bias inserted into what should be a neutral process.</li><li>• Finally, “730 evaluator” does not release the report to the court or litigants until litigants pay the full amount, with no review of the product. If substandard work is released to the court, litigants must then attempt to “unring the bell” by countering any inaccuracies in a hearing or a trial, which results in high attorney fees. Litigants have even questioned whether they should send a 1099 MISC IRS independent contractor form to the “730 evaluator” under these unusual circumstances, because the contractor they hired seems to work for the court, not them, after court appointment.</li></ul> <p>This problematic practice has become entrenched in the court system and has not been challenged legally, to our knowledge, due to immunity issues. One lawsuit, <i>People v Sanchez</i>, indicates that experts should provide general, not specific case-related opinions on their area of expertise, but does not address these particular issues.</p> <ul style="list-style-type: none"><li>• When Senator Ortiz learned that expert witnesses were</li></ul>	<p>The issue of an evaluator’s compensation and the parties’ ability to pay is outside the scope of the proposal and is not within the purview of the Judicial Council.</p> <p>Further, rule 5.220(b) refers to Evidence Code section 730 child custody evaluations to incorporate the language in Family Code section 3110.5(b)(1), which provides that: [o]n or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.</p> <p>No response required as to the opinions expressed by the commenter.</p> <p>No response required.</p>

**SPR20-20****Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)**

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

<b>Rule 5.220</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>being appointed under Evidence Code section 730 to conduct child custody evaluations and were charging litigants directly, she wrote letters of concern to the Senate and Assembly Judiciary Committees in 2010.</p> <p>She was also concerned that reports were not fact-checked for accuracy, nor stipulated to by litigants pursuant to Family Code section 3111(c), before being submitted to the court which meant that non-stipulated reports and recommendations were being reviewed by the court prior to hearing testimony. This practice would be unthinkable in a civil jury trial.</p> <ul style="list-style-type: none"> <li>• Senator Ortiz gave permission to forward her letter. We can provide her current contact information, if needed. Her recommendation to have a form to implement Family Code section 3118 is in process and we believe that many of her recommendations could be addressed through Rule of Court 5.220 amendments, since they are already codified.</li> </ul>	<p>No response required.</p> <p>The committee recommends amendments to rule 5.220 that are required to implement the mandate of AB 1179.</p>
Superior Court of Orange County Family Law Division Orange	Amendments to the rule are supported by recent changes to FC3118 resulting from AB1179.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Director	CRC 5.220 (g)(1)(A): Change to “File and serve a report on the parties or their attorneys and any counsel appointed for the child pursuant to Family Code section 3150.”	The committee agrees with the comment and recommends amending the rule as suggested.



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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Association of Certified Family Law Specialists by Avi Levy, Legislative Director Woodland	<p>There needs to be a box for everything Family Code §3118 requires. This form does not pass the test. For example, Family Code §3118(b) states the evaluator or investigator shall, at a minimum, do certain things. Item 6 of the proposed FL-329 form is perfect. It specifically and affirmatively requires the evaluator or investigator to answer whether or not they requested a forensic medical examination of the child. This is precisely what the code requires. See Family Code §3118(b)(5). The remaining prompts on the proposed form should also require the evaluator or investigator to affirmatively state whether each requirement in Family Code §3118(b) has been met, meaning the evaluator or investigator (this is not an exhaustive list):</p> <ul style="list-style-type: none"> <li>i. Has or has not consulted with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and has or has not obtained recommendations from these professionals regarding the child's safety and the child's need for protection.</li> <li>ii. Has or has not reviewed and summarized the child welfare services agency file.</li> <li>iii. Has or has not obtained from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.</li> </ul>	The committee agrees with the comment and recommends revising the form to include a check box for every entry in Family Code section 3118.

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>iv. Has or has not reviewed the results of a multidisciplinary child interview team...</p> <p>v. ...</p>	
<p>California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento</p>	<p>The invitation to comment queries whether the proposal appropriately addresses the stated purpose. Because of a concerning flaw in item 12 of the Proposed Form FL-329, it does not.</p> <p>We generally appreciate the form as is but have concerns about item 12. Currently it reads, “Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence.” (Emphasis added.) This language is not found in the statute, however. Rather, Family Code section 3118, subdivision (b)(6)(G) requires the evaluator to report “which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.” (Emphasis added.)</p> <p>It is important for courts to know when a separate investigation has yielded victim of crime assistance eligibility, especially where such conclusion may conflict with the evaluator’s. Likewise, notifying the court when there has been domestic violence is exceedingly important when child sexual abuse has been alleged, because “[s]tudies show that children of batterers are 6.5 to 19 times more likely to be victims of incest than children of non-battering parents.” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6, [citing to <a href="https://gcc02.safelinks.protection.outlook.com/?url=http%3A%3A">https://gcc02.safelinks.protection.outlook.com/?url=http%3A%3A</a></p>	<p>The committee agrees with the commenter and recommends revising the form as suggested.</p> <p>See above response.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>2F%2Fwww.caprotectiveparents.org%2FResearch&amp;data=02%7C01%7CGabrielle.Selden%40jud.ca.gov%7C110ec66f90f4468e9c8408d80d03c11c%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637273657070012508&amp;sdata=yYbuX2apLF723EoIB7Y4yKGIaNc5%2BkeZZjXlu7eMO6U%3D&amp;reserved=0].)</p> <p>For that reason, we recommend item 12 be amended to read: “List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.” This ensures the proposed form is in fact “a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings,” as the statute now mandates. (Fam. Code §3118 (i).)</p> <p>Assembly Bill 1179 was passed to address concerns about Family Code section 3118 custody evaluations where serious allegations of child sexual abuse are alleged. (Rubio; Stats. 2019, ch, 127.)</p> <p>As the bill’s sponsor wrote:</p> <p>Family Code section 3118 was implemented in the year 2000 to help ensure children who reported sexual abuse in the context of divorce or separation were kept safe. Research at that time showed that those children were protected only 10% of the time in family courts, even though 99% of the children were not considered to be fabricating.</p> <p>The number of child sex abuse cases overall is very low (less than 2%), but child abuse cases use a disproportionate amount of court time. . . Advocates were hopeful Family Code section</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>No response required.</p> <p>No response required.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>3118 protocol would prevent children from being placed in unsupervised contact with their accused abusers, as had been occurring previously. However, the situation seems to be getting worse. New research showed that these children were being protected only 9% of the time. It appears the protocol is being underutilized.</p> <p>(Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6-7) (emphasis added.)</p> <p>Amending the form as we have suggested will help address these important concerns, by meeting the legislative mandate to create “a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings.” (Fam. Code §3118(i).)</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>
Seth L. Goldstein Attorney at Law Monterey	<p>Perhaps I am wrong, but, I believe it was my original suggestion that there be in inclusion in the investigation/evaluation report of the fact that there was identified someone who was receiving Victim/Witness services/funding. The reason I suggested that such identification be made is that whereas law enforcement or social services may not find that abuse occurred (penal code definitions of abuse being the operative measuring scale), the Victim’s Compensation Board, providing services and funds to victims of crime, can and often does find that a crime has occurred such that the child and or the child’s family are eligible for compensation. The standard they use is exactly the same as that which a Family Court must use: the preponderance of evidence standard (more likely than not).</p> <p>This is a critical factor for the Court to consider. If the State of</p>	<p>The committee agrees with the commenter and recommends revising the form as suggested.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>California is paying out money because the Victims' Compensation Board found it is more likely than not that abuse occurred, certainly that should be considered by the court in making its determination of whether a child has been abused in a Family Court case.</p> <p>I believe that the code section as currently written concerning this issue must remain the same.</p>	
<p>Family Violence Appellate Project by Jennafer Dorfman Wagner, Esq. Director of Programs Oakland</p>	<p>We generally appreciate the form as is but have concerns about item 12. Currently it reads, "Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence." (Emphasis added.) This language is not found in the statute, however. Rather, Family Code section 3118, subdivision (b)(6)(G) requires the evaluator to report "which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence." (Emphasis added.)</p> <p>It is important for courts to know when a separate investigation has yielded victim of crime assistance eligibility, especially where such conclusion may conflict with the evaluator's. Likewise, notifying the court when there has been domestic violence is exceedingly important when child sexual abuse has been alleged, because "[s]tudies show that children of batterers are 6.5 to 19 times more likely to be victims of incest than children of non-battering parents." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6, [citing to</p>	<p>The committee agrees with the commenter and recommends revising the form as suggested.</p> <p>No response required.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><a href="http://www.caprojectiveparents.org/Research">www.caprojectiveparents.org/Research</a>].)</p> <p>For that reason, we recommend item 12 be amended to read: “List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.” This ensures the proposed form is in fact “a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings,” as the statute now mandates. (Fam. Code §3118 (i).)</p> <p>Assembly Bill 1179 was passed to address concerns about Family Code section 3118 custody evaluations where serious allegations of child sexual abuse are alleged. (Rubio; Stats. 2019, ch, 127.)</p> <p>As the bill’s sponsor wrote: Family Code section 3118 was implemented in the year 2000 to help ensure children who reported sexual abuse in the context of divorce or separation were kept safe. Research at that time showed that those children were protected only 10% of the time in family courts, even though 99% of the children were not considered to be fabricating.</p> <p>The number of child sex abuse cases overall is very low (less than 2%), but child abuse cases use a disproportionate amount of court time. . . Advocates were hopeful Family Code section 3118 protocol would prevent children from being placed in unsupervised contact with their accused abusers, as had been occurring previously. However, the situation seems to be getting worse. New research showed</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>that these children were being protected only 9% of the time. It appears the protocol is being underutilized.</p> <p>(Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 1179 (2019-2020 Reg. Sess.) June 26, 2019, p. 6-7) (emphasis added.)</p> <p>Amending the form as we have suggested will help address these important concerns, by meeting the legislative mandate to create “a template for all information necessary to provide a full and complete analysis of the allegations raised in the proceedings.” (Fam. Code §3118(i).)</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>
<p>Legislative Coalition to Prevent Child Abuse by Melissa Knight-Fine Cameron Park</p>	<p><b>Title</b> Form FL-329 is to be used for a child custody evaluation, investigation, or assessment based on serious allegations of child sexual abuse or allegations of child abuse under Family Code section 3118 and therefore should be titled <u>Confidential Custody Investigation and Report</u> in order to conform to the statute. (Authority cited: Family Code Section 3118 Chapter 6. Custody Investigation and Report [3110-3118].)</p> <p><b>Items 1-3.</b> No changes are recommended to form items 1-3.</p> <p><b>Item 4</b> <b>Summary of child welfare agency investigation(s) and recommendations</b></p> <p>c. <u>Did you consult with the agency providing child welfare services and obtain recommendations from these professionals regarding the child’s safety and the child’s need for protection?</u> (Authority cited: Family Code section 3118(b)(1).)</p>	<p>The proposed change is not required to implement the amendments to Family Code section 3118 under Assembly Bill 1179 (Rubio; Stats. 2019, ch. 127). Further, such a change would require extensive technical changes to other rules of court and forms, and potentially local court rules as well that reference the current title of the rule. For these reasons, the committee does not agree to recommend that the Judicial Council change the title of rule 5.220, as the commenter proposes.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>

## SPR20-20

### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Form FL-329		
Commenter	Comment	Committee Response
	<p>The status or disposition of the investigation(s) and recommendations made regarding the child's safety, including information regarding child abuse, domestic violence, or substance abuse is as follows:</p> <p><u>Attach dates and documentation of investigations and reports of child abuse, domestic violence, and substance abuse.</u></p> <p><b>Item 5</b> <b>Summary of law enforcement investigation(s) and recommendations</b></p> <p><u>Did you consult with law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection? Report all recommendations in your written report.</u> (Authority cited: Family Code section 3118(b)(1).)</p> <p>(Summarize information obtained related to any recommendations made, criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.)</p> <p><u>Attach documentation and dates for each law enforcement report including background checks.</u></p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>



## SPR20-20

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Form FL-329		
Commenter	Comment	Committee Response
	<p><b>Item 6</b>  <b>Forensic medical examination of the child. <u>Relevant medical examinations and treatments.</u></b>            Did you request a forensic medical examination of the child?            Yes            No            (If you answered “no”, explain why the examination is not needed)</p> <p><u>Attach results and dates of all forensic medical examinations.</u></p> <p><u>Attach results of and show dates of other relevant medical examinations or treatments.</u></p> <p><i>It would be most expedient for all forensic and medical examination and treatment information to be listed here under you titles of Forensic medical examination of the child and Relevant medical examinations and treatment. If the information is listed elsewhere and not under the descriptive title, it may be overlooked.</i></p> <p><b>Item 7</b>  <b>Relevant background material <u>including reports from therapists.</u></b> (Provide a summary, including any written report from <del>a</del> <u>any</u>-therapist <u>who has treated or is treating</u> the child for suspected child sexual abuse (excluding any privileged communication) <del>a multidisciplinary child interview team, or</del> <u>and summaries and written reports</u> from other professionals <u>that could help establish or disprove whether the child has been the victim of sexual abuse.</u> <del>and results of any forensic medical examination and any other medical examination or treatment.</del>)</p> <p><u>Attach documentation and dates from all therapists who have</u></p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and</p>

## SPR20-20

### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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Form FL-329		
Commenter	Comment	Committee Response
	<p><u>treated or are treating the child for suspected child sexual abuse and from other professionals whose reports are relevant.</u></p> <p><i>By concentrating documentation of medical examinations in 6., therapist reports in 7., and material interviews in 8., it is easier for the court to quickly find information and it is less likely that evidence will be overlooked.</i></p> <p><b>Item 8</b> <b>Documentation of material interviews.</b> <u>If no multidisciplinary child interview team (hereafter MDIT) interview is available, or if the investigator or evaluator conducting this investigation believes the MDIT interview is inadequate for purposes of this investigation, the investigator must interview the child or request an MDIT interview, avoiding repeated interviews of the child when possible.</u></p> <p><u>Specify in writing if you determined that a previous MDIT interview was adequate and attach the date and documentation of that interview:</u></p> <p><u>Specify in writing if you determined that a MDIT interview was not available or adequate. Attach the date and documentation of the current investigator's interview of the child or the MDIT interview of the child that this investigator requested.</u> (Authority cited: Family Code Section 3118 (b)(4).)</p> <p><i>The legislature determined that an MDIT interview with the child or an interview with the child conducted by a professional trained in child interviews, was a key piece of evidence needed</i></p>	<p>recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>Same as above response.</p>

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Form FL-329		
Commenter	Comment	Committee Response
	<p><i>to determine child safety, and thus it is required by Family Code section 3118 (b)(4).</i></p> <p>(<del>Summarize</del> <u>Attach written documentation of</u> any interviews of the parents, children, and other witnesses who provided relevant information.) (Authority cited: Family Code section 3118(6)(A).)</p> <p><b>Item 9</b> <b>Limitations in the <del>evaluation</del> investigation and report.</b> (Describe any limitations in the <del>evaluation</del> <u>investigation and report</u> that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews.)</p> <p><b>Item 10</b> <b>Other:</b> Additional information the evaluator <u>or investigator</u> believes would be helpful to the court in determining <u>the safety needs</u> and the best interests of the child (specify):</p> <p><i>The reason for the investigation and report is to determine the safety needs of the child. Additional information the evaluator or investigator believes would be helpful to the court in determining specifically the safety needs of the child should be included and attached here.</i> (Authority cited: Family Code section 3118(b)(6); FC section 3118 (b)(6)(D).)</p> <p><b>Item 11</b> <b>Evaluator <u>or investigator</u> recommendations</b> regarding how to ensure the safety of the child (specify):</p> <p><u>Recommendations regarding the therapeutic needs of the child:</u></p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>As previously written, the committee does not recommend using “investigation” in place of “evaluation.”</p> <p>Same as above response.</p> <p>The committee does not recommend revising the form as suggested. Under rule 5.220(c)(3), a child custody evaluation is an expert investigation and analysis of the health, safety, welfare, and best interest of the children.</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>The primary reason for this investigation and report is to determine the safety needs of the child. Therefore, safety needs should be described first and separately.</i></p> <p><b>Item 12</b>  <b>Victims of Crime Program.</b>  <u>List family members who have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.</u>  (Authority cited: Family Code Section 3118 (6) (G))</p> <p>Recommendations for known family members who may be eligible for assistance from the Victims of Crime program due to child abuse or domestic violence (specify, if any).</p> <p><b>Item 13</b>  No changes are recommended for Item 13.</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>No response required.</p>
Mothers of Lost Children by Connie Valentine, M.S.	<p>1. For clarity, the title used in Chapter 6, FC 3110-3118 “Child Custody Investigation and Report” would be a more appropriate title for FL-329.</p> <p>2. Investigators in some jurisdictions report they are unable to access child welfare agency records. Ensuring court orders include access to juvenile court records pursuant to Family Code section 3118 and child welfare agency records pursuant to Welfare and Institutions Code section 827 could make it easier for investigators to gather and review required documentation.</p> <p>3. The use of expanding boxes and check boxes on FL-329 for</p>	<p>For the reasons previously provided, the committee does not recommend revising the form as suggested.</p> <p>The committee recommends revising the <i>Order Appointing Child Custody Evaluator</i> (form FL-327) as required by Family Code section 3118 to include that the child custody evaluator must have access to juvenile court records of the child who is the subject of the evaluation.</p> <p>Judicial Council form are static forms that do not</p>

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<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>each separate procedure and reporting requirement in individual categories would ensure information is easily and accurately entered and located. Since there are often multiple events and documents from multiple counties and states to be summarized on and attached to FL-329, expanding boxes will need to have a large capacity, similar to that on the court website.</p> <p>4. A declaration that the investigator has met all the training requirements is important to attach.</p> <p>5. Form FL-329 needs to reflect all procedural requirements, in addition to reporting requirements, set forth in FC 3118(b)(1)-(5). These are different from the data gathering and limitations process in FC 3111.</p> <p>6. Certain FC 3118 reporting requirements were inadvertently omitted from the current FL-329 draft. (see amended form FL-329 below).</p> <p>7. Having the recommendations of child welfare and law enforcement listed separately would make court review easier.</p> <p>8. Forensic examinations (MDIT and medical) can be combined into a separate category. If an adequate MDIT interview was conducted, FC 3118 requires that the investigator must prevent repeated interviews of the child. (FC 3118(b)(4))</p>	<p>expand. The committee recommends that form be revised to provide additional blank space for the evaluator to write responses on the form; however, the committee recognizes that the evaluator will likely need to use an attachment to draft a complete response to the inquiry.</p> <p>The declaration that the evaluator has met the qualifications is a prerequisite for appointment. The statute does not require that the evaluator file an updated declaration of qualifications when the report is filed.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>

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

<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>9. Best interests of the child considerations, pursuant to FC 3011(a) should be included on the form for clarity.</p> <p>10. It is important for litigants and their attorneys to fact check the report for accuracy.</p> <p>Commenter included a pdf mock up of the form as she proposes it be adopted by the Judicial Council</p>	<p>The committee recommends including a reference to Family Code section 3011, not listing each factor under 3011(a).</p> <p>The commenter's sample form is included as Attachment A. The committee agrees with many of the commenter's suggestions and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p>
Superior Court of Orange County Family Law Division Orange	<p>Header/parties names area; ALL Petitioner/Respondent and Other Parent/Party items can be indented to the left to be consistent with all other JCC forms.</p> <p><u>Number 1</u>: There should be a space in between the words filed on.</p> <p><u>Number 4(c)</u>: Rephrase to include child sexual abuse; The status or disposition of the investigation and recommendation made regarding the child's safety, including information regarding child abuse, child sexual abuse, domestic violence, or substance abuse, is as follows:</p> <p><u>Number 5</u>: Rephrase to include child sexual abuse and remove parenthesis; Summarize information obtained related to any recommendations made, criminal background checks of the parents and any suspect perpetrator that is not a parent, including information regarding child abuse, child sexual</p>	<p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee agrees with the commenter and recommends including the proposed changes, with modifications, among the other recommendations being made to the Judicial Council.</p> <p>The committee's new recommendations no longer include the language in 4(c).</p> <p>The committee's new recommendations no longer include the language in 5.</p>

**SPR20-20****Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)**

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

<b>Form FL-329</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>abuse, domestic violence, or substance abuse.</p> <p><u>Number 6</u>: Remove the period from the title of this portion to keep consistency with other number areas in the form.</p> <p><u>Number 7</u>: Remove the period from the title of this section to keep consistency with other numbered areas in the form. Remove the parenthesis and italics font, other sections' instructions are not in italics.</p> <p>Move instructions to the line below the title.</p> <p><u>Number 8</u>: Remove the period from the title of this section to keep consistency with other numbered areas in the form.</p> <p>Remove the parenthesis and italics font, other sections' instructions are not in italics.</p> <p>Move instructions to the line below the title.</p> <p><u>Number 9</u>: Remove the period from the title of this section to keep consistency with other numbered areas in the form. Remove the parenthesis and italics font, other sections' instructions are not in italics.</p> <p>Move instructions to the line below the title.</p> <p><u>Number 10</u>: Remove the period from the title of this section to keep consistency with other numbered areas in the form.</p>	<p>The committee agrees to remove periods from the titles to each section of the form.</p> <p>The committee agrees to move instructions below the titles in each section.</p> <p>The committee agrees to remove periods from the titles to each section of the form.</p> <p>The committee agrees to remove parentheticals and italic fonts.</p> <p>The committee agrees to move instructions below the titles in each section.</p> <p>The committee agrees to remove periods from the titles to each section of the form. The committee agrees to remove parentheticals and italic fonts.</p> <p>The committee agrees to move instructions below the titles in each section.</p> <p>The committee agrees to remove periods from the titles to each section of the form.</p>

## SPR20-20

### Family Law: Changes to Child Custody Evaluation Rule and Form (Amend Cal. Rules of Court, rule 5.220, adopt form FL-329)

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

Form FL-329		
Commenter	Comment	Committee Response
	<p>Move instructions to the line below the title.</p> <p>A section called Other works best listed at the end of all other sections. Other to be moved to the next page as number 13, and as a result, sections 11 and 12 would be renumbered to 10 and 11 respectively.</p> <p>Notice these instructions are not in a parenthesis and in italics, this validates the recommendations above.</p> <p><u>Number 11</u>: Have the whole sentence be bold and renumber to 10.</p> <p><u>Number 12</u>: Remove the period from the title of this section to keep consistency with other numbered areas in the form.</p>	<p>The committee agrees to move instructions below the titles in each section.</p> <p>The committee's new recommendations no longer include the language in 5.</p> <p>Same as previous responses.</p> <p>Same as previous responses.</p>



## Confidential Child Custody Investigation and Report (FL-329)

### 1) Appointment and Confidentiality

- a) The *Order Appointing Child Custody Evaluator (form FL-327)* filed on \_\_\_\_\_ is Attachment #1 and provides confidential access to all juvenile court records and child welfare services agency records pursuant to Welfare and Institutions Code 827 pertaining to the child who is the subject of the evaluation, investigation, or assessment.
- b) The *Confidentiality of Child Custody Evaluation Report (form FL-327)* is Attachment #2.
- c) A declaration that the investigator has met every training topic in Rules of Court 5.225 and 5.230 is Attachment #3.

### 2) The names and dates of birth of the child(ren) are (specify):

Child's full name	Date of birth
Child's full name	Date of birth

Please list each event or document separately.

### 3) Dependency court orders that might affect custody (if any)

- ☐ There are no dependency court orders, OR
- ☐ See Attachment(s) # \_\_\_\_\_ for all dependency court orders.

Court (county, state):	Case number:	Date order filed:
Summary/ies:		

### 4) Summary of child welfare agency investigation(s) and recommendations

- a) The children in section 2) and the children's parents are or have been the subject of child abuse investigation(s).
- ☐ No (skip b–d), OR
- ☐ Yes. I consulted with the agency/ies providing child welfare services regarding the allegations of child sexual abuse, reviewed the child welfare services agency/ies file, and obtained recommendations from the social worker(s) regarding the child's safety and the child's need for protection. My notes are filed in a separate section.
- b) Each social worker's contact information and summary of each child welfare agency investigation, including statements made by the children and the parents, and information regarding child abuse, domestic violence or substance abuse, is as follows:

Social worker Name:	Telephone No.:	Address:	Email address:
County/state:	Case number:	Date opened:	Status/disposition:
Summary/ies:			

- c) Recommendations made by each social worker for the child's safety and need for protection:

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### 5) Summary of law enforcement investigation(s) and recommendations

- ☐ a) I consulted with the agency/ies providing law enforcement regarding the

allegations of child sexual abuse, and obtained recommendations from the law enforcement investigator/s regarding the child's safety and the child's need for protection, and information regarding child abuse, domestic violence, or substance abuse. See Attachment(s) #\_\_\_\_\_ for all police and sheriff reports.

Summary of each law enforcement investigator's investigation and information from regarding child abuse, domestic violence, substance abuse:

Investigator Name/Title	Telephone No.:	Address:	Email Address:
County/state:	Case number:	Date opened:	Status/disposition:
Summary/ies:			

- ☐ b) I obtained from the law enforcement investigator(s) all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse. See Attachment(s) #\_\_\_\_\_ for all criminal background records

Summary/ies:

c) Recommendations from each law enforcement investigator for the safety of the child and the child's need for protection:

## 6) Forensic examinations

a) Multi-disciplinary Interview team (MDIT) interview(s)

- ☐ I requested an MDIT interview because ☐ there was no MDIT interview, or ☐ the MDIT interview was inadequate for purposes of this investigation.
- ☐ I reviewed the videotape and any transcripts of the MDIT interview(s). See Attachment(s) #\_\_\_\_\_ for copies of all MDIT interview videotape(s) and transcripts.

Summary/ies:

b) Forensic medical examination(s)

- ☐ I reviewed the forensic medical examination(s) of the child. See Attachment(s) #\_\_\_\_\_ for all forensic medical examination reports.

Summary/ies:

- ☐ Reason no forensic medical examination was conducted and I did not request one.

Reason:

## 7) Documentation of material interviews. .

- ☐ a) See Attachments #\_\_\_\_\_ for my written documentation of interviews with both parents.
- ☐ b) If no MDIT forensic interview could be conducted, I interviewed the child(ren). Whenever possible, repeated interviews were avoided.

See Attachments(s) # \_\_\_\_ for written documentation of my interview(s) with each child.

Reason for no MDIT forensic interview:

- ☐ c) See Attachment(s) # \_\_\_\_ for written documentation of each of my interviews with other witnesses who provided relevant information.

Summary/ies

**8) Relevant background material.**

- ☐ a) See Attachment(s) # \_\_\_\_ for all written reports from therapist(s) treating the child(ren) for suspected child sexual abuse (excluding any privileged communication).

Summary/ies:

- ☐ b) See Attachment(s) # \_\_\_\_ for all written reports from other professionals.

Summary/ies:

- ☐ c) See Attachment(s) # \_\_\_\_ for all written reports from medical examination(s).

Summary/ies:

- ☐ d) See Attachment(s) # \_\_\_\_ for all written background material(s).

Summary/ies:

**9) Additional information regarding the presence of domestic violence or substance abuse in the family.**

- ☐ a) See Attachment(s) # \_\_\_\_ for all written reports and records from medical personnel regarding the presence of domestic violence or substance abuse.

Summary/ies:

- ☐ b) See Attachment(s) # \_\_\_\_ for all written reports from prior or current treating therapist(s) regarding the presence of domestic violence or substance abuse.

Summary/ies:

- ☐ c) See Attachment(s) # \_\_\_\_ for all interviews I conducted or reviewed regarding the presence of domestic violence or substance abuse.

Summary/ies:

**10) Victims of Crime Program.**

- a) Recommendations for known family members who may be eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence (specify, if any):

- b) Family members known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence, if any:

**11) Other information.**

Any other information I believe would be helpful to the court in determining the best interests of the child:\*

\*Best interests of the child, pursuant to Family Code section 3011, consists of a consideration of

(1) The health, safety, and welfare of the child.

(2) A history of abuse by one parent or any other person seeking custody against any of the following:

(i) 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.

(ii) The other parent.

(iii) 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.

(3) The nature and amount of contact with both parents, except as provided in Section 3046.

(4) 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.

**12) My recommendations** regarding the therapeutic needs of the child and how to ensure the safety of the child:

Reviewed for accuracy by parties and attorneys prior to submission to the clerk of the court.

Parties' signature/date \_\_\_\_\_

Attorney's signature /date \_\_\_\_\_

Investigator signature/date \_\_\_\_\_