

Cal.Rules of Court, Rule 5.242

WEST'S ANNOTATED CALIFORNIA CODES

CALIFORNIA RULES OF COURT

TITLE 5. FAMILY AND JUVENILE RULES

DIVISION 1. FAMILY RULES

CHAPTER 5. CHILD CUSTODY

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

(a) Purpose

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

(b) General appointment requirements

To be eligible for appointment as counsel for a child, counsel must:

- (1) Be an active member in good standing of the State Bar of California;
- (2) Have professional liability insurance or demonstrate to the court that he or she is adequately self-insured; and
- (3) Meet the education, training, and experience requirements of this rule.

(c) Education and training requirements

Effective January 1, 2009, before being appointed as counsel for a child in a family law proceeding, counsel must have completed at least 12 hours of applicable education and training which must include all the following subjects:

- (1) Statutes, rules of court, and case law relating to child custody and visitation litigation;
- (2) Representation of a child in custody and visitation proceedings;
- (3) Special issues in representing a child, including the following:

(A) Various stages of child development;

(B) Communicating with a child at various developmental stages and presenting the child's view;

(C) Recognizing, evaluating and understanding evidence of child abuse and neglect, family violence and substance abuse, cultural and ethnic diversity, and gender-specific issues;

(D) The effects of domestic violence and child abuse and neglect on children; and

(E) How to work effectively with multidisciplinary experts.

(d) Annual education and training requirements

Effective January 1, 2010, to remain eligible for appointment as counsel for a child, counsel must complete during each calendar year a minimum of eight hours of applicable education and training in the subjects listed in (c).

(e) Applicable education and training

(1) Education and training that addresses the subjects listed in (c) may be applied toward the requirements of this rule if completed through:

(A) A professional continuing education group;

(B) An educational institution;

(C) A professional association;

(D) A court-connected group; or

(E) A public or private for-profit or not-for-profit group.

(2) A maximum of two of the hours may be by self-study under the supervision of an education provider that provides evidence of completion.

(3) Counsel may complete education and training courses that satisfy the requirements of this rule offered by the education providers in (1) by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(4) Counsel who serve as an instructor in an education and training course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction. All other counsel may claim credit for actual time he or she attended the education and training course.

(f) Experience requirements

(1) Persons appointed as counsel for a child in a family law proceeding must have represented a party or a child in at least six proceedings involving child custody within the preceding five years as follows:

(A) At least two of the six proceedings must have involved contested child custody and visitation issues in family law; and

(B) Child custody proceedings in dependency or guardianship cases can count for no more than three of the six required for appointment.

(2) Courts may develop local rules that impose additional experience requirements for persons appointed as counsel for a child in a family law proceeding.

(g) Alternative experience requirements

Counsel who does not meet the initial experience requirements in (f) may be appointed to represent a child in a family law proceeding if he or she meets one of the following alternative experience requirements. Counsel must:

(1) Be employed by a legal services organization, a governmental agency, or a private law firm that has been approved by the presiding or supervising judge of the local family court as qualified to represent a child in family law proceedings and be directly supervised by an attorney in an organization, an agency, or a private law firm who meets the initial experience requirements in (f);

(2) Be an attorney working in consultation with an attorney approved by the presiding or supervising judge of the local family court as qualified to represent a child in family law proceedings; or

(3) Demonstrate substantial equivalent experience as determined by local court rule or procedure.

(h) Compliance with appointment requirements

A person appointed as counsel for a child must:

(1) File a declaration with the court indicating compliance with the requirements of this rule no later than 10 days after being appointed and before beginning work on the case. Counsel may complete the *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) or other local court forms for this purpose; and

(2) Notify the court within five days of any disciplinary action taken by the State Bar of California, stating the basis of the complaint, result, and notice of any reproof, probation, or suspension.

(i) Rights of counsel for a child

Counsel has rights relating to the representation of a child's best interest under Family Code sections 3111, 3151, 3151.5, 3153, and Welfare and Institutions Code section 827, which include the right to:

(1) Reasonable access to the child;

(2) Seek affirmative relief on behalf of the child;

(3) Notice to any proceeding, and all phases of that proceeding, including a request for examination affecting the child;

(4) Take any action that is available to a party to the proceeding, including filing pleadings, making evidentiary objections, and presenting evidence;

(5) Be heard in the proceeding, which may include presenting motions and orders to show cause and participating in settlement conferences and trials, seeking writs, appeals, and arbitrations;

(6) Access the child's medical, dental, mental health, and other health-care records, and school and educational records;

(7) Inspect juvenile case files subject to the provisions of Welfare and Institutions Code section 827;

(8) Interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child; however, the release of this information to counsel does not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications;

(9) Interview mediators, subject to the provisions of Family Code sections 3177 and 3182;

(10) Receive reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation,

for purposes of the proceeding, that has not been ordered by the court;

(11) Assert or waive any privilege on behalf of the child;

(12) Seek independent psychological or physical examination or evaluation of the child for purposes of the proceeding on approval by the court;

(13) Receive child custody evaluation reports;

(14) Not be called as a witness in the proceedings;

(15) Request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency; and

(16) Receive reasonable compensation and expenses for representing the child, the amount of which will be determined by the court.

(j) Responsibilities of counsel for a child

Counsel is charged with the representation of the best interest of the child. The role of the child's counsel is to gather facts that bear on the best interest of the child and present those facts to the court, including the child's wishes when counsel deems it appropriate for consideration by the court under Family Code section 3042. Counsel's duties, unless under the circumstances it is inappropriate to exercise the duties, include those under Family Code section 3151:

(1) Interviewing the child;

(2) Reviewing the court files and all accessible relevant records available to both parties;

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

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

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

(k) Other considerations

Counsel is not required to assume the responsibilities of a social worker, probation officer, child custody evaluator, or mediator and is not expected to provide nonlegal services to the child. Subject to the terms of the court's order of appointment, counsel for a child may take the following actions to implement his or her statutory duties in representing a child in a family law proceeding:

(1) Interview or observe the child as appropriate to the age and circumstances of the child. In doing so, counsel should consider all possible interview or observation environments and select a location most conducive to both conducting a meaningful interview of the child and investigating the issues relevant to the case at that time.

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

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

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

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

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

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

(C) Prepare for any hearings or trials;

(D) Work to settle contested issues and to define trial issues;

(E) Prepare witnesses, including the child if the child is to testify;

(F) Introduce and examine witnesses on behalf of the child;

(G) Cross-examine other witnesses;

(H) Make appropriate evidentiary objections;

(I) Review court files and other pertinent records;

(J) Prepare motions to advance the child's interest, including motions to quash subpoenas for the child and other protective orders;

(K) Present arguments to advance the child's interest;

(L) Prepare trial briefs and other documents if appropriate; and

(M) Request appointment of separate appellate counsel.

(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child's interest, which may include:

(A) Obtaining necessary authorizations for the release of information.

(B) Reviewing the child's social services, mental health, drug and alcohol, medical, law enforcement, education, and other records relevant to the case;

(C) Reviewing the court files of the child and his or her siblings, case-related records of the social service agency, and case-related records of other service providers;

(D) Contacting attorneys for the parties and nonlawyer guardians ad litem, Court Appointed Special Advocates (CASAs), and other service professionals, to the extent permitted by local rule, for background information;

(E) Contacting and meeting with the child's parents, legal guardians, or caretakers, with permission of their attorneys;

(F) Interviewing witnesses and individuals involved with the child, including school personnel, child welfare caseworkers, foster parents and other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

(G) Reviewing relevant photographs, video- or audiotapes, and other evidence;

(H) Documenting the results of these investigations;

(I) Monitoring compliance with court orders as appropriate, including the provision for and effectiveness of any court-ordered services;

(J) Promoting the timely progression of the case through the judicial system;

(K) Investigating the interests of the child beyond the scope of the proceeding and reporting to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings; however, counsel is not responsible for instituting those proceedings or representing the child in them unless expressly appointed by the court for that purpose; and

(L) After learning of other existing administrative or judicial proceedings involving the child, communicating and cooperating with others to the extent necessary and appropriate to protect the child's interest.

(5) Taking all other steps to represent the child adequately as appropriate to the case, including becoming knowledgeable in other areas affecting minors including:

(A) The **Indian Child Welfare Act**;

(B) Information about local experts who can provide evaluation, consultation, and testimony; and

(C) Delinquency, dependency, probate, family law, and other proceedings.

Current with amendments received through 7/1/2010