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**Superior Court of California**
**County of Los Angeles**

September 18, 2014

## PROPOSED REVISIONS TO LOCAL COURT RULES

Pursuant to California Rules of Court, Rule 10.613(g), the following proposed amendments to the Local Rules are hereby distributed for comment. The affected rule is:

- RULE 5.20 PRIVATE CHILD CUSTODY EVALUATIONS: Proposed revisions regarding Private Child Custody Evaluations.

The proposed amendments were reviewed and approved by both the Los Angeles Superior Court's Rules Committee and Executive Committee. Comments must be submitted via email at localrulescomments@lacourt.org, or in writing, to: Janet Garcia, Room 620, Management Research Unit, Los Angeles Superior Court, 111 North Hill Street, Los Angeles, CA 90012. Comments must be received no later than 5:00 p.m. on **November 2, 2014**.

***View LASC Local Rules at http://www.lasuperiorcourt.org***

5.20 PRIVATE CHILD CUSTODY EVALUATIONS

**(a) Qualifications for Appointment. A person appointed to conduct a child custody evaluation ("Evaluator") must complete a Declaration of Private Child Custody Evaluator Regarding Qualifications (Form FL-326) showing compliance with all applicable education, training, and experience requirements and file it in the clerk's office no later than ten days after notification of an appointment and before beginning any work on a child custody evaluation.**

**(b) Disclosures. An Evaluator must disclose in writing within ten days of appointment, any significant personal or professional relationship the Evaluator has or has had with a party, attorney, or law firm in any case to which appointment is made, including the number and nature of any services in the past 24 months for which the Evaluator has been privately compensated by a party, attorney, or law firm involved in the case to which appointment is made. "Services" includes, but is not limited to, services provided as an expert witness, consultant, evaluator, special master, mediator, or therapist.**

~~(a)~~**(c)** Peremptory Challenge. When an ~~private e~~**E**valuator is appointed, other than by stipulation, each side will be permitted one peremptory challenge of a specific ~~e~~**E**valuator. The challenge must be made within ten court days of the notice of appointment.

~~(b)~~**(d)** Withdrawal From a Case. An ~~private E~~evaluator ~~has the right~~ **may petition the trial court making the appointment** to withdraw from a case**. The request shall be granted** upon a showing of good cause ~~to the trial court making the appointment~~.

~~(d) Training. A person appointed as a child custody evaluator must complete a Declaration of Private Child Custody Evaluator Regarding Qualifications (Form FL-326) showing compliance with all applicable education, training, and experience requirements and file it in the clerk's office no later than ten days after notification of an appointment and before beginning any work on a child custody evaluation.~~

~~(c)~~**(e)** Complaint Regarding Evaluator. A complaint regarding the ~~conduct~~**performance** of~~, or procedure employed, by~~ a court-appointed ~~private child custody e~~**E**valuator **may be addressed to the appropriate professional licensing board and/or, in the case of a party, through a Request for Order and/or Motion before** ~~will be handled by~~ the judge making the appointment ~~and the appropriate professional licensing board~~. **The judge who made the appointment will determine the appropriate response to a complaint about the Evaluator's**

**performance. The court's decision concerning the removal or retention of a court-appointed Evaluator is independent of any action taken by any applicable professional licensing board.** If the ~~e~~**E**valuator is listed ~~in~~**on** the court's ~~Counselor and~~ Evaluator ~~Directory~~**List**, the judge receiving the complaint ~~may defer action to the Directory Administrator pursuant to subdivision (e), subsection (5), of this rule~~ **may refer the matter to the Supervising Judge of the Family Law Division for further action concerning removal or retention of the Evaluator on the Evaluator List**.

**(f) *Ex Parte* Communication. An Evaluator must not have *ex parte* communication with parties, counsel, or the court unless permitted under this rule. *Ex parte* communication includes all forms of communication including but not limited to voice, email, or written communication. An *ex parte* communication between the Evaluator and a party, counsel, or other person for the purpose of scheduling appointments or arranging for payment for services rendered is permitted. An *ex parte* communication between the Evaluator and any party, child, or other witness in the course of conducting scheduled interviews as part of an evaluation is also permitted. A party or counsel may address an objection to an *ex parte* communication between an Evaluator and another person to the judge making the appointment. The judge who made the appointment will determine the appropriate response to the objection, which may include disqualifying the evaluator or striking the evaluation report.**

~~(e)~~**(g)** ~~Private~~ Evaluator List.

~~(1) In an effort to assist parties and their attorneys in locating mental health professionals who perform Child Custody Evaluations, the court has a list of mental health professionals who perform this service. The mental health professionals listed are not court employees and are not endorsed by the court.~~

~~(2) To be included in the Evaluator List, a mental health professional must:~~

~~a. Be licensed in the State of California in one of the following areas: LCSW, MFT, clinical psychologist, or board certified psychiatrist;~~

~~b. Declare under penalty of perjury that he/she has performed five child custody evaluations within the last three years;~~

~~c. Declare under penalty of perjury that he/she has read The Standards of Practice for Court-Appointed Child Custody Evaluations in the California Rules of Court and this Local Rule 5.21;~~

~~d. Complete any training required for child custody evaluators by statute or the California Rules of Court;~~

~~e. Have malpractice insurance coverage; and~~

~~f. Not use inclusion in the directory for advertising.~~

~~(3) Mental health professionals seeking inclusion in the list must submit the following materials which will be made available to the public:~~

~~a. A signed application and declaration;~~

~~b. A current résumé;~~

~~c. A copy of the applicable clinical license;~~

~~d. Certificates of completion of 16 hours of advanced domestic violence training and annual updates as required by Family Code section 1816 and California Rules of Court, rule 5.230; and~~

~~e. Certificates of completion of 40 hours of initial education and training and annual updates as required by California Rules of Court, rule 5.225.~~

~~(4) Mental health professionals included on the list must update these materials as requested by the court.~~

~~(5) Upon appointment to perform an evaluation, a mental health professional must provide both parties with a letter describing his or her procedures, including that any written material submitted to the evaluator must be sent to the opposing party and that the final date by which written material must be submitted.~~

~~(6) Any court-ordered evaluation conducted by a mental health professional listed in the directory must be completed and mailed within fourteen weeks of the court's appointment and the evaluator's receipt of the required deposit, unless exceptional circumstances arise. A request for an extension must be made in writing to the court that appointed the evaluator, with copies to both parties, and the Directory Administrator. Reasons for the extension must be described in the letter, and the length of the extension requested.~~

~~(7) Upon request, the mental health professionals included in the directory must disclose in writing any significant personal or professional relationship the evaluator has or has~~

~~had with a party, attorney, or law firm in the instant case, including the number and nature of any services in the past 24 months in which the evaluator has been privately compensated by a party, attorney, or law firm in the instant case. The services may include, but are not limited to, services provided as an expert witness, consultant, evaluator, special master, mediator, or therapist.~~

~~(8) Challenges, Complaints, Removal from the Directory. The court reserves the right to remove any name from the directory upon written notification to the evaluator.~~

~~a. Reasons for removal may include, but are not limited to the (i) failure to maintain a clinical license in good standing, (ii) failure to remain current on training mandated by statute or the California Rules of Court, (iii) submission of work that does not meet the standard of practice for court-appointed evaluators, (iv) failure to submit work in a timely fashion, (v) consistent refusal to accept court referrals, and (vi) providing false or misleading information on the application.~~

~~b. A complaint regarding the content of the evaluation report or the conclusions reached by the evaluator must be made to the court hearing the custody matter at the time of trial.~~

~~c. A complaint about the ethical conduct of the evaluator must be made in writing to the Directory Administrator, and may also be made to the appropriate licensing board.~~

~~d. A complaint about the procedures used by an evaluator must be addressed in writing to the List Administrator.~~

~~e. Complaints addressed to the Directory Administrator will be reviewed and answered in writing. The Directory Administrator will provide a copy of the complaint to the evaluator who is the subject of the complaint.~~

~~f. A serious complaint regarding the conduct of procedures used by an evaluator will be reviewed by a committee appointed by the Supervising Judge of the Family Law Department. The committee will consist of the Directory Administrator, a family law judge, a court employed evaluator, and may also include a private evaluator and any other person appointed by the Family Law Division Supervising Judge. The committee will review the complaint with the evaluator. If the committee decides to remove the evaluator from the directory, the evaluator will be notified of that fact in writing. The decision of the committee will be final and not subject to further review. In reviewing a complaint, the members of the~~

~~committee are persons performing quasi-judicial functions, and presiding at quasi-judicial proceedings within the meaning of Evidence Code section 703.5. The records and information in the possession of the committee regarding evaluators is official information acquired in confidence by public employees in the course of their duties, and not open, or officially disclosed to the public within the meaning of Evidence Code section 1040, subdivisions (b)(1) and (b)(2).~~

**Family Court Services maintains a list of Evaluators ("Evaluator List"). This list is provided solely as a public service. The court does not endorse or recommend any Evaluator. The Evaluators are not court employees. The court may appoint a person to conduct a child custody evaluation who is not on the Evaluator List.**

**(h) Qualification for Inclusion on Evaluator List. To be included on the Evaluator List, a person must meet the qualifications set forth in the Family Code and the California Rules of Court. An Evaluator must also complete any application required by the court and meet the requirements set forth in the application. Upon request by the court, an Evaluator on the Evaluation List must provide documents demonstrating compliance with these qualifications, including proof of continuing education and training, and the case names, numbers and dates of four completed court-appointed child custody evaluations in which the Evaluator has participated in the preceding three years in accordance with California Rules of Court, Rule 5.225.**

**(i) Completion of Report by Evaluator on the Evaluation List. An Evaluator on the Evaluator List ordered to conduct an evaluation must complete the evaluation and send the report to those persons as directed by the court or as provided by stipulation within fourteen weeks of the appointment unless good cause is shown for an extension. An Evaluator seeking an extension must file a written request with the judge who made the appointment, and send a copy of the request to both parties. The request must specify the length of the requested extension and describe the circumstances constituting good cause.**

**(j) Removal from Evaluator List. The court reserves the right to remove any person or entity from the Evaluator List with or without cause upon written notification to the Evaluator. Any court-conducted investigations and conclusions concerning an Evaluator will be confidential and not be maintained as a public record.**

(Rule 5.20 [*7/1/2011, 5/17/2013, 1/1/2014*] amended and effective _____)