

CHAPTER 10
VISITATION/CHILD CUSTODY RECOMMENDING COUNSELING
AND EVALUATIONS; VISITATION MONITORS

Rule 5.10.1

Child Custody Recommending Counseling Required

Before a hearing on any disputed issue of custody or visitation, the parties are required to attend and participate in child custody recommending counseling either with a counselor at FCS of the Superior Court or with a private mediator/child custody recommending counselor at the parties' own expense. The locations and telephone numbers of FCS are online. The purpose of visitation/child custody recommending counseling at FCS or private mediation/child custody recommending counseling is to reduce the conflict which may exist between the parties and to develop a custody and time-sharing agreement which is in the child(ren)'s best interest.
(Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.2

Non-Confidentiality; Recommendation

Unless otherwise stipulated by the parties or ordered by the court, FCS child custody recommending counseling and private mediation/child custody recommending counseling in San Diego County is understood to be a non-confidential process which means that the information provided to the counselor is not confidential. If the parties do not reach an agreement, the counselor will submit a recommendation to the court.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. & Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.3

FCS Child Recommending Counseling

A. Child Custody Recommending Counseling at FCS

Disputed custody or visitation matters must have a child custody recommending counseling appointment at FCS except in cases where the parties stipulate to private mediation/child custody recommending counseling. Absent a showing of good cause, the court will not set a new FCS appointment until at least six months have passed since the last such FCS date. Parties may appear before the court ex parte to make such a request.

B. Initiating FCS Counseling; Orders Pending Counseling

1. The moving party must file a completed Family Court Services Screening Form (SDSC FCS-46) with the moving papers if custody/visitation is at issue. At that time, both a hearing date and an FCS appointment date will be set and noted on the moving papers. The moving party/attorney shall notify the opposing party/attorney in writing of the date of the FCS appointment as soon as possible but no later than 16 court days before the counseling session plus 5 calendar days if notice is sent by mail.

2. If unanticipated child custody/visitation issues are raised for the first time at any hearing, the court may make a temporary custody/visitation order and may order the parties to participate in an FCS counseling session. The parties must meet with an FCS counselor before the court will make final custody/visitation orders on disputed custody/visitation issues.

C. Resolution; Cancellation, Rescheduling; Sanctions.

1. Resolution. Parties are encouraged to try to resolve child custody/visitation disputes before the FCS appointment. If the disputed custody/visitation issue is resolved prior to the FCS date, the moving party or their attorney must promptly notify the other party or their attorney and call FCS to cancel the appointment or risk a monetary sanction being imposed on one or both of the parties.

2. Cancellation.

a. Parties may cancel FCS appointment if the custody/visitation issue is dismissed or the parties choose to participate in private mediation/child custody recommending counseling prior to the FCS date. The requesting party must notify FCS of the cancellation at least 2 court days prior to the FCS appointment date.

b. If the moving party has been unable to timely serve notice of the FCS appointment on the other party, the moving party must cancel the FCS appointment at least 2 court days prior to the FCS date.

3. Rescheduling. Parties may reschedule the FCS appointment one time by stipulation by notifying FCS at least 2 court days prior to the FCS date. All subsequent requests to reschedule an FCS appointment require a court order, a copy of which must be provided to FCS by the requesting party or their attorney.

4. Sanctions. Failure to cancel or reschedule an FCS appointment at least 2 court days before the FCS appointment or failure to attend and participate in the FCS counseling session may subject the offending party to monetary sanctions of up to \$1,500 pursuant to Code of Civil Procedure section 177.5.

D. FCS Data Sheet

1. At or before the FCS appointment, each party must submit a completed FCS Data Sheet (form

SDCS FCS-02) to the FCS office. No attachments are permitted to the FCS Data Sheet.

2. Parties appearing by telephone for an FCS appointment must mail a completed FCS Data Sheet to the FCS office at least 5 calendar days before the FCS appointment date.

E. Materials for FCS Review

1. No writings or other materials may be submitted to FCS for the counselor's review absent court order.

2. Documents Requested by FCS. FCS may request the parties to submit documents for consideration. Copies of the documents must be provided to the other party/attorney concurrently with the submission to FCS.

F. Attendance at FCS Counseling. Other than a statutorily authorized support person, only the parties may attend the counseling session. The attorneys do not participate in the FCS counseling session. If the counselor wants to interview the child or other person(s), the counselor will arrange for such interviews.

G. Telephone Conference. If an in-person meeting with a counselor at FCS is not feasible, such as when one party resides outside the County of San Diego, the FCS session will be conducted by telephone with that party. The party appearing by telephone must call FCS to obtain an FCS Data Sheet or access it online for submission to FCS in accordance with subsection D above. The party appearing by telephone shall call FCS at the time designated for the FCS appointment.

H. Agreements. If the parties reach an agreement during the FCS session and both parties are self-represented, the counselor may prepare a written agreement that will be approved and signed by the parties and filed with the court. If the parties reach an agreement and either of the parties is represented by an attorney, the represented party will have the opportunity to have his or her attorney review the agreement before signing it and having it filed with the court.

I. Unresolved Issues. If the parties are unable to resolve issues of custody or visitation, the FCS counselor will submit a written recommendation to the parties, their attorneys and the court before the custody hearing. If the FCS recommendation is not available at least 10 calendar days before the hearing, the court will generally grant a continuance upon a party's request.

J. Cross Examination of FCS Counselor. A party has the right to cross-examine the FCS counselor at trial or at a special set hearing. FCS counselors are employees of the Superior Court. A party desiring the testimony of a FCS counselor at trial or special set hearing should first contact FCS to determine availability on the desired date. A subpoena must then be served on FCS at least 10 days in advance of the hearing with fees deposited as required by Government Code sections 68097, 68097.1, and 68097.2. If, at the time of trial or hearing, the FCS counselor is no longer an employee of Superior Court, is on leave, or other circumstances prevent the Superior Court from producing the counselor as a witness in response to a subpoena, FCS will assign the case for another child custody recommending counseling session with a different counselor. The court will not authorize depositions of counselors absent a showing of extraordinary good cause, such as prolonged unavailability of the counselor on or about the time of trial. Certain privileges attach to FCS files. Judicial officers will not order the release of any FCS documents without a prior in-camera review. A party desiring an in-camera review shall serve a subpoena duces tecum upon FCS for the file/documents at least 15 days before the trial or special set hearing, and if an objection is received, must schedule a motion to compel or Order to Show Cause to obtain the in camera review.

K. Communication with FCS. Communications between FCS counselors, parties, attorneys, including minors' counsel, are governed by Family Code sections 216 and 1818.

L. Request for Change of FCS Counselor.

1. Perceived Bias. Should a party believe that a particular counselor is biased in a way that affects the fair and equal treatment, the party may bring this matter to the attention of the Manager of FCS for consideration of this perception and assignment to a different counselor.

2. Procedure. A peremptory challenge of a counselor is not allowed. However, a party may request a change of counselor by following these rules.

a. During Counseling. A party must request a change of counselor as soon as sufficient basis for a change is known. No request to change a counselor will be granted unless there is a demonstrable showing of bias or prejudice against one of the parties or their attorney such that an independent, fair, and impartial recommendation cannot be made to the court.

b. Subsequent Court Proceedings. If either party files a subsequent court proceeding requiring an FCS appointment, either party may, at the time of the assignment, request a different counselor, without a showing of good cause.

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.4

Private Mediation/Child Custody Recommending Counseling

A. Initiating the Counseling. The parties may stipulate that the issues of custody and visitation be referred for private mediation/child custody recommending counseling at their own expense prior to an FCS child custody recommending counseling session or in addition to other recommendations made by FCS or an evaluator.

B. Scope of the Counseling. A formal order must be prepared setting forth the scope of the private mediation; identifying the private mediator; setting forth the payment plan for the private mediator's services; setting forth whether the private mediation is confidential or non-confidential, child custody recommending counseling; and such other matters as the court deems appropriate. Conformed copies of the order must be provided to the private mediator and all parties/attorneys.

C. Qualifications. Private mediators must meet the qualifications, training and continuing education requirements of Family Code sections 1815 and 1816, and will be required to acknowledge that they are so qualified and trained.

D. Writings and Other Materials for Review; Notice. Submission, service and/or review of writings and materials in a private mediation shall be decided between the private mediator and the parties and/or their attorneys.

E. Agreements. If the parties reach an agreement during private mediation, the mediator will prepare a report setting forth the terms of the agreement. If the private mediation was non-confidential, either party or the private mediator may file the child custody recommending report with the court.

F. Unresolved Issues.

1. Confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through private mediation and the parties stipulated to participate in confidential private mediation, the parties must participate in non-confidential private mediation/child custody recommending counseling or schedule and participate in FCS Child Custody Recommending Counseling before the matter is heard by the court.

2. Non-confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through non-confidential private mediation, the mediator will submit a written report with a recommendation and reasons for the recommendation to the parties, their attorneys and the court before the custody hearing. If the report is not available at least 10 calendar days before the hearing, the court may grant a continuance upon request of a party. The written recommendation and report of the private mediator will be admitted without further foundation.

G. Cross-Examination of the Private Mediator. A party has the right to cross-examine a non-confidential private mediator at trial or special set hearing. Either party may call the private mediator, upon reasonable notice, to examine the mediator on the report and/or the recommendations at the special set hearing/trial.

H. Communication with the Private Mediator. Communications between private mediators, parties, and attorneys, including minors' counsel, shall be governed by the provisions of Family Code sections 216 and 1818. (Adopted 1/1/2008; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.5

Child Custody Evaluations

The court will order child custody evaluations in accordance with Family Code sections 3111, 3118; Evidence Code section 730; Code of Civil Procedure section 2032.010 et seq.; and California Rules of Court, rules 5.220 and 5.225. All child custody evaluators must comply with the qualifications, training, continuing education, experience and ethics requirements in California Rules of Court, rules 5.220, 5.225, 5.250, 5.230, Family Code sections 3110.5, 3111, 1816, 3118 and Evidence Code section 730.

A. Order Appointing Evaluator.

1. The court shall issue orders appointing a child custody evaluator using form FL-327 (Order Appointing Child Custody Evaluator). This form may be supplemented by and/or attached to a separate stipulation prepared by the parties.

2. The content of the order and/or stipulation, including the purpose and scope, must comply with the requirements of California Rules of Court, rule 5.220.

3. The court must determine and allocate any fees and costs of the evaluation in the order and/or stipulation.

4. Parties must immediately provide a copy of the order to the appointed evaluator.

B. Qualifications. All private evaluators must complete and timely file a qualifications declaration in each case in accordance with California Rules of Court, rule 5.225(k)(1)(B). The parties are responsible for ensuring the timely filing of a private evaluator's qualifications declaration.

C. Finding a Qualified Private Child Custody Evaluator. The public may find a private, mental health professional who is qualified to be a court-appointed child custody evaluator by the San Diego court by contacting the court's Family Court Services for a list of the required qualifications as set forth in the California Family Code and California Rules of Court. The list is also available on the Court's website. This list of qualifications may then be used to search through any standard public resource, such as the internet, to find a mental health professional who

meets all the legal criteria. A private, court appointed evaluator must be able to sign under penalty of perjury and file a Declaration of Private Child Custody Evaluator Regarding Qualifications within ten days of the appointment. The court does not maintain a list of qualified evaluators nor does it endorse any mental health professional. The parties are responsible for ensuring a private child custody evaluator meets all the legal qualifications.

D. Peremptory Challenges and Challenges for Cause.

1. There shall be no peremptory challenges allowed for a court-connected evaluator.
2. There shall be no peremptory challenges allowed for a private evaluator appointed by the court.
3. A party may challenge an evaluator for cause by noticed motion upon a substantial showing that the evaluator is biased or prejudiced against one of the parties or otherwise unable to render a fair and impartial evaluation.

E. Withdrawing from a Case. A private evaluator may petition the court to withdraw from the case for good cause by delivering a letter addressed to the trial judge assigned to the case stating the reasons for their request. A copy of the letter must also be served on all parties and minor's counsel. Any objections to the request to withdraw must be filed with the court and served on the evaluator, all parties, and minor's counsel, within ten days of notice of the petition to withdraw. Based on the court's review of the petition and any objections, the court may schedule a hearing or decide the matter by issuing an ex parte order. All withdrawals require a court order.

F. Complaints. Any party's complaint about an evaluator's performance must be in writing and addressed to the Supervising Judge of the Family Court. Complaints shall be as specific as possible in describing what the evaluator did or did not do. The Supervising Judge or their designees will investigate, evaluate and respond to the complaint in due course.

G. Ex Parte Communications. Ex-parte communications between an attorney, including minor's counsel, and the court-appointed evaluator, are governed by Family Code sections 216 and 1818.

H. Confidentiality of Reports. See rule 5.10.6 below.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.6

Confidentiality of Evaluation Reports and Recommendations

All court-ordered child custody evaluation reports filed with the court and served on the parties must be done so in strict compliance with Family Code section 3111, subsection (e) and California Rules of Court, rule 5.220(i).

(Adopted 1/1/2008; Renum. & Rev. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.7

Visitation Monitors

A. Purpose. The purpose of a visitation monitor is to provide a safe and nurturing environment for children, during a parent's visitation, where there is need for reunification, alleged/adjudicated emotional, physical or sexual abuse of the child by a parent, or threat of abduction.

B. List. A list of visitation monitors is available through the San Diego Superior Court - Programs Resource List (PRL) online. The individuals/entities have identified themselves to the San Diego Superior Court as visitation monitors. The visitation monitors are not affiliated with the court, and each visitation monitor is independently responsible for compliance with any and all applicable legal requirements. The court does not endorse, evaluate, supervise, or monitor the visitation monitors.

C. Requirements. Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency are required to follow the legal requirements and obligations set forth in California Rules of Court, Judicial Administrative Standard 5.20. Informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider are available at all FCS locations.

D. Non-Professional Visitation Monitors. A non-professional visitation monitor is defined as any person who is not paid for providing supervised visitation services. Prior to supervising any visitation, the non-professional visitation monitor must complete and file with the court a Non-Professional Visitation Monitor Declaration available on the court's website.

E. Grievance. A party/attorney may file a grievance against the PRL visitation monitor. The grievance must be submitted in writing to the Supervising Judge of the Family Court. The Supervising Judge will forward the grievance to the Presiding Judge of the San Diego Superior Court or his or her designee for review.

F. Removal from List. Removal from the PRL list may be made without cause, notice, or explanation. If practical, written notification of removal will be provided.

(Adopted 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 1/1/2011; Rev. 1/1/2012)

Rule 5.10.8**Children's Participation in Family Court**

A. The court will consider a child's wishes and determine the manner and extent of a child's participation and testimony in family court proceedings in accordance with California Rules of Court, rule 5.250.

B. Court-connected or appointed professionals dealing with children shall comply with their responsibilities in accordance with California Rules of Court, rule 5.250.

(Adopted 1/1/2012)