

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

**“Children’s Voices and Testimony in Child Custody Cases”
California Rule of Court 5.250**

This document provides information regarding children’s voices in the family law court when child custody is being discussed under family code section 3042. Children’s participation in family law matters must be decided on a case by case basis. The judge needs to find a balance between protecting the child, and the duty to consider the wishes of a child, while making sure that the best interests of that child are served in the process.

Certain people must inform the judge if they are aware that a child would like to provide testimony to the court.

***Minor’s Counsel
An Evaluator
An investigator
A child custody recommending counselor***

The following people may, but are not required to, inform the court if they have information that a child wishes to address the court:

A party or their attorney

In some instances, the judge may ask whether a child wishes to provide testimony.

Deciding Whether a Child Should Address the Court

The judge in your case has to follow a set guideline to decide whether a child should be allowed to address the court, or provide testimony in their own child custody case. This means a child may not always be allowed to testify. Some guidelines the judge must consider when making this decision are:

- The most important guideline is for the judge to consider whether addressing the court is in the child’s best interest.***
- If the child in question is age 14 or older, the judge must hear from that child unless the court makes a finding that addressing the court (providing testimony) is not in the child’s best interests and states the reasons on record.***
- Some of the factors a judge may consider in deciding whether the child should be allowed to address the court and whether doing so would be in the child’s best interest include:***

Whether the child is of sufficient age and capacity to be able to form an intelligent preference as to parenting time

Whether the child is able to understand the nature of testimony

Whether information has been presented indicating that the child may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the child may benefit from addressing the court

How Testimony Will Be Received By the Court

The judge must also determine how the court will receive a child's testimony. In doing so, the judge may decide to:

- ***Allow the child to give direct testimony to the court.***
- ***Use alternatives to direct testimony to obtain information.***

If the court decides to use alternatives to direct testimony:

- ***The child may be interviewed in the child custody recommending counseling process under FC 3180.***
- ***A child may be interviewed by a child custody evaluator under evidence code section 3110 or section 730.***
- ***Information from a child could also be provided from a child interview center or professional to avoid unnecessary interviews.***
- ***If the court relies on the alternative processes rather than having the child testify, the information needs to be in writing and fully document the child's views on the matters they wished to express their opinions.***
- ***The child's input should be described in detail and be provided to the court and to the parties by a person who will be available to provide testimony and cross-examination.***

In cases where the child's direct testimony will be taken, the court will also consider several things:

- ***Where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from a child in chambers.***
- ***Who should be present when testimony is taken, such as parents and their attorneys, etc. or just a court reporter and the judicial officer.***

- ***How the child will be questioned, such as whether only the judge will ask questions that the parties have submitted, or whether attorneys may cross examine the child.***
- ***Whether a court reporter will be present when testimony is taken or whether a listening device is available if testimony is taken in chambers.***

The rules state that when taking a child's testimony, special care must be made to protect the child from harassment or embarrassment and to restrict repetition of questions. Care should be taken to make sure the questions are appropriate for the child's understanding of them.

- ***In any case in which a child may be called to testify, the judge may consider the appointment of minor's counsel for that child.***
- ***If minor's counsel is appointed, the parents may be responsible for any legal fees.***

Requirements for Court Connected or Appointed Professionals.

A child custody evaluator, a child custody recommending counselor, an investigator, or mediator appointed or assigned to meet with the child must:

- ***Provide information to the child in an age appropriate manner about the limits of confidentiality, and that the information shared may be provided to the judge and to the parents in the case.***
- ***Allow but not require a child to state a preference regarding their custody or parenting time in an age-appropriate manner.***
- ***Provide the parents of the child with information about local court procedures and how to best support the child in an age-appropriate manner.***

If you have further questions about your child's voice in your child custody matter, you may wish to review California Rule of Court 5.250 and FL section 3042.