

RULE 9 COUNSEL FOR MINOR CHILDREN

(A)-(B) no changes

C. APPLICATION FOR PAYMENT OF COMPENSATION

- (1) Appointed counsel may apply for payment of fees and costs when counsel has billed a minimum of 10 hours or when representation has concluded. Appointed counsel will ~~shall~~ promptly apply for payment when costs and fees at the applicable billing rate reach \$4,000. Application for payment must ~~shall~~ be consistent with any Court determinations under CRC 5.241 and ~~shall~~ will be made ex parte, using local form Application for Payment of Fees and Costs of Children's Counsel (attached form FM-1067), and following the procedures set out in that form. If a judicial officer makes a determination under CRC 5.241 that the court must pay any portion of appointed counsel's fees, the fees must be paid at the rate set by the court.
- (2) Any response by a party to appointed counsel's application for payment must ~~shall~~ use the Response to Application for Payment of Fees and Costs by Children's Counsel (attached form FM-1068), following the procedures set out in that form.

D. EX PARTE APPLICATION TO BE RELIEVED AS COUNSEL FOR MINOR CHILD

Appointed counsel may apply via an ex parte application and order to be relieved as the counsel for minor child. The attorney for the minor(s) will ~~shall~~ serve the parties or attorneys for the parties the Ex Parte Application and Order to be Relieved as Counsel for Minor Child (attached form FM-1187) along with a blank Response to Application to be Relieved as Counsel for Minor Child (attached form FM-1188). Parties or attorneys for the parties will have 21 calendar days from date of the application to respond to the request. Responses ~~shall~~ must be served on the counsel for the minor child and all other parties. If no response is received, the court may grant the request if good cause exists.

If a response is received and the party or counsel for a party objects to the

request to be relieved, a Status Conference or hearing may be set by the court to consider the objection.

(Effective 7/1/2019)

ATTORNEY OR PARTY WITHOUT AN ATTORNEY: Name		TELEPHONE NUMBER:	ATTACHMENT FM-1067 <i>FOR COURT USE ONLY</i>
Firm			
Address:			
e-mail			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA			
STREET ADDRESS: 201 North First Street, San José, CA 95113			
MAILING ADDRESS: 191 North First Street			
CITY AND ZIP CODE: San José, California 95113			
BRANCH NAME: Family Justice Center			
PETITIONER:			
RESPONDENT:			
CLAIMANT:		CASE NUMBER:	
		APPLICATION #:	
APPLICATION AND ORDER FOR PAYMENT OF ATTORNEY FEES AND COSTS OF CHILDREN'S COUNSEL		APJ:	
		DEPARTMENT:	

~~**APPLICATION (TO BE COMPLETED BY CHILDREN'S COUNSEL):**~~

I, _____, declare the following:

1. ~~I am an attorney duly licensed to practice law within the State of California.~~
2. ~~The last four digits of my tax Id number are: _____ . My Phoenix vendor number is: _____ .~~
3. ~~I am the Child(ren)'s Counsel in the above-entitled action. I was appointed on _____, by the Honorable _____ to represent the following child(ren) in this matter: _____.~~

4. I have timely filed the Declaration of Counsel for a Child Regarding Qualifications (JC Form #FL-322). I have reviewed Rule 9 of the Family Local Rules of Court as well as the requirements in FM-1055 (Order appointing Minor's Counsel and am making this request in compliance with the Rules and guidelines therein. I have served this Application, a blank response, and a blank Income and Expense Declaration on the parties and their attorneys if applicable.

5. ~~2. I, and/or my staff, have completed _____ hours of work on this matter between the ~~date~~ dates _____ of and _____.~~

3. ~~I have billed a total in fees and costs of \$ _____ during this time.~~
 - ~~at my standard rate of \$ _____ per hour, or~~
 - ~~at a reduced rate of \$ _____ per hour. My standard rate is \$ _____ per hour.~~

~~If applicable, I have billed paralegal time at the rate of \$ _____ per hour.~~

~~I have recorded _____ hours at no charge.~~

4. ~~This matter, as it pertains to my client(s), is complete.~~
 - ~~An order has been entered, or~~
 - ~~I am currently requesting that an order be entered for that reason, terminating my appointment.~~

5. ~~I am now requesting attorney fees and costs from _____ through _____ for the _____ hours that I and/or my staff have spent on behalf of the minor child(ren) _____ since my appointment, or _____ since my last application for an order for fees.~~

6. ~~I am now requesting that the court order the replenishment of the retainer. I ask that each party pay the amount of \$ _____ to me within fifteen (15) days of the date the Order for Fees is filed.~~

PETITIONER:	CASE NUMBER:
RESPONDENT:	<u>APPLICATION #:</u>

6. 7. I am requesting fees in the amount of \$ _____ and costs in the amount of \$ _____. I recommend that the court allocate the payment of such fees and costs as follows:

_____ % to be paid by **Petitioner**

_____ % to be paid by **Respondent**

_____ % to be paid by the Superior Court

for the following reason(s): _____

~~8. I mailed a copy of this Application and Exhibits with a blank Response and blank Income and Expense Declaration to the parties or their attorneys of record on _____.~~

~~A copy of this Application and Exhibits with a blank Response and blank Income and Expense Declaration was served on the parties or their attorneys of record on _____.~~

~~9. I request Abstracts of Judgment and Earnings Withholdings Orders be issued for the following reasons: _____~~

7. 10. I request an order that if a party fails to make a full payment within 10 days of the due date ordered by the court, the entire balance will immediately become due with interest accruing at the legal rate from the date of default.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
 Child(ren)'s Counsel

NOTICE:

To Child(ren)'s Counsel: You must submit this Application and Order through e-filing.

To the Parties: You must complete the form "Response to Application for Payment of Fees and Costs of Children's Counsel (form FM-1068)" and follow the procedures set out in that form. Your response must be filed within 21 calendar days of the date of this application.

Failure to submit a response may result in an order directing you to pay up to 100% of the fees and costs requested.

ORDER (TO BE COMPLETED BY THE COURT):

PETITIONER:	CASE NUMBER:
RESPONDENT:	APPLICATION #:

Having reviewed the request of the Children’s Counsel and any responses by the ~~parents and the Superior~~ ^{parties} Court of California, ~~County of Santa Clara Finance Division~~, IT IS ORDERED: the court issues the following findings and orders:

1. Children’s Counsel, _____, ~~shall~~ ^{will} be paid \$ _____ in current fees and \$ _____ in costs for the period from _____ to _____.
2. Petitioner ~~shall~~ ^{is ordered to} pay \$ _____. Payment ~~shall~~ ^{will} be made as follows:
 - Late payments will accrue interest at the legal rate
 - Monthly payments in the amount of \$ _____ ~~shall~~ ^{will} commence on _____.
 - If a monthly payment is late, the entire balance will be immediately due and interest will accrue at the legal rate.
 - Other: _____.
3. Respondent ~~shall~~ ^{is ordered to} pay \$ _____. Payment ~~shall~~ ^{will} be made as follows:
 - Late payments will accrue interest at the legal rate
 - Monthly payments in the amount of \$ _____ ~~shall~~ ^{will} commence on _____.
 - If a monthly payment is late, the entire balance will be immediately due and interest will accrue at the legal rate.
 - Other: _____.
4. FINDING OF INABILITY TO PAY: Upon review of all financial declarations and the Court file(s), the Court finds Petitioner Respondent is/are unable to pay all part of the children’s attorney’s fees and costs.
4. \$ _____ ~~shall~~ ^{will} be paid by the Superior Court of California, County of Santa Clara.
- ~~6. Abstracts of Judgment/Earnings Withholding Orders shall issue.~~
- ~~If a party fails to make a full payment within 10 days of the due date ordered by the court, the entire balance will immediately become due with interest accruing at the legal rate from the date of default.~~
- ~~7. Failure to pay fees to the appointed counsel may result in the attorney initiating legal action against them to collect the money.~~
- ~~8. Withdrawal of Counsel: Based upon the Children’s Attorney’s representation that the matter with respect to the minor children is complete, the Attorney’s appointment is hereby terminated.~~

Date: _____

~~Judicial Officer~~ Judge/Commssioner of the Superior Court

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 201 North First Street, San Jose, CA 95113 MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, California 95113 DIVISION: Family Justice Courthouse - Family Law Division</p>	<p><i>FOR COURT USE ONLY</i></p>
<p>PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:</p>	
<p>ORDER APPOINTING MINOR'S COUNSEL</p>	<p>CASE NUMBER: DEPARTMENT NUMBER: FCS NUMBER:</p>

1. **FINDINGS:** The Court finds the best interests of the child/ren in this case will be served by the appointment of counsel to represent the child/ren.
 This is a limited scope appointment regarding the following subject or duration:

THE COURT ORDERS:

2. **APPOINTMENT:** Pursuant to Family Code Sections 3150 – 3153, the Court appoints:
 Attorney Name: _____ Bar No. _____
 Telephone Number: _____
 Email Address: _____

to represent the minor child/ren who is or are:

Name: _____	Date of Birth: _____
Name: _____	Date of Birth: _____
Name: _____	Date of Birth: _____

Additional children are listed on Attachment 2.

3. **IDENTITY OF PARTIES:**

Party 1: Petitioner Respondent Other

Name: _____
 Telephone Number (*UNLESS CONFIDENTIAL, see No. 5*): _____
 Email Address: _____
 Address (*UNLESS CONFIDENTIAL, see No. 5*): _____

Party 2: Petitioner Respondent Other

Name: _____

Telephone Number (*UNLESS CONFIDENTIAL, see No. 5*): _____

Email Address: _____

Address (*UNLESS CONFIDENTIAL, see No. 5*): _____

Other Party/Claimant: _____

Relationship: _____

Name: _____

Telephone Number (*UNLESS CONFIDENTIAL, see No. 5*): _____

Email Address: _____

Address (*UNLESS CONFIDENTIAL, see No. 5*): _____

4. COUNSEL FOR PARTIES:

Party 1 is self-represented

Party 1's counsel:

Name: _____

Telephone Number: _____

Email Address: _____

Address: _____

Party 2 is self-represented

Party 2's counsel:

Name: _____

Telephone Number: _____

Email Address: _____

Address: _____

Claimant/Other Party is self-represented

Claimant/Other Party's counsel:

Name: _____

Telephone Number: _____

Email Address: _____

Address: _____

5. CONFIDENTIAL ADDRESS:

If a party's address is confidential, due to a pending Domestic Violence Restraining Order proceeding or participation in California's Safe At Home Program, that party or their attorney if they are represented, must provide the address, email address, and telephone number to counsel for the child/ren within 5 days of this order.

6. KEEPING MINOR'S COUNSEL INFORMED OF ADDRESSES/PHONE NUMBERS:

Counsel for the parties, or the parties, if self-represented, must keep the attorney for the child/ren informed of the parties' current residence, employment addresses, email addresses, and telephone numbers at all times.

7. PLEADINGS:

Once appointed, Minor's Counsel will have access to the Court's electronic file in this matter. Each attorney or party must serve copies of all future pleadings related to child/ren's issues on Minor's Counsel within five (5) calendar days of filing. Any *ex parte* filings or motions relating to child issues, including child support, must be served on Minor's Counsel in the same manner as if served upon a party. All stipulated orders involving issues regarding the child/ren, including child support issues, must include the agreement of Minor's Counsel or a statement by Minor's Counsel that no position is taken. All orders following hearings and trials involving Minor's Counsel shall be submitted to Minor's Counsel for approval as to form and content.

8. MINOR'S COUNSEL'S RIGHT AND RESPONSIBILITIES

- a. Counsel and the child/ren will have a confidential attorney-client relationship. Counsel will not be called as a witness in the proceedings.
- b. Counsel must have reasonable access to the child/ren.
- c. Counsel will be given notice of any proceeding, and all phases of that proceeding, including any requests for examination affecting the child/ren.
- d. Counsel will receive reasonable advance notice of and has the right to refuse any physical or psychological examination or evaluation, for purposes of this proceeding, that has not been ordered by the Court or to seek independent psychological or physical examination or evaluation of the child/ren for purposes of the proceeding on approval by the Court.
- e. Counsel has the right to assert or to waive any privilege on behalf of the child/ren.
- f. Counsel may be heard in any proceeding including presenting motions and orders to show cause and participating in settlement conferences and trials, seeking writs, appeals, and arbitrations. Filing fees are waived for Minor's Counsel.
- g. Each party must provide copies of records as requested by Counsel. Counsel must have access to the child/ren's medical, dental, mental health, other health care providers, and to mental health professionals, and others who have assessed the child/ren or provided care to the child/ren, subject to paragraph k below. Minor's Counsel must have access to any and all reports, test results, and other documents relating to the child/ren from third parties, for example but not limited to, school personnel, medical personnel, and Department of Family and Children Services workers. The release of this information to Minor's Counsel will not constitute a waiver of the confidentiality of the reports, files, and/or any disclosed communications. All privileged documents will continue to be privileged. Each party must sign releases for such information as requested by the Minor's Counsel.

- h. The parties or their counsel must provide Minor's Counsel with the names, addresses, email addresses and telephone numbers for all individuals involved with the treatment, care, daycare, and education of the children within 14 days of this order, and must keep counsel informed of any changes in this information.
- i. There must be no *ex parte* communication between the Minor's Counsel and any Family Court Services assessor/evaluator, private assessor/evaluator, and mental health professional appointed by the Court or hired by the parties, except for the parties' own therapists, or where expressly authorized by the Court pursuant to Family Code §3151 (c)(5). The above limitations will not apply under the circumstances set forth in Family Code Section 216 (c)(1) and (2).
- j. Counsel must be permitted to review the Family Court Services files regarding the case. Any request for copies of a Family Court Services file may be subject to a protective order and must be in compliance with Santa Clara County Local Rules, Family Rule 2 (C)(6).
- k. Counsel may participate in mediation of parenting issues with the parents, whether through Family Court Services or private mediation, subject to the requirements of Family Code sections §§ 3177 and 3182. All parties are responsible for reasonable notice to the Counsel of any scheduled mediation. Counsel is bound by the same mediation confidentiality as the parties.
- l. Minor's Counsel is charged with the representation of the child/ren's best interests. The role of Counsel is to gather evidence that bears on the best interests of the child/ren and present that admissible evidence to the Court.
- m. For all issues related to the qualifications, rights, and responsibilities of Minor's Counsel the parties are referred to California Rules of Court, Rule 5.242.

9. REVIEW OF APPOINTMENT:

- a. Minor's counsel, counsel for any party, a self-represented party, or the Court may set a Status Conference before the end of 24 months from the filing of this order, for the purpose of determining whether a hearing will be required on the question of continuing or ending the appointment. If no one sets a Status Conference by the end of 24 months from the filing of this order, the appointment will continue for another 12 months, with the same ability to be heard by the Court at the end of each subsequent 12-month period.
- b. If all parties and Counsel agree that Counsel's appointment should end, they may present a signed stipulation stating the reasons for termination to the court for review. Appointed counsel may also file an Ex Parte Application and Order to be Relieved as Counsel for Minor Child (FM-1187) as described in Family Rule 9 (D).
- c. Appointment will terminate upon emancipation of the child/ren, except as to any continuing orders.

10. ATTORNEY FEES AND COSTS:

- a. Minor's Counsel will receive a reasonable sum for compensation and expenses, which will be determined by the Court. Family Code § 3153(a). Minor's counsel may not include within a request for compensation any billing entries relating to purely clerical or administrative tasks, overhead items, or any compensation for time spent preparing the request for compensation itself.
- b. The parties are responsible for the payment of Minor Counsel's fees and costs, unless the Court finds that one or both of the parties are unable to pay all or a part of the fees. The Court can

order the parties to pay the fees and costs in proportions deemed to be just and reasonable, and may order payment in advance as a retainer. The Court has discretion to order all or part of the fees and costs to be paid by the Superior Court. If payment for fees and costs is made by the Superior Court of Santa Clara County, the Court may order either party to make reimbursement to the Court and the rate of payment must be the amount set by the court.

- c. Each party shall pay \$ _____ to the Minor's Counsel within _____ days of the date of filing of this Order as a deposit toward fees and costs for Minor's Counsel.
- d. Minor's Counsel may submit an application for payment of fees and costs upon completion of ten hours of billable time. Once the proposed billable amount reaches \$4,000, Minor's Counsel should submit an application for payment of fees and costs. Applications which do not include billing statements will be rejected by the court.
- e. Whenever Minor's Counsel submits an application and billing statement of fees and costs, each party must file and serve a fully completed Income and Expense Declaration (Judicial Council Form FL-150) which must include recent pay stubs, or other verification of income no later than 21 days after Minor's Counsel's application is submitted. Parties are advised that the court requires updated financial information to determine the ability of the parties to pay all or a portion of counsel's compensation and expenses.
- f. Failure to pay ordered fees and costs may result in the appointed attorney or the court initiating legal action to collect the ordered fees and costs. (Cal. Rules of Court 5.241.) Appointed attorneys may file a Request for Order addressing enforcement remedies for unpaid fees and costs, including a request for the court to issue an Abstract of Judgment.

11. **APPLICATION SUBMISSION TO FINANCE:**

Minor's Counsel may submit one copy of any application and billing statements of fees and costs (Exhibit) to Court Finance the court on a quarterly basis. This helps to properly charge expenditures to the correct fiscal year and avoid duplicate claims.

12. **OTHER ORDERS:**

DATE:

JUDICIAL OFFICER