Dude, I'm 14 Years Old and I'm Here to Address the Court … Now What?
California Prepares for Teenagers in Family Court

By
Leslie Ellen Shear[1]

In January 2012 California teenagers will begin exercising the right to "address the court" about their own custody under a newly enacted section of the state's Family Code. California's family courts and family courts are preparing for this change, ruminating about how it will work in practice, and wondering whether it will create a court culture that ends up with greater direct involvement of younger children as well. The practical questions begin with how teenagers (who generally aren't reading the California Family Code) learn that they have a right to address the court, and include questions about the quality of information judges will obtain, and the short and long-term impact on children of participating in custody litigation.

What do the parties, lawyers and judges hope to learn from children's direct participation in custody proceedings? The new statute (and its enabling court rule) fail to distinguish between three very different purposes for a child's direct participation. Those possible purposes for direct child-involvement are:

1. Factual testimony by the child as a percipient witness;
2. The child addresses the court for purposes of expressing preferences about the prospective parenting plan; or
3. The Court meeting the child for purposes of learning about the child's unique traits and characteristics as they bear on provisions of the parenting plan.

The new legislation creates a presumption in favor of granting the request of a child who is at least 14 years old to "address the court." California Family Code §3042[*], governing the duty of a family court[†] to consider a child's intelligent preference about his or her custody, has been amended to add subsections (c) through (h) (effective 1/1/12). The full statute, as amended, reads:

> (a) If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation.
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> (b) In addition to the requirements of subdivision (b) of Section 765[‡] of the Evidence Code, the court shall control the examination of a child witness so as to protect the best interests of the child.
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> (c) If the child is 14 years of age or older and wishes to address the court

[1] Leslie Ellen Shear is an attorney in private practice in Encino, California. Ms. Shear is certified as a specialist in both Family Law and Appellate Law by the California Board of Legal Specialization and is a Fellow of the International Academy of Matrimonial Lawyers. She may be contacted at custodymatters@earthlink.net.

regarding custody or visitation, the child shall be permitted to do so, unless the court determines that doing so is not in the child's best interests. In that case, the court shall state its reasons for that finding on the record.

(d) Nothing in this section shall be interpreted to prevent a child who is less than 14 years of age from addressing the court regarding custody or visitation, if the court determines that is appropriate pursuant to the child's best interests.

(e) If the court precludes the calling of any child as a witness, the court shall provide alternative means of obtaining input from the child and other information regarding the child's preferences.

(f) To assist the court in determining whether the child wishes to express his or her preference or to provide other input regarding custody or visitation to the court, a minor's counsel, an evaluator, an investigator, or a mediator who provides recommendations to the judge pursuant to Section 3183 shall indicate to the judge that the child wishes to address the court, or the judge may make that inquiry in the absence of that request. A party or a party's attorney may also indicate to the judge that the child wishes to address the court or judge.

(g) Nothing in this section shall be construed to require the child to express to the court his or her preference or to provide other input regarding custody or visitation.

(h) The Judicial Council shall, no later than January 1, 2012, promulgate a rule of court establishing procedures for the examination of a child witness, and include guidelines on methods other than direct testimony for obtaining information or other input from the child regarding custody or visitation.

The statute creating a presumption in favor of allowing teenagers to address the Court isn't the only major change in California's family courts. The new statute comes on the heels of a set of family law reforms that increase the role of live testimony in family law proceedings, limit written testimony by most witnesses to only 10 double-spaced pages, restrict the role of court-appointed children's lawyers, and make other procedural reforms, and statewide changes in court administration resulting from the recent appointment of a new Chief Justice of the California Supreme Court.

One of the greatest challenges faced by California family courts arises from the rotation of judges with little or no experience and expertise in family law into family law assignments. Making individualized decisions about whether and how to include a particular child in custody decision making, and what weight to give the information obtained takes a level of specialized expertise possessed by few family law bench officers. While California family-law bench officers receive family law training, that training is too limited for these complex determinations. Similarly, many family lawyers have relatively little interdisciplinary training that would equip them to give wise advice or have the skills necessary to implement these new policies.

All of these new policies and procedures for family courts are coming into effect during a period of devastating budget cuts for California's courts. Even before the budget cuts, California's family courts suffered from crippling under-funding, and a marked lack of public confidence. The funding crisis means that we can expect a wide gap between the way the bill is implemented and the aspirations that led to its adoption. Before the budget cuts, the California chapter of the Association of Family and Conciliation Courts (AFCC-CA) had declared the failure to adequately fund California's family courts a public health crisis that jeopardizes the safety and well-being of the approximately half of all California children whose lives are shaped by decisions made in family court. The Association of Certified Family Law Specialists (ACFLS) and other groups have adopted the AFCC-CA resolution. Unfortunately, that message has been drowned out by the need to cope with wave after wave of significant funding reductions. It appears that things will get worse, before they get better.

California's Judicial Council Has Adopted a Statewide Rule of Court
With Guidelines for Implementing the New Statute

Historically children have been the subjects of custody law, not quasi-parties to that litigation. Custody rights reflected social norms based upon parental gender except in extreme cases. Thus in early American, fathers were entitled to custody of their children, and to their children's labor. The industrial revolution marked a shift in gender roles – men left to work outside the home, and childrearing was seen as women's realm. When custody was assigned based upon parental gender, custody disputes were rare. In the last forty years American society has moved to gender neutral individualized parenting plans that are intended to be child-centered and keep both parents actively involved in childrearing. The task in custody cases has shifted from picking a parent to developing a detailed plan. So what do we need to know about the child, and what rights does the child have in these 21st Century child custody proceedings?

As directed by the Legislature, California's Judicial Council developed and adopted a statewide rule of court that addresses some of these questions (California Rules of Court, rule 5.250, effective January 1, 2012) in late October 2011.[§] The statewide rule identifies options and factors to consider, recommends special professional training for judges, lawyers and family court mental health professionals but leaves decision making to take place on a case-by-case basis. The Administrative Office of the Courts (AOC) released a draft version of the rule for comment earlier in the year, and made modifications to the draft as result of the comments received. The AOC offered training during 2011 to mediators, child custody recommending counselors, and judicial officers as well as attorneys. They plan to offer additional training, to work with the State Bar and local bar organizations and others throughout the state to support training for attorneys as well. It is unlikely that such training will be in the depth necessary, and that it will include supervised clinical experience in child interviewing.

The most important feature of the new rule is its recognition that each case requires an individualized determination. Rule 5.250 gives family-court bench officers broad discretion to decide whether and how a child will participate in the litigation,

> Children's participation in family law matters must be considered on a case-by-case basis. No statutory mandate, rule, or practice requires children to participate in court or prohibits them from doing so. When a child wishes to participate, the court should find a balance between protecting the child, the statutory duty to consider the wishes of and input from the child, and the probative value of the child's input while ensuring all parties' due process rights to challenge evidence relied upon by the court in making custody decisions.

The genius of the "best interests" standard is its indeterminacy – it requires that each child's parenting plan be based on the individualized factors that matter in to that particular child's well-being. Thus the subject of a California custody case is "What is best for *this* child?" not what is best for children generally. Each case invites evidence and argument about what matters, reflecting changing social science research, cultural and regional values, and the unique traits of each child and each family. One of the most robust findings of the major longitudinal studies of the impact of divorce on children is that the particular matters more than the general – siblings in the same parenting plan may have very different outcomes. Generic parenting plans fail to meet the best interests standard – how do we find out about this particular kid and her relationships – and what plan is most likely to help her flourish?

The new rules set forth detailed sets of factors to consider in deciding whether and how a child will participate in court proceedings. But the rules are pretty silent about how the court will learn enough about each child to inform those decisions with something more reliable than quick takes and speculation. Making individualized decisions about a particular child's participation in court proceedings requires a lot of information about that child, yet in most cases that kind of information is not before the court. Large caseloads, limited budgets, and lack of expertise each present obstacles to the quality of these decisions, even if the Court does its best to consider the factors set forth in the new rules.

Questions and Concerns

The new legislation increasing the likelihood of children's direct involvement in custody litigation raises many questions and concerns. A number of those who commented on the proposed rule opposed its adoption, but the Administrative Office of the Courts correctly observed that the California Legislature has mandated adoption of enabling rules. Comments noted the lack of funding to properly implement this new program – the new statute is an unfunded mandate.

Many California family law professionals wonder and worry about the impact on children of direct participation in litigation about their family relationships. In the current family court setting, this new policy is likely to produce decontextualized information that sheds little light on which parenting plan is in a particular child's best interests or accurate information about events the child has witnessed.

In *The Moral Intelligence of Children: How to Raise a Moral Child* (Random House, 1997), psychiatrist Robert Coles tells us how he learned something important from his young son. One day Dr. Coles' son slipped away and played with his father's power tools – suffering a severe cut. Dr. Coles put him in the car and took off for the emergency room. In his anxiety to get there quickly he started running yellow lights until the boy said, 'Daddy, I think we are going to get in more trouble trying to get out of trouble." Will increasing children's direct participation in family law litigation create more trouble than it prevents? The risks seem higher in the current setting, where courts are carrying heavier caseloads, resources for court-connected mental health services are shrinking, and job instability may prevent many parents from obtaining counsel.

When the statute creating a large role for children in family court courtrooms was first adopted, some thought family courts would turn to child protection (dependency courts) for models about how to implement the statute. But the differences between the two courts are more significant than the similarities. One bench officer who came to family law from years as a dependency court lawyer, and a dependency court commissioner observes that unlike children who testify in dependency court, children in family court go home that night with a parent or parents who may not be pleased with what the child had to say, or may reward the child for supporting the parent's goals and perspectives. Thus, children's involvement in family court presents different questions about the influences on what the child has to say, and the consequences for the child after the proceedings.

To reflect upon how best to decide when and how teenagers will address family courts, we will return to the purposes for which a child's participation in custody litigation process could be used, the ways in which California family law courts can learn what the child has to say, the reliability and quality of different ways of obtaining information, and the question of iatrogenic consequences of the child's direct involvement in courtroom proceedings over the child's custody. We also consider the impact of direct involvement on the child, and the skills and methods necessary to get reliable and useful information.

Since the phrase "address the court" is fairly ambiguous, individual family law judges may have considerable latitude in implement this new law. The new statute refers to the child expressing a preference or providing "other input regarding custody or visitation" but doesn't make it clear whether the child is a witness subject to cross-examination; a quasi-party to the litigation seeking or opposing orders from the court; or is making something akin to a victim's statement in criminal court proceedings. Similarly, it is unclear whether the Legislature intended the teenager to be testifying about facts, voicing opinions, or offering an opportunity for the Court to get to know the child whose custody is at issue. The new court rules suggest a variety of approaches by which family courts can hear from children.

1. When will the benefits of including a teenager in the custody litigation process outweigh the risks? When will the teenager's participation provide valuable information to the Court? What procedures for the teenager's participation will provide the most reliable information for the Court? What will the impact of the experience of being involved directly in the litigation be on the teenager? The answers to each of these questions will be different for each case and situation.

Will busy family courts with limited training have enough information to make child-centered decisions in each of these cases?

Impetus and Context:
Changing Policy in the World's Largest Family Court During an Unprecedented Budget Crisis

California's court system is the largest in the world, so California's family court practices affect an extraordinary number of families. The numbers are truly staggering. California's Superior Court received 458,814 new family law filings and 389,811 dispositions (not including Juvenile Court cases and Probate guardianships of minors) in the 2008-2009 fiscal year. The actual caseload is higher. Family law cases often take several years from start to finish. Family courts also hear many post-judgment modification and enforcement matters. California's 58 counties are diverse in population size, and character.

Approximately one third of the state's population lives in Los Angeles County – which had 107,201 new family law filings in the 2008-2009 fiscal year heard in 47 dedicated family law courtrooms. By contrast, tiny Alpine County had only 24 new family law filings – a day's calendar for one Los Angeles family law courtroom. California's policies have to work in big cities and small rural communities.

Each of California's counties has mandatory mediation of contested child custody disputes – and most use mental health professional members of the court's staff for that purpose. California law allows counties to elect whether those brief sessions are confidential or result in recommendations to the court. Recently the Legislature renamed "recommending mediation" as "recommending counseling" since mediation is a confidential process in all other settings, referring to this process as mediation caused confusion.

Rule 5.250 points to children's involvement in the mediation process as one way that that children's voices can be heard. But in confidential mediation counties children's participation in the pre-hearing counseling can powerfully impact the parents' decisions, but will not be shared with the judge. In Los Angeles County, confidential mediators must see many families each day, and seldom have time for meaningful inclusion of children in the process. Some counties have early brief assessment or evaluation models, and some offer full custody evaluations by family court mental health staff, while others rely upon appointment of evaluators working in private practice, and compensated by the parents. Similarly, counties vary in their practices of appointment of lawyers to represent children's best interests, and communicate children's preferences to the Court. To the extent that the new rule of court relies upon family court services staff and minors' counsel for implementation, that implementation will vary markedly from county to county.

Approximately 70% of California's family law litigants are self-represented. Many get assistance from Family Law Facilitators and Family Law Information Centers located in the courthouses. Almost 95,000 self-represented litigants participate in court-connected child custody mediation in California's Superior Courts each year. What happens when those self-represented litigants learn that there is a presumption in favor of permitting their teenagers to

address the Court about their custody? What safeguards are there to facilitate wise decisionmaking about involving children when the parents are self-represented?

Historically, California has been a family law pioneer – exportting no-fault divorce, gender-neutral custody laws, joint legal and physical custody, child custody mediation and other reforms to the rest of the country and many countries around the world. California's appellate decisions are frequently cited by the appellate courts of other states.

Why did California decide to shift gears, and adopt this new way to bring children's voices into the family law courtroom? The new statute represents a major change in attitude. California's family courts have discouraged direct involvement of children in custody litigation, and relied heavily on child-custody evaluators, court-appointed children's lawyers and, in some counties, recommendations from non-confidential mediation, to augment the evidence about individual children presented by the parent and witnesses. California family courts often issue orders barring parents from sharing information about the custody litigation and parental conflicts with the children.

The impetus for enactment of Family Code §3042(c) came from two sources. California's former Chief Justice appointed a family law reform task force (the Elkins Family Law Task Force) after a case in which the California Supreme Court reversed a family law trial court decision and found the procedures the court had followed were fundamentally unfair to a self-represented family law litigant. The Elkins Task Force recommended legislation and court rules designed to

a. Protect the child from psychological damage resulting from feeling "caught in the middle" and from confusion about the process;

b. Allow for meaningful participation by the child -- when appropriate;

c. Allow judicial officers to retain discretion in determining whether a child's testimony is needed and how it is to be presented; and

d. Clearly define the role of Minor's Counsel in representing the interests of a child in a custody proceeding.

Those reforms were included in an omnibus family-law-reform bill that went into effect this year.

There was another group that influenced the Legislature to adopt this new statute. In recent years, several court watchdog groups with members who feel they were the victims of incompetent child custody evaluations or false allegations of parental alienation have organized and lobbied for changes in California's Family Code. Among the changes they have sought is greater direct opportunities for the Court to hear directly from children – including children who reject one parent. Those efforts resulted in the bill that became §3042(c). Interestingly, the youngest teenagers are often most vulnerable to forces that contribute to alienation and estrangement from parents for a variety of developmental

reasons. Wise implementation of the new statute requires a very sophisticated understanding of the complex range of reasons some children reject a parent if we are to avoid compounding, rather than remedying, the child's difficulties.

Before the Elkins reforms and this new provision for teenagers to "address the court," California's Family Code already provided for consideration of a child's parenting plan preferences, "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody."

The United States has not entered into the United Nations Convention on the Rights of the Child, which includes provisions for children's voices to be heard in custody proceedings. In California, there have been significant efforts to gather information about the child, including the child's preferences indirectly, while attempting to protect the child from feeling caught in the middle, pressured or swept away into an alignment with one litigating parent, or stressed by exposure to the details of the litigation.

Under the new law, the child remains the subject of child custody litigation – not a party to that litigation – but enjoys some of the rights of parties. California courts must consider the preference of a child who is mature enough to voice an intelligent preference. Where the Court appoints minors' counsel to protect the child's best interest, the child is entitled to have his or her lawyer express those preferences to the Court. Court-appointed lawyers charged with representing a child's best interests have the same procedural rights as parents, and can introduce evidence and make arguments relating to what parenting plan is in the child's best interests. Children's lawyers can also advocate for procedures for the child's involvement that balance child protection with the due-process rights of parents. Now teenagers also have the right to address the court in some fashion.

California courts typically get information about the child from various sources including parents and other witnesses, and child custody mediators in counties that have adopted "recommending" mediation models. Most California counties offer some form of court-connected child custody evaluation models ranging from brief child interviews, to screenings and limited scope evaluations, to comprehensive child custody evaluations. In all but the smallest counties, family courts also have the option to appoint private practice child-custody evaluators at the parents' expense.

California law permits the court to appoint a lawyer as minor's counsel who is charged with representing the child's best interests in the custody litigation, protecting the child from the adverse consequences of involvement in the litigation, exercising the child's evidentiary privileges such as the doctor-patient or psychotherapist-patient privilege, and, in some circumstances, communicating the child's preferences about a parenting plan to the court. Legislation and court rules have restructured the role of the child's attorney in California custody cases, making it clear that minors' counsel is not a quasi-child custody evaluator – he or she is a lawyer who must present admissible evidence, and argument to advocate for the child's best interests. Since those changes came into effect, fewer children's lawyers have been appointed in California family courts.

The revised Judicial Council rule governing minors' counsel shifts the decision about whether to share the child's preferences with the Court (and thus the parents) from the lawyer to the child. Rule 5.242(j) will provide, as amended, "If the child so desires, the child's counsel must present the child's wishes to the court." This new rule appears to be an effort to harmonize Rule 5.242 with new rule 5.250 and use minor's counsel as a vehicle by which the child's voice is heard in the courtroom. While Rule 5.250 limits the presumption in favor of permitting the child to address the court to children aged 14 or older, children's lawyers will have to communicate the expressed preferences of children of any age – and then present evidence and argument as to the significance of the child's expressed preference.

It is not clear how the duty to express the child's preference will work with the requirement that minor's counsel present information through admissible evidence since counsel's recitation of the child's preference would be inadmissible hearsay. One wonders whether expression of the child's preference has become an exception to the hearsay rule, or whether children's lawyers must present declarations or testimony of children expressing their preferences. One also wonders whether this provision requires counsel to present the child's preferences as to the many details of a parenting plan or just the broader residential arrangements.

Developing Best Practices for Teenagers to Address Family Courts

Family law judges, lawyers and mental health professionals in California are speculating about how they will practice under the new statute and court rules – and trying to get ready. Decisions about when and how the new law will be applied turn on a complex set of questions.

Why is this teenager addressing the court? Is the teenager appearing as an advocate for himself or herself, a percipient witness to relevant facts, or so the court has some sense of the traits of the individual whose parenting plan is being developed? The new court rule fails to distinguish between these purposes, but practitioners and bench officers should bring a higher level of rigor to consideration of this question. In this arena, form will follow function – surely we can't decide how the child will participate until we clarify the purpose of this child's participation.

How does the teenager learn that the right to address the court exists? Should parents, lawyers, or family court professionals be inviting young people to address the court? Should they be discussing the proposed parenting plans at-issue, or letting the teenager know about the legal and factual questions being considered by the court? Should lawyers be interviewing the teenagers as prospective witnesses? Do the parents have a due process right to discover (by deposition or other means) what the teenager has to say? What about cross-examination? What impact will it have on teenagers to treat them as part of a parent's litigation team against the other parent?

The new rule requires minors' counsel, child custody evaluators, recommending counselors and other court-connected professionals to advise the Court "if they have

information that" the child wants to be heard. The rule permits parties and parties' lawyers to do so. It is not clear whether any of these professionals have a duty to advise the teenager of this right, or whether they are to wait until the child expresses a wish to communicate with the court.

How should this teenager address the court? Does the teen address the court through a monologue from the witness stand, by letter or declaration, through a lawyer or mental health intermediary? Should the court interview this teenager in chambers. If so, on or off the record? Who else should be present? How will questions for the teen be crafted? What about follow-up questions? The proposed rules permit a wide range of options, including employing a mental health professional to conduct a child interview (thereby obtaining decontextualized data), or allowing a judge to interview the child in chambers accompanied only by a court reporter (thus placing the highly skilled task of forensic interviewing in the hands of a person without in-depth training, and depriving the parents of the opportunity for cross-examination). In most cases where there is important information to obtain from the child, a child custody evaluation will be the best option. Unfortunately, limited economic resources may lead to use of less-effective options.

How does the child's participation in contested litigation differ from the child's participation in custody mediation, collaborative divorce negotiations, or other forms of Consensual Dispute Resolution (CDR)? We know from the research that teenagers have a strong interest in helping plan their schedules in light of their school, enrichment and social activities. But is consulting in that process when parents are working on an agreement materially different than when parents presenting evidence and a judge is making the decisions?

What sense will the decisionmakers make of the decontextualized information they get from the teenagers statement? When is it not in the teenager's best interests to address the court? What training do professionals need to interview or take testimony from teenagers in custody cases, and what training do they need to interpret what the teen has to say? How does the teenage brain differ from the adult brain? How stable are this teen's views – and how realistic are they? How accurate is this teen's accounts of events and relationships?

What impact will direct participation have on the child and the family? Will the child be over-empowered, with parents engaging in permissive parenting because they fear loss of custody? Will their parental authority be compromised? Will the child be anxious about the experience, feel trapped in the middle, or subjected to intolerable pressures to express a preference for one parent, or adopt that parent's views about events and relationships? Will the child feel guilty in the future about picking a parent? Will the parents' express their hurt or anger to the child when they learn the content of the child's remarks, or when the parenting plan doesn't reflect their desires. Will the child regret decisions based upon an unrealistic view about what life with the other parent will actually look like? Will the child request multiple opportunities to address the court as his or her preferences and experiences change?

One of the things social psychology research teaches us is that once a person takes a public position, that individual becomes wedded to that position. Children and adolescents naturally gravitate to different parents over the course of childhood. Inviting the child to state a preference in the course of litigation interrupts those natural experiences and freezes the child into what might well otherwise be a temporary perception as the young person individuates, and develops his or her own identity. Thus increasing the role a child plays in custody decisions may well interfere with normal development and nudge the child into an unhealthy alliances with one parent to the exclusion or minimization of the relationship with the other parent.

These decisions must be educated, informed, individualized decisions. It takes a great deal of expertise to make wise policy decisions about involving children in the court process, and about whether and how to involve a particular child or adolescent. Most family judges, and lawyers, and many mental health professionals simply do not have the training and experience to avoid doing harm.

Few professionals have sufficient training in interviewing children, understanding the growing research about the strengths and limitations of children's memory, intellectual development, and thinking, or in integrating the data they get directly from children with the other information in the case to make informed decisions about the parenting plan. [See the Appendix for a reading list to help professionals develop the necessary expertise.] Brief trainings do not suffice – competent forensic interviewing of children requires extensive training that includes supervised forensic interviewing in a clinical setting. It is important to note that training to work with children as a therapist or diagnostician is very different from training to interview children for investigative and forensic purposes.

Dr. Richard Warshak's 2003 article, *Payoffs and Pitfalls of Listening to Children* (52 Family Relations, 373–384), provides an excellent starting place for thinking about these questions and developing best practices. Warshak systematically reviews what can be gained from involving children in the litigation process, as well as the risks associated with that involvement. Other valuable references for developing best practices include Parkinson & Cashmere (2008) *The Voice of a Child in Family Law Disputes* and Schepard (2004) "The Voice of the Child, the Lawyer for the Child, and Child Alienation" in *Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families.*

Addressing Fairness and Due Process Concerns While Protecting Children From the Adversary Process

Rule 5.250 attempts to address due-process concerns and child protection concerns, but ends up just recognizing the existence of both while leaving court and counsel to work out how to resolve these competing principles on a case-by-case basis. The rule states, "When a child wishes to participate, the court should find a balance between protecting the child, the statutory duty to consider the wishes of and input from the child, and the probative value of the child's input while ensuring all parties' due process rights to challenge evidence relied

upon by the court in making custody decisions." In practice, these may well be impossible factors to reconcile.

The draft version of the rule contained an absolute bar on judges interviewing children in camera, out of the presence of the lawyers and parents. The revision permits such interviews, but requires that the court reporter be present. This procedure raises myriad concerns. Few bench officers have the requisite expertise and experience at interviewing children and analyzing their responses. The bench officer may or may not have enough other information about the child and family to put the responses into context. Custody professionals know that children tend to live in the moment, and may give very different responses depending on which parent accompanied them to court, or what they have experienced in the days immediately preceding the judicial interview. These interviews appear to provide little opportunity for parents and parents' counsel to propose topics for the interview, or follow-up questions. Unless the session is immediately transcribed, the parent may have no opportunity to provide additional evidence that could impact the weight that the Court gives to the child's statements. Many of these same issues arise where the minor's interview is conducted by a family court professional who is not conducting a full child custody evaluation.

California has begun a challenging experiment to incorporate children's perspectives into the development of their parenting plans at a time where it lacks the resources to provide the kind of safeguards family law professionals view as essential. It is likely that the state's family courts will be engaging in a lot of trial and error as they attempt to implement the new statute and court rule.

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[*] California's statutes can be accessed online at http://leginfo.ca.gov/calaw.html. California's statewide and local court rules can be accessed at http://www.courts.ca.gov./rules.htm.

[†] California's family court departments hear cases arising from marital status proceedings (marital dissolutions, legal separations and nullity cases), actions to determine parentage, independent actions for child custody, child support proceedings, and cases under the state's Domestic Violence Protection Act. California's probate court departments hear guardianships, and California's juvenile courts hear child protection cases.

[‡] Evidence Code §765 provides:

> (a) The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment.
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> (b) With a witness under the age of 14 or a dependent person with a substantial cognitive impairment, the court shall take special care to protect him or her from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The court shall also take special care to ensure that questions are stated in a form which is appropriate to the age or cognitive level of the witness. The court may, in the interests of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age or cognitive level of the

witness. (Am Stats 2004, C823)

[§] The newly-adopted rules are available on line at http://www.courts.ca.gov./documents/2012-01-01_Rules_Oct_Mtg.pdf for the period before they become effective. On January 1, 2010, the new rules will be posted with all of the other Judicial Council rules at http://www.courts.ca.gov/formsrules.htm.