



California Coalition for Families and Children

4139 Via Marina, PH3
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May 3, 2010

The Honorable Mike Feuer
Chair, California State Assembly Judiciary Committee
State Capitol – Room 3146
Sacramento, CA 94249

Via email, facsimile, and US Mail

RE: **SUPPORT for AB 2475** (Beall), a bill to eliminate quasi-judicial immunity for private court appointees

Dear Assembly Member Feuer:

The undersigned members of the California Coalition for Families and Children ("CCFC") are pleased to join the National Coalition for Men, Center for Judicial Excellence, and the California Protective Parents Association in writing to urge you to support AB 2475 (Beall).

I. About Us:

CCFC is a nonprofit organization comprised primarily of parents—both men and women—who have experienced a marital dissolution proceeding in San Diego, Orange, or Los Angeles Counties. Our members are professionals or others who are very highly motivated to devote time and resources to promote the health and success of Southern California families and children by addressing special social problems antithetical to such success, and which are currently being caused or contributed to by the present marital dissolution or other processes involving child custody issues.

CCFC is very active in fighting for the rights of all parties affected by the process of divorce or establishment of paternity. We believe equal, shared

parenting time or joint custody is the optimal custody situation. You may learn more about our efforts by Googling "California Coalition for Families and Children" and our CEO, "Cole Stuart."

II. Background:

The appointment and usage of private child custody evaluators in family law disputes has been a longstanding concern for hundreds of thousands of Southern Californians, courts, political representatives, and the family law community for many years. Most high-conflict cases center on disputes over child custody. Unfortunately, the experience of thousands of Southern Californians suggests that many child custody evaluators demonstrate unethical or illegal behaviors that confound the resolution of such cases, increase conflict, expense, and harm to the involved families—particularly the children. It also appears from experience that a lack of effective judicial oversight, accountability, and concern is largely responsible for creating an environment in which such rampant malfeasance exists.

It goes without saying that protection and promotion of the well-being of California families and children involved in the difficult process of a marital dissolution is a paramount interest of this state and its citizens. Marital dissolutions often involve incredibly difficult, life-changing circumstances for children and their parents—changes in living arrangements, financial instability, and conflict, all of which can have a tremendously negative impact on children, parents, extended families, relevant communities, and the general well-being of our local and state economy if not handled with extreme care by honest, unbiased, competent and thorough professionals.

The state also has an interest in promoting healthy relationships between children and both healthy parents. There is no dispute among family health care experts that supporting healthy, robust relationships between children and parents after divorce stabilizes families and promotes peaceful, healthy relationships between children, their parents, and even the parents themselves. Assuring that courts—and the "experts" on which they frequently rely—are doing an excellent job of honestly evaluating the



best prospects for promoting such healthy relationships is a primary interest of public welfare.

There also exist important fundamental Constitutional rights guaranteed to parents and children under the 4th, 5th, 13th, and 14th Amendments to the United States Constitution and related provisions of the California Constitution to assure that the legal process is competent, unbiased, and efficient. Assuring that those interests are honestly, competently, and accurately evaluated and protected by those practicing in family court professions is critical to protecting and promoting our communities' families and assuring the best likelihood for their future health, harmony, common wealth, and success.

California family law community professionals also have an important interest in enforcing high standards of accountability, responsibility, integrity, and professionalism among their own. Members of the family law community—who themselves owe a duty of care to their own clients whom they frequently refer to custody evaluators and mediators—expect the family court psychologists and other professionals to whom they refer their clients to uphold the highest standards within their profession.

Our state's family courts also have an interest in maintaining public trust and confidence in the impartiality of the adjudicative process by observing the California Code of Judicial Ethics to "avoid even the appearance of impropriety," as well as all state and federal laws, tax laws, Rules of Court, and Local Rules. Though evaluators are private psychologists paid by the parties, their performance of their role as a "neutral" evaluator reflects on the judiciary.

California Supreme Court Chief Justice Ronald George has recently expressed deep concern that the family court community is failing to "police themselves." See *Elkins v. Superior Ct.*, *infra*.

Based on years of experience, it is the common perception of members of CCFC and thousands of others that current practices are not in fact promoting these important interests and that the private mediators and evaluators are, in fact, harming such important interests by forcing parents



to endure extravagantly expensive services which are often performed incompetently, fraudulently, and in violation of state and federal laws.

III. Lack of Oversight and Accountability Under Current Law

Yet despite the fact that these "quasi-judicial" officials are entrusted with extraordinary levels of public trust and discretion, they roam virtually free from any oversight or control. Such professionals have never passed the rigors of appointment by a governor or other political body. They are not subject to oversight or election by a concerned public. They are not monitored by any internal judicial staff or officer (in fact, they are rarely, if ever, monitored at all). They insist on working under strict privacy and confidentiality. They may (and often do) refuse to disclose records, and their work is never subject to review on appeal.

Evaluators are not bound or guided by the Canons of Judicial Ethics (or any other moral, ethical, or professional code specific to their profession as evaluators). They work under extreme confidentiality with little or no public visibility or oversight, no rigorous review on appeal, no public scrutiny, and no public or private watchdog groups (other than those similar to CCFC, who have limited ability to police private client interactions).

Further, unlike ordinary psychologists, custody evaluators are not subject to review by the client or clients paying them—any person hiring a normal clinical psychologist (or lawyer, physician, builder, plumber, or any other conceivable independent contracting professional) has at least some—if not all—control over the performance of the professional's services and thus can correct, guide, and—most importantly—fire that professional if unhappy with their work. Not so with professional evaluators, who, under present law, cannot be fired or sued by clients unhappy with their services.

Evaluators are often appointed as mediators in the same role as J.A.M.S./Endispute. However, unlike retired judges or other professional mediators who must perform for their clients (i.e., settle disputes quickly and efficiently) and uphold rules of ethics or fail to earn repeat business, clients cannot fire evaluators, have little or no control over the scope and



nature of their investigation, the information provided to them, the amount of time they spend attempting to resolve the dispute, and if they are unsuccessful (i.e., prolong rather than settle disputes) have little recourse because they are likely one-stop shoppers.

By contrast, every politician, judge, or public official to whom the powerful shield of immunity is granted is subject to far, far greater oversight, scrutiny, and review.

Despite this near 'carte blanche' lack of oversight, evaluators currently enjoy the exact same immunity as judicial officials who are subject to extraordinary scrutiny, work in a public courtroom, are subject to scrutiny by the press, the public, colleagues, appellate judges, court officers, superiors, watchdog groups, and politicians, and must run for re-election based upon a public record.

Thus, under current law, evaluators are permitted to operate unsupervised as "free radicals," selling breathtakingly expensive services at over \$300 per hour while beholden to no client, no government, and no professional organization. Our research has revealed that ***no other state in our nation provides private mediators and evaluators with such a broad cloak of immunity.*** The potential for abuse of such extraordinary power, wealth, and discretion by such professionals is truly frightening. Our abundant experience indicates that such abuse is already causing *tremendous harm* to *thousands* of citizens in this state.

IV. Response to Entrenched Family Court Interests

It is anticipated that the entrenched divorce industry with very strong (but naïve) monetary interests in preserving this renegade status of evaluators will claim that Family Courts presently have adequate internal checks and balances that provide the necessary oversight for evaluators. Nothing could be further from the truth.

In fact, Courts *admit* they can't police the evaluators. They regularly complain to state officials that they don't have the necessary resources to effectively evaluate reports of evaluators. Many admit that the evaluators'



reports are themselves biased, incomplete, or not helpful in addressing relevant issues and resolving disputes. Yet they continue to order them in virtually every case in which parents can afford them. Under the current "status quo", courts regularly "rubber stamp" the evaluators' recommendations because there are few viable alternatives to their use after years of inattention to this critical public problem.

It is widely known that divorce industry professionals operate in a "clubby" atmosphere, making numerous referrals and cross-referrals. This "clubby" atmosphere tends to have a "chilling effect" on attorneys' ability to cross-examine or attack a mediator or evaluator because the attorney must face the evaluator repeatedly for many years in their career. As such, each attorney has a natural disincentive to zealously cross-examine an evaluator who will likely have ample opportunity to retaliate against the attorney in future cases.

California Supreme Court Chief Justice Ronald George recently acknowledged this dysfunction in Family Court in the case of *Elkins v. Superior Ct.*, 41 Cal. 4th 1337, 63 Cal. Rptr. 3d 160 (2007), stating:

"That a procedure is efficient and moves cases through the system is admirable, but even more important is for the courts to provide fair and accessible justice. In the absence of a legislative decision to create a system by which a judgment may be rendered in a contested marital dissolution case without a trial conducted pursuant to the usual rules of evidence, we do not view respondent's curtailment of the rights of family law litigants as justified by the goal of efficiency. ... While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment."

The Supreme Court Justice threw some profound barbs at Contra Costa County Judges:

".... we do not view respondent's curtailment of the rights of family court



litigants as justified by the goal of efficiency. ***We are most disturbed by the possible effect the rule and order have had in diminishing litigants' respect for and trust in the legal system.*** *Elkins v. Superior Ct.*, 41 Cal. 4th 1337, 63 Cal. Rptr. 3d 160 (2007) (emphasis added).

Thus, the existing divorce industry has few, if any, effective tools for policing itself. AB 2475 would provide litigants themselves with the necessary tools to do the job the courts themselves plead to be incapable of. The ability of a party injured by misfeasance or malfeasance to hold private professionals responsible by bringing suit in a civil court outside of the Family Court system will be one of but a very few critical tools to improve the currently *highly dysfunctional* processes in California's Family Courts.

V. AB 2475 (Beall)

CCFC and its aligned groups enthusiastically support this Bill. AB 2475 would remove the cloak of immunity from these "free radical" private professionals, enabling clients of those who abuse their responsibilities to put their claims before a jury of peers. The ordinary argument in favor of immunity for government officials is that the government cannot afford to defend itself against lawsuits from private parties for unpopular decisions. While this is in and of itself a dubious proposition, it in no way justifies extending immunity to private evaluators, who charge in excess of \$300 per hour and often run up tabs in excess of \$30,000. They are highly trained, *extremely* well paid, and can afford the malpractice insurance (most already possess such insurance) which will answer to any claim.

They also do not serve a public function—they work for individuals, *not* the general public. They execute *private* contracts, bill *private* citizens, and provide entirely *private* services. There is no justification whatsoever to cloak them in the same immunity as that provided to underpaid, less-educated, less powerful, yet highly supervised government officials.

AB 2475 proposes only to require these private professionals to adhere to relevant standards of care – just like any other psychologist, physician, lawyer, or other highly-paid professional. It would eliminate quasi-judicial



immunity for private court appointees who, under current law, enjoy the privilege of judicial immunity, *even if they knowingly break the law or ignore the local rules of court that govern their work.*

In no other sector of state government do private sector appointees receive immunity from liability for violations of law made in the course of their employment, and this must be remedied through the passage of this important bill.

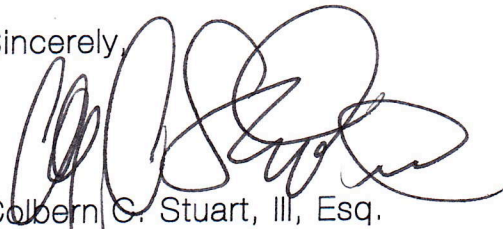
AB 2475 proposes to eliminate quasi-immunity for private court appointees who break the law or negligently cause harm while providing court users with clear remedies to recoup damages for wrongdoing. Court appointees who abide by state law, local rules, and the standards of their profession have nothing to fear with this bill, as this bill will only impact those private sector court appointees who violate laws, rules, and procedures.

AB 2475 is a necessary step to improve the courts' and its private-sector exports' accountability and is a needed "good government" measure to restore Californians' confidence in our court system.

We collectively urge you to support this important legislation and express our enthusiastic support for AB 2475.

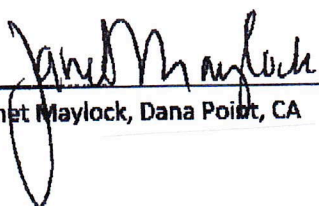
Thank you for your attention and service.

Sincerely,



Colbern C. Stuart, III, Esq.
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We Members of CCFC and Interested Parties, Concur:



Janet Maylock, Dana Point, CA

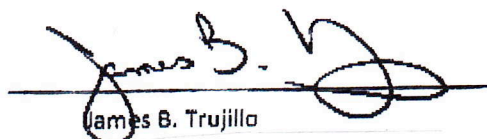


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Cynthia Cuidio

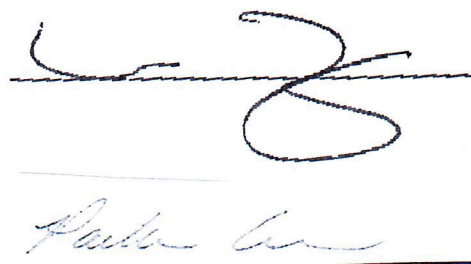


James B. Trujillo

Kathleen LeBon, RN, MSN, FNP 4/28/10
Kathleen LeBon

Harold Rose

Greg LeBon AFA 4.28.10
GREG LEBON



Paula

Gary L Krater Gary L Krater 5/1/10



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Jeff Nichols Jeff Nichols

DALE KIZZIAH

NINA KIZZIAH NINA KIZZIAH

Benny Padynama Benny Padynama

Noah Wiemken Noah Wiemken

Micah Padynama Micah Padynama

Brian Wiemken Brian Wiemken

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Ronnie Guirguis

Sally Guirguis

Amira Tadros

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Encl.

CC: California State Assembly Members

Van Tran
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Dave Jones
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San Diego Family Court Main Courthouse

Dept. P KENNETH K. SO, Presiding Judge
6th Ave. Family Court

Dept. F1 FOSTER, LISA A. – Judge
Dept. F2 SCHALL, LISA – Judge
Dept. F3 GARCIA, PATRICIA - Judge
Dept. F4 BOSTWICK, JEFFREY S. - Judge
Dept. F5 ALKSNE, LORNA - Supervising Judge
Dept. F6 CURIEL, GONZALO - Judge
Dept. F9 ALLARD III, EDWARD P. - Judge

North County Family Court

Dept. 7 ORFIELD, ADRIENNE A. - Judge



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Dept. 15 IPEMA, TAMILA E. - Judge
 Dept. 16 EYHERABIDE, EUGENIA A. - Judge
 Dept. 17 VON KALINOWSKI, SIM - Judge
 Dept. 18 LOWE, JEANNIE - Commissioner
 Dept. 19 BRANNIGAN, JOSEPH P. - Judge

East County Family Court

Dept. 4 SALCIDO, DEANN M. - Judge
 Dept. 6 MCKENZIE, EDLENE C. - Commissioner
 Dept. 7 HALLAHAN, MAUREEN F. - Judge

South County Family Court

Dept. 6 MCADAM, WILLIAM H - Judge
 Dept. 7 BACAL, KATHERINE A. - Judge
 Dept. 12 DOMNITZ, H. RONALD - Judge

Juvenile Courts

Dept. J1 HUGUENOR, SUSAN D. - Presiding Judge
 Dept. J2 CLARKE, GEORGE W. - Judge
 Dept. J4 WILLIS III, BROWDER A. - Judge
 Dept. J5 ISACKSON, CAROL - Judge Dept. J5
 Dept. J6 BIRKMEYER, LAURA J. - Judge Dept. J6
 Dept. J7 CAIETTI, CAROLYN M. - Judge Dept. J7
 Dept. J8 MORING, DWAYNE K. - Judge Dept. J8
 Dept. J9 CAMPOS, YVONNE ESPERANZA - Judge
 Dept. J10 MEZA, AMALIA L. - Judge

Dept. J9 IMHOFF, MICHAEL J. - Commissioner, North County
 Dept. J18 BUBIS, GARY - Judge, East County

Pro Tem Family Judges

BAKER, CYNTHIA D - Pro Tem
 GUROFF, JULIA H. - Pro Tem
 POMERANZ, DAVID A. - Pro Tem
 RATZER, JAMES - Pro Tem
 FINLAY, SUSAN P. - Judge



The San Diego Public
Governor Arnold Schwarzenegger
Dr. Stephen Doyne c/o Christopher Zopatti, Esq.
San Diego County Bar Association c/o Charles Dick, Jr.
Ms. Sharon Blanchet c/o Charles Grebing, Esq.
Ms. Marilyn Bierer, Esq.
Mr. Jeffrey Fritz, Esq.
Ms. Sondra Southerland, Esq.



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