



JUDICIAL COUNCIL OF CALIFORNIA

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Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

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Director, Governmental Affairs

April 16, 2015

Hon. Bob Wieckowski
Member of the Senate
State Capitol, Room 3086
Sacramento, California 95814

Subject: SB 594 (Wieckowski), as introduced – Oppose

Dear Senator Wieckowski:

The Judicial Council opposes SB 594, because it would cause a severe workload increase on courts, be difficult or impossible to implement, and would limit the information judicial officers receive in attempting to make decisions on child custody matters.

SB 594 would create a checklist that child custody evaluators, investigators, and mediators would use to ensure that they are following all of the requirements of Family Code sections 3110-18, 3162, and 3170. This is an attempt to create a one-size-fits-all solution to child custody disputes, which should be analyzed on a case-by-case basis. Family Code section 3118, for example, governs the requirements a court-appointed child custody investigator must follow when there has been an allegation of child sexual abuse. Family Code section 3111, by contrast, governs child custody disputes where “it is in the best interests of the child” that an investigation be conducted. To create a form that covers both of these situations would cause confusion to the investigators, the court, and the parties, many of whom are self-represented, as the form would seek information that is not at all related to the case at hand.

Further, creating a form that is merely a checklist will inherently limit the information a court receives to information that is sought by the checklist. Currently, investigators provide courts

with information they find that would be relevant to the court's determination regarding best interests of the children, as set out by the court on FL-327. FL-327 is a mandatory form that the family law judicial officer uses, in part, to indicate the purpose and scope of the evaluation. After appointment, the evaluator must submit FL-326 indicating that they meet the requirements to conduct the evaluation. When the evaluation is complete, FL-328 must be attached to the final report to inform the parties of the confidentiality of the report. By statute, that report must be kept in the confidential portion of the family law file and is only accessible to a limited number of people, an indication of the sensitive and complex nature of the matters subject to these evaluations. Child custody evaluations are almost always paid for by the parties, generally cost thousands of dollars, and involve considerable time and resources. Not only will adding a checklist requirement tend to limit the investigator to finding information that satisfies the checklist, but it will add unnecessary paperwork and time whether or not that information will be helpful to the bench officer in making a custody determination or the parties in resolving their child custody dispute.

Additionally, this bill requires that a form be developed to implement the domestic violence protocol required under Family Code §3177. That protocol was adopted by the Council in 2002 as California Rule of Court 5.215, and is recognized as a comprehensive approach to addressing domestic violence cases in court-connected child custody mediation proceedings, all of which are provided and funded by the courts, as mandated. Mediators are required to follow the protocol, as well as an extensive array of statutes addressing domestic violence cases, often in a relatively short period of time with limited access to information and resources, so as to meet the needs of the children, the parties, and the court to reduce acrimony and develop an agreement, if possible. This bill proposes to add an additional requirement to the mediation process by requiring that mediators complete a form indicating that they have followed the law in one specific area when in fact, there are a significant number of statutes and rules they are expected to follow in fulfilling their duties. Requiring that they complete a form will add a significant burden to the mediation process which is sometimes conducted on a very short turnaround time. Additionally, if a child custody mediator makes a recommendation to the court, as permitted, thereby becoming a child custody recommending counselor (CCRC), the parties receive that report in writing and have the opportunity to present their concerns about the content or the process to the court. Unlike private child custody evaluators, these mediators and CCRCs are court employees (and a few contractors) and under this bill, would theoretically be required to fill out this form in every case, indicating that they were doing what they had been hired by the court to do. Additionally, mediation is confidential under Family Code section 3170 and although some CCRCs are permitted to make recommendations under Family Code section 3183, it is this confidentiality that gives parties the opportunity to lower their guard and work out an agreement that is in the best interest of the child. By requiring the mediator to fill out a form describing their process when they are providing confidential mediation potentially compromises that confidentiality. It is crucial, especially in cases involving domestic violence, that mediators and CCRCs be provided with the time necessary to focus on providing the mandated services, including safety planning and separate sessions designed to address intimate

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partner violence effectively. As written, SB 594 will add unnecessary time to this process for reasons that are unclear and decrease the amount of time mediators and CCRCs are able to spend with parties working on agreements and reducing acrimony as required. It may also reduce parties' willingness to participate, or at least to participate fully and effectively, in the mediation process, leaving more custody determinations to be made by the court. This will increase court costs due to increased subsequent filings and appeals, as the "losing" party will not feel that they were involved in the process, and will continue fighting and attempting to relitigate the issues surrounding the custody order.

In terms of direct court fiscal impacts, there will be the initial costs of developing each of these forms and adding to the complexity and paperwork in these already difficult child custody proceedings. Additionally, there will be a high expense to duplicate all of the documents necessary to be attached to the child custody evaluator form, both for the original and for any copies that need to be distributed to the various parties. Some documents that would likely be required are often cannot be accessed or collected by the investigator, and may involve additional confidentiality protections. With both forms, there will be significant workload impacts on court-employed investigators, evaluators, and mediators, taking time that could otherwise be used to work with parents, meet with children, forge consensus agreements and, where appropriate, craft appropriate recommendations for the court.

Finally, simply the creation of the forms would cause a significant burden on the branch. It would not only involve the development of the two stated forms themselves on an impossible timetable, as the Judicial Council is directed to have this form ready on the day that SB 594 would take effect, but also involve the modification of other forms and rules of court that are impacted by all of the implicated sections of the Family Code. In this case, neither form would do more than require that court-appointed and court-connected (employees and contractors) professionals indicate that they have in fact followed existing legal requirements.

For these reasons, the Judicial Council opposes SB 594.

Sincerely,



Alan Herzfeld
Associate Attorney

AH/yc-s

cc: Ms. Connie Valentine, Public Policy Director, California Protective Parents' Association
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor



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April 16, 2015

Hon. Hannah Beth Jackson
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: SB 594 (Wieckowski), as introduced – Oppose
Hearing: Senate Judiciary Committee – April 28, 2015

Dear Senator Jackson

The Judicial Council opposes SB 594, because it would cause a severe workload increase on courts, be difficult or impossible to implement, and would limit the information judicial officers receive in attempting to make decisions on child custody matters.

SB 594 would create a checklist that child custody evaluators, investigators, and mediators would use to ensure that they are following all of the requirements of Family Code sections 3110-18, 3162, and 3170. This is an attempt to create a one-size-fits-all solution to child custody disputes, which should be analyzed on a case-by-case basis. Family Code section 3118, for example, governs the requirements a court-appointed child custody investigator must follow when there has been an allegation of child sexual abuse. Family Code section 3111, by contrast, governs child custody disputes where “it is in the best interests of the child” that an investigation be conducted. To create a form that covers both of these situations would cause confusion to the investigators, the court, and the parties, many of whom are self-represented, as the form would seek information that is not at all related to the case at hand.

Further, creating a form that is merely a checklist will inherently limit the information a court receives to information that is sought by the checklist. Currently, investigators provide courts with information they find that would be relevant to the court’s determination regarding best

interests of the children, as set out by the court on FL-327. FL-327 is a mandatory form that the family law judicial officer uses, in part, to indicate the purpose and scope of the evaluation. After appointment, the evaluator must submit FL-326 indicating that they meet the requirements to conduct the evaluation. When the evaluation is complete, FL-328 must be attached to the final report to inform the parties of the confidentiality of the report. By statute, that report must be kept in the confidential portion of the family law file and is only accessible to a limited number of people, an indication of the sensitive and complex nature of the matters subject to these evaluations. Child custody evaluations are almost always paid for by the parties, generally cost thousands of dollars, and involve considerable time and resources. Not only will adding a checklist requirement tend to limit the investigator to finding information that satisfies the checklist, but it will add unnecessary paperwork and time whether or not that information will be helpful to the bench officer in making a custody determination or the parties in resolving their child custody dispute.

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April 16, 2015

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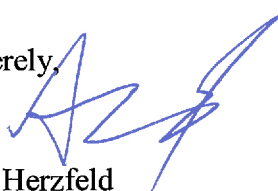
reasons that are unclear and decrease the amount of time mediators and CCRCs are able to spend with parties working on agreements and reducing acrimony as required. It may also reduce parties' willingness to participate, or at least to participate fully and effectively, in the mediation process, leaving more custody determinations to be made by the court. This will increase court costs due to increased subsequent filings and appeals, as the "losing" party will not feel that they were involved in the process, and will continue fighting and attempting to relitigate the issues surrounding the custody order.

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cc: Members, Senate Judiciary Committee
Hon. Bob Wieckowski, Member of the Senate
Ms. Connie Valentine, Public Policy Director, California Protective Parents' Association
Ms. Nichole Rapier, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor