



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

KATHLEEN T. HOWARD
Director, Office of Governmental Affairs

April 28, 2005

Hon. Mervyn Dymally
Member of the Assembly
State Capitol, Room 3123
Sacramento, California 95814

Subject: AB 1307 (Dymally), as amended April 11, 2005 - Oppose
Hearing: Assembly Judiciary Committee – May 3, 2005

Dear Assembly Member Dymally:

I regret to inform you that the Judicial Council is opposed to AB 1307 (Dymally), which would create a presumption of equal joint custody in child custody disputes, because it unduly limits the discretion of the court in child custody matters, and inappropriately shifts the court's focus in these matters from the best interest of the child to the rights of the parents.

Under current law there is no preference for any custodial arrangement, although there is a presumption of joint custody where the parents agree to it. Mothers and fathers are equally entitled to custody, and the court is prohibited from making a preference based on the gender of a parent. When determining the best interest of a child the court is guided by general principles focused on the health, safety and welfare of the child. Family Code section 3020(b) further provides that it is the public policy of the state to assure that children have frequent and continuing contact with both parents, except where such contact is not in the best interest of the child. Thus current law allows the court wide discretion to fashion custody orders for each child that are in the best interest of that child based on the facts presented in the case, with an emphasis on ensuring that a child has a strong relationship with both parents. AB 1307 would shift the focus of the court away from the best interest of each child, and instead place the emphasis on the rights of the parents and those factors that may allow a parent to overcome the premise that an equal timeshare order is in the child's best interest.

Hon. Mervyn Dymally

April 28, 2005

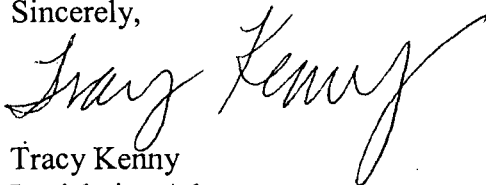
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Such a change implies that an equal custody share is in the best interest of most children, a premise which oversimplifies the wide array of family situations that courts encounter in child custody cases on a daily basis. The very high numbers of self-represented litigants in child custody matters further exacerbates the problems that would be created by AB 1307, as these parties would be hard pressed to overcome a presumption of joint custody by "clear and convincing evidence." Due to the structure of the law, the court could find itself unable to make orders that it deemed in the best interest of a child because a self-represented litigant would not know how to overcome the burden of proof.

The Judicial Council has historically opposed a presumption of joint custody in child custody matters for the reasons described above, and continues to support a statutory structure in child custody matters that affords the court the authority necessary to ensure that it can continue to make individualized and fair custody determinations premised on the best interest of the child.

For these reasons the Judicial Council is opposed to SB 1307.

Sincerely,

A handwritten signature in cursive script, reading "Tracy Kenny". The signature is written in dark ink and is positioned above the printed name and title.

Tracy Kenny
Legislative Advocate

TK/yt



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April 28, 2005

Honorable Dave Jones, Chair
Assembly Judiciary Committee
State Capitol, Room 3126
Sacramento, California 95814

Subject: AB 1307 (Dymally), as amended April 11, 2005 - Oppose
Hearing: Assembly Judiciary Committee – May 3, 2005

Dear Assembly Member Jones:

I regret to inform you that the Judicial Council is opposed to AB 1307 (Dymally), which would create a presumption of equal joint custody in child custody disputes, because it unduly limits the discretion of the court in child custody matters, and inappropriately shifts the court's focus in these matters from the best interest of the child to the rights of the parents.

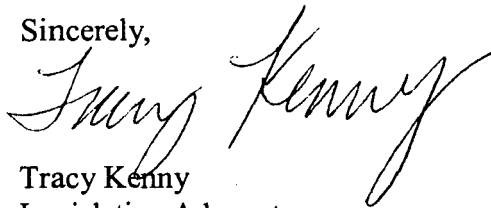
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For these reasons the Judicial Council is opposed to SB 1307.

Sincerely,



Tracy Kenny
Legislative Advocate

TK/yt

cc: Members, Assembly Judiciary Committee
Leora Gershenzon, Counsel
Assembly Judiciary Committee
Karen Pank, Deputy Legislative Secretary
Office of the Governor
Sue Blake, Assistant Director of Legislation
Office of Planning and Research
Mark Redmond, Consultant
Assembly Republican Office of Policy