




MEMORANDUM

DATE	January 24, 2014
TO	Psychology Board Members
FROM	 Antonette Sorrick Executive Officer
SUBJECT	Legislation Committee (a): AB 958 (Jones) or Successor Bill Requesting Access to Child Custody Evaluations be Obtainable by the Board

Background:

Attached are the Board of Behavioral Science bill proposal and text of bill. AB 958, as amended, Jones. Child custody: evaluations and reports. Existing law permits a court to appoint a child custody evaluator, who is usually licensed as a physician, as a psychologist, as a marriage and family therapist, or as a clinical social worker, to conduct a child custody evaluation and file a written confidential report on his or her evaluation in any contested child custody or visitation rights proceeding. Existing law limits the disclosure of the evaluator's written confidential report, specifying in what circumstances the written confidential report may be disclosed.

Most importantly, this bill would expand the circumstances in which that report may be disclosed by requiring a court to disclose the report to the licensing board governing the child custody evaluator upon receiving a written request from the board, and by allowing a person who is permitted to possess the written confidential report to provide a copy of the report to the child custody evaluator's licensing board, in order to assist the board in investigating allegations that the child custody evaluator engaged in unprofessional conduct.

Action Requested:

Motion Requested: To support AB 958 (Jones) or a successor bill if the language is moved into another bill. Delegate to the Executive Officer the authority to send a letter of support and to work with the Assembly Judiciary Committee on language to accomplish the same changes in another bill.

BOARD OF BEHAVIORAL SCIENCES

Legislative Proposal – Child Custody Evaluators

PURPOSE

A child custody evaluator who is also a Board licensee is, by law, subject to disciplinary action for unprofessional conduct. However, the law does not give the Board direct access to the child custody evaluation report, which is a critical piece of evidence in determining if unprofessional conduct occurred.

The inability to access this report leaves the Board unable to investigate complaints of unprofessional conduct by child custody evaluators.

This bill would specify in law that the Board may access a child custody evaluation report for the purpose of investigating allegations that the child custody evaluator engaged in unprofessional conduct in the creation of the report.

BACKGROUND

For many years, licensees of the Board of Behavioral Sciences (Board) have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role a Board licensee may serve as a child custody recommending counselor (formerly known as mediators), as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

A court connected child custody evaluator or a private child custody evaluator must be licensed as a Marriage and Family Therapist, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in

psychiatry (Family Code Section 3110.5). The evaluator has the task of conducting a comprehensive assessment (commonly referred to as an evaluation) to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation requires a significant amount of time. The Rules of the Court (Rule 5.220) specify the content each evaluation must include as well as a description of the work completed by the evaluator. Upon the conclusion of the evaluator's work, the evaluator submits a written report to the court. The court bases the decision regarding custody and visitation on this report.

Pursuant to Family Code Section 3025.5, the report submitted by the evaluator is considered confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney
- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator
- Counsel appointed for the child pursuant to Family Code Section 3150
- Any other person upon order of the court for good cause

An individual releasing this report may be subject to sanctions by the Court (Family Code Section 3111).

Family Code section 3110.5 specifically states that “a child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that license.”

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Each court has its own procedures for filing a complaint. These individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board. The Board of Behavioral Sciences is one of the state licensing boards listed.

NEED FOR THIS BILL

Each year, the Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts.

In all complaints, the source of the complaint alleges the licensee’s conduct/recommendation is unprofessional or unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board’s statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator’s report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of a Subject Matter Expert and at times, assistance from the Division of Investigation.

The Board recently learned that current law does not allow the Board direct access to the

evaluator’s report. To obtain the report, the Board would be required to file a petition or subpoena with the court.

Petitioning or subpoenaing the court requires the Board to obtain the services of the Attorney General, and is an extremely costly and time consuming process. Approximately 20% of the Board’s enforcement complaints (roughly 200 cases per year) involve these types of cases, and the report is needed up front for the Board to determine whether or not there are enough grounds to the complaint to continue the investigation.

Therefore, although Family Code Section 3110.5 states that a child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct, the Board cannot readily access the most critical piece of evidence in these investigations. If the Board cannot access the report, an investigation cannot be performed.

In order to fulfill its statutory obligation as stated in Family Code Section 3110.5, the Board is seeking amendments which would allow a party to the report, or the court, upon written request from the Board, to release a report to the Board for investigative purposes.

SUPPORT/OPPOSITION

Not known at this time.

CONTACT

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