

Department of Consumer Affairs
Board of Psychology

February 20-21, 2014 Board Meeting
Sacramento, CA

Hand-Carry
Agenda Item

Agenda Item 8(a) – Additional Information regarding AB
958 or Successor Bill re: Child Custody Evaluations

ASSEMBLY BILL

No. 1843

Introduced by Assembly Members Jones and Gordon

February 18, 2014

An act to amend Section 3025.5 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as introduced, Jones. Child custody evaluations: confidentiality.

Under existing law, reports containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child, that are submitted to the court in a proceeding involving child custody or visitation, are required to be kept in the confidential portion of court files, and may be made available only to specified persons.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3025.5 of the Family Code is amended
2 to read:
3 3025.5. In~~any~~ a proceeding involving child custody or
4 visitation rights, if a report containing psychological evaluations
5 of a child or recommendations regarding custody of, or visitation
6 with, a child is submitted to the court, including, but not limited
7 to, a report created pursuant to Chapter 6 (commencing with

- 1 Section 3110) of this part, a recommendation made to the court
2 pursuant to Section 3183, and a written statement of issues and
3 contentions pursuant to subdivision (b) of Section 3151, that
4 information shall be contained in a document that shall be placed
5 in the confidential portion of the court file of the proceeding, and
6 may not be disclosed, except to the following persons:
- 7 (a) A party to the proceeding and his or her attorney.
 - 8 (b) A federal or state law enforcement officer, judicial officer,
9 court employee, or family court facilitator of the superior court of
10 the county in which the action was filed, or an employee or agent
11 of that facilitator, acting within the scope of his or her duties.
 - 12 (c) Counsel appointed for the child pursuant to Section 3150.
 - 13 (d) Any other person upon order of the court for good cause.



CALIFORNIA
PSYCHOLOGICAL
ASSOCIATION

1231 I Street, Suite 204 • Sacramento, California 95814 • Tel. 916.286.7979 • Fax 916.286.7971 • www.cpapsych.org

February 18, 2014

Michael Erickson, PhD
President, California Board of Psychology
1625 N. Market Blvd., N-215
Sacramento, CA 95834

Dear Dr. Erickson:

The California Psychological Association (CPA) is recommending that the Board of Psychology (BOP) refrain from taking a position at this time on AB 958 (Jones) or its successor. We believe that the Board would benefit from a more thorough consideration of the major issues, including issues not fully addressed in the limited information provided to the Board by the Board of Behavioral Sciences (BBS).

The proposed legislation would allow the non-prevailing party in a custody case to strip confidentiality protections from the prevailing party, including highly confidential information about the most sensitive and private family revelations about children's behavior, parental interactions with the children, and spousal relations. All of these parties are consumers, not just the party filing a licensing complaint. Licensing boards are charged with the protection of all consumers and not merely the dissatisfied party. Removing confidentiality protections from consumers should be the last resort, and only after all stakeholders fail to achieve a better solution. It is our opinion that all stakeholders need to be convened so that the issues can be discussed and all possible solutions considered before the Board of Psychology takes a position on this bill.

From our perspective, these are major issues to consider:

- (1) In its discussion about the need for AB 958, the BBS states, "If the Board cannot access the report, an investigation cannot be performed" and uses this as justification for the proposed legislation which would force the Court to release the report upon the request by the Board. In fact, existing law clearly permits the release of the report upon the request by a licensing board, but *there must be good cause shown*. It is not accurate to imply that licensing boards are not able to gain access to these reports; the inconvenience of filing a request that shows good cause is not sufficient to warrant the extreme measure of proposing legislation. Nor is the cost; this is part of doing the business of the Board. Current law was established to provide some minimal barrier to the misuse of the licensing complaint process during custody proceedings. The record of courts for many, many years shows the courts have routinely provided the reports to licensing agencies. That long record of cooperation with licensing agencies by the courts belies any suggestion that courts would not provide custody reports, if good cause is provided, when requested by licensing agencies.

- (2) We believe that AB 958 will have the unintended consequence of more improper and baseless licensing complaints. The bill will remove the already minimal review established in law to regulate the attempt to improperly abuse both the orderly custody proceedings as well as the proper filing of licensing complaints. BOP support of this bill may well create the perception that the BOP is aiding the party who is willing to file a baseless licensing complaint to the detriment of the party who prevailed in the court's custody decision.
- (3) We are also quite concerned about the fact that the BBS and the BOP are apparently operating under a different set of policies, based upon different legal advice, about how to proceed when a complaint about a custody evaluator is received and a copy of the custody evaluation is included with the complaint. Rather than using the legislative arena, CPA strongly recommends that the licensing boards resolve this discrepancy with the Attorney General's Office as soon as possible. We request that the Board will advise the staff to take action so that both the BOP and the BBS are acting on legal advice that is consistent.

Other factors to consider:

We are aware of well-known and well-organized efforts to abuse and undercut the required orderly process of the courts in custody cases. Such programs, with advice by attorneys, frequently recommend that those receiving unfavorable court custody decisions file a licensing complaint against a custody evaluator as a means of helping their cause. It is important to note that Court procedure requires the consent of all parties prior to the appointment of a specific custody evaluator. Nonetheless, one party is often disappointed in the outcome, and the evaluator is often threatened with a complaint by the unhappy party unless the evaluator is willing to change the report.

Here is an announcement of a program of this kind.

**"The 9th Annual Battered Mothers Custody Conference Happening Now: Be There or Be Here
SPECIAL SAT. EVENING WORKSHOP**

8:00 – 9: 15 p.m. Nancy Erickson, J.D.: Filing an Ethical Complaint Against a Custody Evaluator: Do It Yourself
Many battered women have lost custody of their children because a "custody evaluator" (sometimes called a "forensic") has recommended that custody be given to the abusive father. Yet, in many cases, the custody evaluator was incompetent, unprofessional, or unethical – perhaps even taking bribes from the other side. A common example is a custody evaluator who believes all mothers try to alienate the children from the fathers. This will be a do-it-yourself workshop where participants will be guided through the process of filing licensing board complaints against these evaluators. If successful, it could have an effect on your case, and it might lead toward another valuable result — that the evaluator would never ruin the lives of more protective parents and their children."

Licensing complaints have a major effect on psychologists and false licensing complaints seek to exploit the effect of a licensing complaint on a custody evaluator. Under the best of circumstances, false licensing complaints are stressful to defend, they are costly in money and time to the licensee and they affect the future viability of the psychologist's practice. Licensing boards properly should do what they can to cooperate with the courts to reduce the incidence of improper, false licensing complaints and should never do anything that might make it easier for these complaints to be filed.

I have included an article written by the Executive Director of the Illinois Psychological Association that further describes the problem. We hope this will provide important information to the members of the Board. The article states, and we concur, that "given the abuses being reported around the country, court appointed custody evaluators must be given some protection if they are expected to conduct non-biased evaluations that serve the best interests of the child. As lawsuits and licensing board complaints are increasingly being used to intimidate these expert witnesses, more and more psychologists are refusing to become involved in the custody process."

To summarize:

CPA strongly supports consumers' ability to file good faith licensing complaints and its longstanding policies reflect that commitment. CPA also has a strong record of protecting the confidentiality of those who receive the services of psychologists. The proposed legislation would remove important confidentiality protections from the prevailing party in a custody dispute and remove a slim protection against the intimidation of a custody evaluator faced with the threat of a complaint from the non-prevailing party. We believe that a change in these protections would be poor public policy. As it has been noted before, for many years the courts have shown cooperation with licensing agencies in allowing custody reports to be provided when a licensing complaint has been filed. If, on occasion, the Court does not find good cause, that becomes the ruling and that ruling of the Court must be respected.

CPA proposes that the licensing boards work with the judicial council to provide education to parties to custody actions about what actually constitutes unprofessional conduct that could provide the basis for a good faith licensing complaint. Having that information would allow both the party to the custody process as well as the court to make an informed decision about the validity of a licensing complaint and to allow the custody report to be provided with the complaint to the licensing agency. CPA believes this cooperation between the licensing agencies and the judicial council should be explored as a solution to any perceived difficulty the BOP is experiencing in gaining access to these reports. If this is done, there could be a two-year assessment of this program to evaluate its effectiveness.

In the meanwhile, CPA recommends that when a licensing complaint about a custody evaluator is received, the complainant should be advised about the process for filing a good cause request with the court to release a copy of the custody report. It is our position that current law is sufficient, and that it offers the proper protection both consumers and licensees.

Thank you for your attention to this important matter.

Best regards,



Jo Linder-Crow, PhD, CEO

cc: Charles Faltz, PhD, CPA Director of Government Affairs
Antonette Sorrick, Executive Office, Board of Psychology

Should There Be Immunity For Custody Evaluators?

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