

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 1088**

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**Introduced by Senator Bowen**

February 22, 2005

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An act to add Section 216 to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 1088, as amended, Bowen. Family law: motions and orders.

~~Under existing law, the rules of practice and procedure applicable to civil actions generally apply to family law proceedings, except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules. Existing~~

*Existing law prohibits ex parte communications involving certain administrative proceedings.*

~~This bill would require the Judicial Council, by March 1, 2006, to adopt a rule of court concerning~~ *prohibit, in the absence of a stipulation to the contrary, ex parte communications between court-appointed mediators or evaluators and the court, and between court-appointed mediators or evaluators and any party to an action, any attorney for a party to an action, or. The bill would also prohibit an attorney appointed by the court to represent a child, as specified or party from initiating oral communication pertaining to the merits of the case with, or providing documents pertaining to the case to, an evaluator or mediator without taking specified action.*

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

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

1 SECTION 1. Section 216 is added to the Family Code, to  
2 read:

3 216. (a) ~~The Judicial Council shall, by March 1, 2006, adopt~~  
4 ~~a rule of court concerning ex parte communications between~~  
5 ~~court-appointed mediators or evaluators and the court, and~~  
6 ~~between court-appointed mediators or evaluators and any party to~~  
7 ~~an action, any attorney for a party to an action, or an attorney~~  
8 ~~appointed by the court to represent a child.~~

9 ~~(b) The rule adopted pursuant to subdivision (a) shall provide~~  
10 ~~that, in~~ *In* the absence of a stipulation by the parties to the  
11 contrary, there shall be no ex parte communication between the  
12 attorneys for any party to an action and any *court-appointed*  
13 evaluator or mediator, or between ~~an~~ *a court-appointed* evaluator  
14 or mediator and the court, in any proceedings under this code. ~~It~~  
15 ~~shall also provide that, absent~~ *Absent* stipulation by the parties to  
16 the contrary, no attorney or party to an action may initiate oral  
17 communication pertaining to the merits of the case with an  
18 evaluator or mediator without first providing all parties,  
19 including any attorney of record for a child, an opportunity to be  
20 present, and ~~that~~ no attorney or party to an action may provide an  
21 evaluator *or mediator* with documents pertaining to the case  
22 without first providing the attorney for any other party, including  
23 any attorney of record for a child, a copy of the document.

24 ~~(e) The rule adopted pursuant to subdivision (a) shall prohibit~~

25 *(b) There shall be no* ex parte communications between  
26 counsel appointed by the court pursuant to Section 3150 and any  
27 *court-appointed* evaluator or mediator, except where it is  
28 expressly authorized by the court or undertaken pursuant to  
29 paragraph (5) of subdivision (c) of Section 3151.

30 ~~(d) The rule adopted pursuant to subdivision (a) shall provide~~  
31 ~~for exceptions to the requirements of subdivisions (b) and (c) in~~  
32 ~~both~~

33 *(c) Subdivisions (a) and (b) shall not apply in either of the*  
34 *following situations:*

35 (1) To allow a mediator or evaluator to address a case  
36 involving allegations of domestic violence.

- 1 (2) Where the mediator or evaluator determines that ex parte
- 2 communication is necessary to prevent an imminent risk to the
- 3 child's safety or well-being.

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