

AMENDED IN ASSEMBLY AUGUST 22, 2005

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN ASSEMBLY JUNE 15, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1088

Introduced by Senator Bowen

(Coauthors: Assembly Members Calderon and Lieber)

February 22, 2005

An act to amend Section 1818 of, and 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.

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

This bill would prohibit, in the absence of a stipulation to the contrary, *ex parte* communications between court-appointed or court-connected mediators or evaluators and the court, and between court-appointed or court-connected mediators or evaluators and any party or any attorney for a party to an action, except as specified. The bill would provide specified exceptions from these provisions. The bill would require the Judicial Council to adopt a related rule of court by July 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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) In the absence of a stipulation by the parties to the
4 contrary, there shall be no ex parte communication between the
5 attorneys for any party to an action and any court-appointed or
6 court-connected evaluator or mediator, or between a
7 court-appointed or court-connected evaluator or mediator and the
8 court, in any proceedings under this code, except with regard to
9 ~~scheduling~~ *the scheduling of appointments.*

10 (b) There shall be no ex parte communications between
11 counsel appointed by the court pursuant to Section 3150 and any
12 court-appointed or court-connected evaluator or mediator, except
13 where it is expressly authorized by the court or undertaken
14 pursuant to paragraph (5) of subdivision (c) of Section 3151.

15 (c) Subdivisions (a) and (b) shall not apply in the following
16 situations:

17 (1) To allow a mediator or evaluator to address a case
18 involving allegations of domestic violence as set forth in Sections
19 3113, 3181, and 3192.

20 (2) To allow a mediator or evaluator to address a case
21 involving allegations of domestic violence as set forth in the
22 California Rules of Court 5.215.

23 (3) If the mediator or evaluator determines that ex parte
24 communication is needed to inform the court of his or her belief
25 that a restraining order is necessary to prevent an imminent risk
26 to the physical safety of the child or the party.

27 (d) Nothing in this section shall be construed to limit the
28 responsibilities a mediator or evaluator may have as a mandated
29 reporter pursuant to Section 11165.9 of the Penal Code or the
30 responsibilities a mediator or evaluator may have to warn under
31 *Tarasoff v. Regents of the University of California* (1976) 17
32 Cal.3d 425, *Hedlund v. Superior Court* (1983) 34 Cal.3d 695, and
33 Section 43.92 of the Civil Code.

34 (e) The Judicial Council shall, by July 1, 2006, adopt a rule of
35 court to implement this section.

36 SEC. 2. Section 1818 of the Family Code is amended to read:

37 1818. (a) All superior court hearings or conferences in
38 proceedings under this part shall be held in private and the court

1 shall exclude all persons except the officers of the court, the
2 parties, their counsel, and witnesses. The court shall not allow ex
3 parte communications, except as authorized by Section 216. All
4 communications, verbal or written, from parties to the judge,
5 commissioner, or counselor in a proceeding under this part shall
6 be deemed to be official information within the meaning of
7 Section 1040 of the Evidence Code.

8 (b) The files of the family conciliation court shall be closed.
9 The petition, supporting affidavit, conciliation agreement, and
10 any court order made in the matter may be opened to inspection
11 by a party or the party's counsel upon the written authority of the
12 judge of the family conciliation court.

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