Assembly Bill No. 939

Passed the Assembly August 23, 2010

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Chief Clerk of the Assembly

Passed the Senate August 20, 2010

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 215, 2030, 2032, 2034, 2330.3, 2400, 2403, 2450, 2451, 3027, 3121, 3150, 3151, 3183, 3557, 6323, and 6340 of, and to add Section 217 to, the Family Code, and to amend Section 328 of, and to add Section 827.10 to, the Welfare and Institutions Code, relating to family law proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, Committee on Judiciary. Family law proceedings.

Existing law prohibits after entry of judgment in specified family law proceedings in which there was at issue the visitation, custody, or support of a child, modification of the judgment or order, and prohibits a subsequent order in the proceedings, unless notice is served upon the party, as specified.

This bill would authorize a postjudgment motion to modify a custody, visitation, or child support order to be served on the other party by first-class mail or airmail, as specified.

Existing law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declarant, subject to specified exceptions.

This bill would require the court in a family law action to receive all live, competent, and relevant testimony at a hearing of an order to show cause or notice of motion, unless the parties stipulate otherwise or the court makes a finding of good cause to refuse to hear the testimony.

Existing law provides that a court in a dissolution of marriage proceeding may order one party to pay the other party an amount that is reasonably necessary for attorney's fees or costs in order to ensure that each party has access to legal representation. Under existing law, the court shall base this determination on the respective incomes and needs of the parties and any factors affecting the parties' respective abilities to pay.

This bill would provide that, when a request for attorney's fees and costs is made, the court shall make findings regarding whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one

party is able to pay for legal representation. The bill would require the court to make an order awarding attorney's fees and costs if the findings demonstrate disparity in access and ability to pay. The bill would require the Judicial Council, by January 1, 2012, to adopt a rule of court and develop a form to implement this provision.

Existing law provides for summary dissolution proceedings if certain conditions exist at the time the proceeding is commenced, including that there are no children, as specified, neither party has any interest in real property, as specified, and the marriage is not more than 5 years in duration at the time the petition is filed. A proceeding for summary dissolution is commenced by filing a joint petition that is signed under oath by the husband and the wife, as specified.

This bill would revise the latter condition that must be met at the time a proceeding for summary dissolution is commenced to instead require that the marriage be not more than 5 years in duration as of the date of separation of the parties.

Existing law also provides that when 6 months have expired from the date of the filing of the joint petition for summary dissolution of marriage, the court may, upon application of either party, enter judgment dissolving the marriage. At any time before the filing of the application for judgment, however, either party to the marriage may revoke the joint petition and thereby terminate the proceeding for summary dissolution.

This bill would authorize the court to enter judgment dissolving the marriage when 6 months have expired without requiring the application of either party, unless a revocation of the joint petition has been filed.

Existing law provides that in an action for dissolution of marriage, the court, upon motion, is required to hold a preliminary status conference to determine whether a case management plan will be ordered. Existing law further provides that no case management plan may be ordered absent the stipulation of the parties. Existing law also sets forth the content of case management plans.

This bill would delete the requirement that the parties stipulate to the case management plan.

The bill would also delete references to case management plans and would instead refer to family centered case resolution plans.

The bill would revise the content of those plans and require the Judicial Council to adopt a statewide rule of court to implement these provisions. The latter provisions would become operative on January 1, 2012.

Existing law provides that the court may appoint private counsel to represent the interests of a child in a custody or visitation proceeding if it determines that it would be in the best interest of the child. Existing law specifies the duties of a child's counsel, and grants the counsel the discretion to present the child's wishes to the court if he or she deems it appropriate.

This bill would require the court and counsel to comply with specified requirements if the court appoints private counsel pursuant to the provision described above. The bill would also require the child's counsel to present the child's wishes to the court if the child so desires.

Existing law authorizes a mediator to submit a recommendation to the court as to the custody of or visitation with a child, except as specified.

This bill would provide that the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor."

Under the Domestic Violence Prevention Act, the court in a protective order proceeding may issue an ex parte order granting temporary child custody and visitation to a party who has established a parent and child relationship. Existing law provides that the court may not make a finding of paternity in this proceeding.

This bill would provide that the court in a protective order proceeding may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity. The bill would provide that if the court in a protective order proceeding makes an order for custody, visitation, or support, the order shall survive the termination of the protective order.

Under existing law, if allegations of child sexual abuse arise during a child custody proceeding, the court may take reasonable, temporary steps to protect the child's safety, including requesting that the local child welfare services agency conduct an investigation of the allegations. Existing law provides that a social worker shall make an investigation of allegations of child abuse or neglect and

shall determine whether it is appropriate to offer child welfare services to the family. Under existing law, juvenile case files are confidential, except as provided.

This bill would expand the scope of those provisions to apply to all allegations of child abuse. The bill would direct a social worker to draw no inference regarding the credibility of allegations of child abuse from the mere existence of a child custody or visitation dispute. The bill would also provide an exception to the confidentiality of child welfare agency records for certain participants in family law and probate guardianship cases by authorizing the child welfare agency to permit inspection of, and to provide copies of, its records, as specified.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Family law touches the most central aspects of Californians' lives, such as where, when, and how often a parent will see his or her child, the personal safety of the parent and child, how much child and spousal support one person will receive and the other will pay, and how the assets that the family has accumulated will be divided between the separating parties. These decisions can have a dramatic and lasting impact on people's lives.

(b) Faced with crowded family law calendars and the rising numbers of self-represented litigants, as over 70 percent of litigants in family law are unrepresented, many courts have adopted local rules and procedures in an attempt to more efficiently process the high volume of family law cases. While some of these rules and procedures have been innovative, others have created barriers to litigants getting their day in court, particularly litigants who are unrepresented. These barriers include drastically reducing live testimony in family law, which the California Supreme Court found, in its landmark decision Elkins v. Superior Court (2007) 41 Cal.4th 1337, deprives family law litigants of due process protections. Access to justice requires that parties be able to appropriately address the court and present their cases.

(c) Family law cases involve an extraordinary range of issues, from the most simple, uncontested case with no children and no property to cases involving complex legal issues, highly personal

and difficult conflicts over children, or serious issues of domestic violence and child safety. Unlike general civil, complex civil, juvenile, probate, and criminal cases, family law is the last general jurisdiction in California that does not provide a procedure for the fair, timely, and efficient disposition of a case. The courts cannot manage limited resources efficiently, nor serve the best interests of California's families and children, without the ability to manage the flow of cases through the courts. Under the current system, the parties, who are most often self-represented, must take the initiative to obtain appropriate orders and judgments in a complicated judicial process that very few litigants can understand, and they often fail to take the next step toward completing the case. As a result, it is not unusual for family law cases to linger in the court for years. By eliminating the current ability of one party to drag out a case for years, the Legislature intends that all parties participate in, and benefit from, family centered case resolution.

(d) A fundamental responsibility of judges in family law cases is to protect the safety and well-being of children. Family courts are confronted with allegations of child abuse or neglect and must respond to these accusations appropriately. In order to help ensure that allegations of child abuse, neglect, and violence are fully investigated and that children are protected from harm, child welfare services should be required to fully investigate all allegations of this type, regardless of the existence of a family law dispute involving the same parties. No inference regarding the credibility of the allegations or the need for child welfare services shall be drawn from the existence of a child custody or visitation dispute.

(e) Courts appoint minor's counsel to provide representation for a child and to meet the need the court may have for additional information on which to base a difficult child custody decision. To be responsive to the complexities inherent in the cases that involve minor's counsel and the challenges attorneys, parties, and children may face when these appointments are made, the role of minor's counsel must be more clearly delineated and the responsibilities of minor's counsel more clearly defined so that there is greater transparency and clarity in order to provide the best possible representation for children in these matters.

(f) Given the lifelong impact of family law matters, legal assistance in these cases is critical. Unfortunately, over 70 percent

of litigants in family law cases are unrepresented by counsel. While many cases involve parties who are all unrepresented, in some of these cases one party can afford counsel but the other cannot. These cases pose significant difficulties for the unrepresented litigant, the attorney, and the judicial officer. Representation for parties can be significantly improved in some of these cases if courts make early need-based attorney's fee awards.

SEC. 2. Section 215 of the Family Code is amended to read:

215. (a) Except as provided in subdivision (b), after entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient.

(b) A postjudgment motion to modify a custody, visitation, or child support order may be served on the other party or parties by first-class mail or airmail, postage prepaid, to the persons to be served. For any party served by mail, the proof of service must include an address verification.

SEC. 3. Section 217 is added to the Family Code, to read:

217. (a) At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties.

(b) In appropriate cases, a court may make a finding of good cause to refuse to receive live testimony and shall state its reasons for the finding on the record or in writing. The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court regarding the factors a court shall consider in making a finding of good cause.

(c) A party seeking to present live testimony from witnesses other than the parties shall, prior to the hearing, file and serve a witness list with a brief description of the anticipated testimony. If the witness list is not served prior to the hearing, the court may,

on request, grant a brief continuance and may make appropriate temporary orders pending the continued hearing.

SEC. 4. Section 2030 of the Family Code is amended to read:

2030. (a) (1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(2) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

(e) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a

form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

SEC. 5. Section 2032 of the Family Code is amended to read:

2032. (a) The court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income.

(d) Either party may, at any time before the hearing of the cause on the merits, on noticed motion, request the court to make a finding that the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion determine the appropriate, equitable allocation of attorney's fees, court costs, expert fees, and consultant fees between the parties. The court order may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only on agreement of the parties or, in the absence thereof, by court order. The court may order that a referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the allocation of fees and costs.

SEC. 6. Section 2034 of the Family Code is amended to read:

2034. (a) On application of either party, the court may deny the family law attorney's real property lien described in Section 2033 based on a finding that the encumbrance would likely result in an unequal division of property because it would impair the encumbering party's ability to meet his or her fair share of the community obligations or would otherwise be unjust under the circumstances of the case. The court may also for good cause limit the amount of the family law attorney's real property lien. A limitation by the court is not to be construed as a determination of reasonable attorney's fees.

(b) On receiving an objection to the establishment of a family law attorney's real property lien, the court may on its own motion determine whether the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. If the court finds that the case involves one or more of these complex or substantial issues, the court may determine the appropriate, equitable allocation of fees and costs as provided in subdivision (d) of Section 2032.

(c) The court has jurisdiction to resolve any dispute arising from the existence of a family law attorney's real property lien.

SEC. 7. Section 2330.3 of the Family Code is amended to read:

2330.3. (a) All dissolution actions, to the greatest extent possible, shall be assigned to the same superior court department for all purposes, in order that all decisions in a case through final judgment shall be made by the same judicial officer. However, if the assignment will result in a significant delay of any family law matter, the dissolution action need not be assigned to the same superior court department for all purposes, unless the parties stipulate otherwise.

(b) The Judicial Council shall adopt a standard of judicial administration prescribing a minimum length of assignment of a judicial officer to a family law assignment.

(c) This section shall be operative on July 1, 1997.

SEC. 8. Section 2400 of the Family Code is amended to read:

2400. (a) A marriage may be dissolved by the summary dissolution procedure provided in this chapter if all of the following conditions exist at the time the proceeding is commenced:

(1) Either party has met the jurisdictional requirements of Chapter 3 (commencing with Section 2320) with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.

(3) There are no children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant.

(4) The marriage is not more than five years in duration as of the date of separation of the parties.

(5) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of the filing of the petition.

(6) There are no unpaid obligations in excess of four thousand dollars ($4,000) incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligation with respect to an automobile.

(7) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than twenty-five thousand dollars ($25,000), and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of twenty-five thousand dollars ($25,000).

(8) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(9) The parties waive any rights to spousal support.

(10) The parties, upon entry of the judgment of dissolution of marriage pursuant to Section 2403, irrevocably waive their respective rights to appeal and their rights to move for a new trial.

(11) The parties have read and understand the summary dissolution brochure provided for in Section 2406.

(12) The parties desire that the court dissolve the marriage.

(b) On January 1, 1985, and on January 1 of each odd-numbered year thereafter, the amounts in paragraph (6) of subdivision (a) shall be adjusted to reflect any change in the value of the dollar. On January 1, 1993, and on January 1 of each odd-numbered year thereafter, the amounts in paragraph (7) of subdivision (a) shall

be adjusted to reflect any change in the value of the dollar. The adjustments shall be made by multiplying the base amounts by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars. The Judicial Council shall compute and publish the amounts.

SEC. 9. Section 2403 of the Family Code is amended to read:

2403. When six months have expired from the date of the filing of the joint petition for summary dissolution, the court shall, unless a revocation has been filed pursuant to Section 2402, enter the judgment dissolving the marriage. The judgment restores to the parties the status of single persons, and either party may marry after the entry of the judgment. The clerk shall send a notice of entry of judgment to each of the parties at the party's last known address.

SEC. 10. Section 2450 of the Family Code is amended to read:

2450. (a) The purpose of family centered case resolution is to benefit the parties by providing judicial assistance and management to the parties in actions for dissolution of marriage for the purpose of expediting the processing of the case, reducing the expense of litigation, and focusing on early resolution by settlement. Family centered case resolution is a tool to allow the courts to better assist families. It does not increase the authority of the court to appoint any third parties to the case.

(b) The court may order a family centered case resolution plan as provided in Section 2451. If the court orders family centered case resolution, it shall state the family centered case resolution plan in writing or on the record.

SEC. 11. Section 2451 of the Family Code is amended to read:

2451. (a) A court-ordered family centered case resolution plan must be in conformance with due process requirements and may include, but is not limited to, all of the following:

(1) Early neutral case evaluation.

(2) Alternative dispute resolution consistent with the requirements of subdivision (a) of Section 3181.

(3) Limitations on discovery, including temporary suspension pending exploration of settlement. There is a rebuttable presumption that an attorney who carries out discovery as provided in a family centered case resolution plan has fulfilled his or her duty of care to the client as to the existence of community property.

(4) Use of telephone conference calls to ascertain the status of the case, encourage cooperation, and assist counsel in reaching agreement. However, if the court is required to issue an order other than by stipulation, a hearing shall be held.

(5) If stipulated by the parties, modification or waiver of the requirements of procedural statutes.

(6) A requirement that any expert witness be selected by the parties jointly or be appointed by the court. However, if at any time the court determines that the issues for which experts are required cannot be settled under these conditions, the court shall permit each party to employ his or her own expert.

(7) Bifurcation of issues for trial.

(b) This section does not provide any additional authority to the court to appoint experts beyond that permitted under other provisions of law.

(c) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section.

(d) The changes made to this section by the act adding this subdivision shall become operative on January 1, 2012.

SEC. 12. Section 3027 of the Family Code is amended to read:

3027. (a) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code.

(b) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code. Upon completion of the investigation, the agency shall report its findings to the court.

SEC. 13. Section 3121 of the Family Code is amended to read:

3121. (a) In any proceeding pursuant to Section 3120, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs

assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in Section 3120, or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in subdivision (f), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in Section 3120.

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made

pursuant to this subdivision within 15 days and prior to the entry of any judgment.

(g) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

SEC. 14. Section 3150 of the Family Code is amended to read:

3150. (a) If the court determines that it would be in the best interest of the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding, provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court.

(b) Upon entering an appearance on behalf of a child pursuant to this chapter, counsel shall continue to represent that child unless relieved by the court upon the substitution of other counsel by the court or for cause.

SEC. 15. Section 3151 of the Family Code is amended to read:

3151. (a) The child's counsel appointed under this chapter is charged with the representation of the child's best interests. The role of the child's counsel is to gather evidence that bears on the best interests of the child, and present that admissible evidence to the court in any manner appropriate for the counsel of a party. If the child so desires, the child's counsel shall present the child's wishes to the court. The counsel's duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.

(b) Counsel shall serve notices and pleadings on all parties, consistent with requirements for parties. Counsel shall not be called as a witness in the proceeding. Counsel may introduce and examine counsel's own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

(c) The child's counsel shall have the following rights:

(1) Reasonable access to the child.

(2) Standing to seek affirmative relief on behalf of the child.

(3) Notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child.

(4) The right to take any action that is available to a party to the proceeding, including, but not limited to, the following: filing pleadings, making evidentiary objections, and presenting evidence and being heard in the proceeding, which may include, but shall not be limited to, presenting motions and orders to show cause, and participating in settlement conferences, trials, seeking writs, appeals, and arbitrations.

(5) Access to the child's medical, dental, mental health, and other health care records, school and educational records, and the right to interview school personnel, caretakers, health care providers, mental health professionals, and others who have assessed the child or provided care to the child. The release of this information to counsel shall not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications. Counsel may interview mediators; however, the provisions of Sections 3177 and 3182 shall apply.

(6) The right to reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.

(7) The right to assert or waive any privilege on behalf of the child.

(8) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court.

SEC. 16. Section 3183 of the Family Code is amended to read:

3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, if the mediator has first provided the parties and their attorneys, including counsel for any minor children, with the recommendations in writing in advance of the hearing. The court shall make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing. If the mediator is authorized to submit a recommendation to the court pursuant to this subdivision, the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending

counselor." Mediators who make those recommendations are considered mediators for purposes of Chapter 11 (commencing with Section 3160), and shall be subject to all requirements for mediators for all purposes under this code and the California Rules of Court. On and after January 1, 2012, all court communications and information regarding the child custody recommending counseling process shall reflect the change in the name of the process and the name of the providers.

(b) If the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

SEC. 17. Section 3557 of the Family Code is amended to read:

3557. (a) Notwithstanding any other provision of law, absent good cause to the contrary, the court, in order to ensure that each party has access to legal representation to preserve each party's rights, upon determining (1) an award of attorney's fees and cost under this section is appropriate, (2) there is a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation for both parties, shall award reasonable attorney's fees to any of the following persons:

(1) A custodial parent or other person to whom payments should be made in any action to enforce any of the following:

(A) An existing order for child support.

(B) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(2) A supported spouse in an action to enforce an existing order for spousal support.

(b) This section shall not be construed to allow an award of attorney's fees to or against a governmental entity.

SEC. 18. Section 6323 of the Family Code is amended to read:

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody and visitation of a minor child on the conditions

the court determines to a party who has established a parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any custody or visitation orders have already been issued in any other proceeding.

(2) (A) In making a determination of the best interests of the child and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all family members, if the party who has obtained the restraining order has established a parent and child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical custody to the party to whom the restraining order was issued and may make an order of no visitation to the other party pending the establishment of a parent and child relationship between the child and the other party.

(B) A party may establish a parent and child relationship for purposes of subparagraph (A) only by offering proof of any of the following:

(i) The party gave birth to the child.

(ii) The child is conclusively presumed to be a child of the marriage between the parties, pursuant to Section 7540, or the party has been determined by a court to be a parent of the child, pursuant to Section 7541.

(iii) Legal adoption or pending legal adoption of the child by the party.

(iv) The party has signed a valid voluntary declaration of paternity, which has been in effect more than 60 days prior to the issuance of the restraining order, and that declaration has not been rescinded or set aside.

(v) A determination made by the juvenile court that there is a parent and child relationship between the party offering the proof and the child.

(vi) A determination of paternity made in a proceeding to determine custody or visitation in a case brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions Code.

(vii) The party has been determined to be the parent of the child through a proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(viii) Both parties stipulate, in writing or on the record, for purposes of this proceeding, that they are the parents of the child.

(b) (1) Except as provided in paragraph (2), the court shall not make a finding of paternity in this proceeding, and any order issued pursuant to this section shall be without prejudice in any other action brought to establish a parent and child relationship.

(2) The court may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity, subject to the set-aside provisions in Section 7646.

(c) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(d) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether visitation or custody shall be suspended or denied.

SEC. 19. Section 6340 of the Family Code is amended to read:

6340. (a) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

SEC. 20. Section 328 of the Welfare and Institutions Code is amended to read:

328. Whenever the social worker has cause to believe that there was or is within the county, or residing therein, a person described in Section 300, the social worker shall immediately make any investigation he or she deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. If the social worker determines that it is appropriate to offer child welfare services to the family, the social worker shall make a referral to these services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. No inference regarding the credibility of the allegations or the need for child welfare services shall be drawn from the mere existence of a child custody or visitation dispute.

However, this section does not require an investigation by the social worker with respect to a child delivered or referred to any agency pursuant to Section 307.5.

The social worker shall interview any child four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the child's view of the home environment. If proceedings are commenced, the social worker shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the social worker shall include the substance of the interview in the social study required by Section 358. A referral based on allegations of child abuse from the family court pursuant to Section 3027 of the Family Code shall be investigated to the same extent as any other child abuse allegation.

SEC. 21. Section 827.10 is added to the Welfare and Institutions Code, to read:

827.10. (a) Notwithstanding Section 827, the child welfare agency is authorized to permit its files and records relating to a minor, who is the subject of either a family law or a probate guardianship case involving custody or visitation issues, or both, to be inspected by, and to provide copies to, the following persons, if these persons are actively participating in the family law or probate case:

(1) The judge, commissioner, or other hearing officer assigned to the family law or probate case.

(2) The parent or guardian of the minor.

(3) An attorney for a party to the family law or probate case.

(4) A family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code.

(5) A court-appointed investigator, evaluator, or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code or Part 2 (commencing with Section 1500) of Division 4 of the Probate Code.

(6) Counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the counsel for the minor.

(b) If the child welfare agency files or records, or any portions thereof, are privileged or confidential pursuant to any other state law, except Section 827, or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the child welfare agency files or records, or any portions thereof, shall prevail.

(c) A social worker may testify in any family or probate proceeding with regard to any information that may be disclosed under this section.

(d) Any records or information obtained pursuant to this section, including the testimony of a social worker, shall be maintained solely in the confidential portion of the family law or probate file.

Approved _____, 2010

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Governor