

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

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 also prohibit an attorney 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.~~ 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: ~~no~~-yes. State-mandated local program: no.

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

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

216. (a) In the absence of a stipulation by the parties to the contrary, there shall be no ex parte communication between the attorneys for any party to an action and any court-appointed *or court-connected* evaluator or mediator, or between a court-appointed *or court-connected* evaluator or mediator and the court, in any proceedings under this code, *except with regard to scheduling appointments*. ~~Absent stipulation by the parties to the contrary, no attorney or party to an action may initiate oral communication pertaining to the merits of the case with an evaluator or mediator without first providing all parties, including any attorney of record for a child, an opportunity to be present, and no attorney or party to an action may provide an evaluator or mediator with documents pertaining to the case without first providing the attorney for any other party, including any attorney of record for a child, a copy of the document.~~

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

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

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

~~(2) As set forth in Sections 3113, 3181, and 3192.~~

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

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

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

(3) If the mediator or evaluator determines that ex parte communication is needed to inform the court of his or her belief

1 *that a restraining order is necessary to prevent an imminent risk*
2 *to the physical safety of the child or the party.*

3 *(d) Nothing in this section shall be construed to limit the*
4 *responsibilities a mediator or evaluator may have as a mandated*
5 *reporter pursuant to Section 11165.9 of the Penal Code or the*
6 *responsibilities a mediator or evaluator may have to warn under*
7 *Tarasoff v. Regents of the University of California (1976) 17*
8 *Cal.3d 425, Hedlund v. Superior Court (1983) 34 Cal.3d 695,*
9 *and Section 43.92.*

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

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

13 1818. (a) All superior court hearings or conferences in
14 proceedings under this part shall be held in private and the court
15 shall exclude all persons except the officers of the court, the
16 parties, their counsel, and witnesses. The court shall not allow ex
17 parte communications, except as authorized by Section 216. All
18 communications, verbal or written, from parties to the judge,
19 commissioner, or counselor in a proceeding under this part shall
20 be deemed to be official information within the meaning of
21 Section 1040 of the Evidence Code.

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