

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

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:

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.

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

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

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

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

1818. (a) All superior court hearings or conferences in 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.