

RESOLUTION 08-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommend that legislation be sponsored to amend Family Code section 3111, to read as follows:

1 § 3111

2 (a) In a contested proceeding involving child custody or visitation rights, the court may
3 appoint a child custody evaluator to conduct a child custody evaluation, investigation or
4 assessment, in cases where the court determines it is in the best interest of the child. The child
5 custody evaluation shall be conducted in accordance with the standards adopted by the Judicial
6 Council pursuant to Section 3117, and all other standards adopted by the Judicial Council
7 regarding child custody evaluations. If directed by the court, the court-appointed child custody
8 evaluator shall file a written confidential report on the evaluation. At least ~~40 days~~ 30 days
9 before a hearing regarding custody of the child, unless the time is extended by the court, the
10 report shall be filed with the clerk of the court in which the custody hearing will be conducted
11 and served on the parties or their attorneys, and any other counsel appointed for the child
12 pursuant to Section 3150. A child custody evaluation, investigation, or assessment, and a
13 resulting report, may be considered by the court only if it is conducted in accordance with the
14 requirements set forth in the standards adopted by the Judicial Council pursuant to Section 3117;
15 however, this does not preclude the consideration of a child custody evaluation report that
16 contains nonsubstantive or inconsequential errors or both.

17 (b) The report shall not be made available other than as provided in subdivision (a) or
18 Section 3025.5, or as described in Section 204 of the Welfare and Institutions Code or Section
19 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file,
20 as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential
21 and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of
22 the Welfare and Institutions Code.

23 (c) The report may be received in evidence on stipulation of all interested parties and is
24 competent evidence as to all matters contained in the report.

25 (d) If the court determines that an unwarranted disclosure of a written confidential report
26 has been made, the court may impose a monetary sanction against the disclosing party. The
27 sanction shall be in an amount sufficient to deter repetition of the conduct, and may include
28 reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party
29 acted with substantial justification or that other circumstances make the imposition of the
30 sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes
31 an unreasonable financial burden on the party against whom the sanction is imposed.

32 (e) The Judicial Council shall, by January 1, 2010, do the following:

33 (1) Adopt a form to be served with every child custody evaluation report that informs the
34 report recipient of the confidentiality of the report and the potential consequences for the
35 unwarranted disclosure of the report.

36 (2) Adopt a rule of court to require that, when a court-ordered child custody evaluation
37 report is served on the parties, the form specified in paragraph (1) shall be included with the
38 report.

39 (f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly
40 or maliciously, and is not in the best interest of the child.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Child custody proceedings involve the fundamental rights of parents and minor children. Decisions should not be made without due process of law, including the right to cross-examine an evaluator as referenced in Fam. Code, §3117.

In most cases, 10-days is an insufficient period of time to read and prepare for the hearing, which may or may not include a party's right to conduct discovery, subpoena witnesses, designate rebuttal experts and prepare for cross-examination.

The Solution: Given the fundamental rights involved, the time to receive reports should be extended to at least 30 days, and the Court should have the discretion to further extend time upon request and for good cause. The legislature has adopted statutes to protect litigants rights including the Discovery Act and the Evidence Code. Moreover, the California Supreme Court in *People v. Sanchez* reminds us that experts may not rely on case specific facts for their conclusions, it is hearsay. Child custody evaluations are filled with hearsay, case specific data accumulated from parties and third party witnesses, such as teachers, psychologists, educational therapists, relatives and minor children. Yet, when it comes to the most fundamental rights of parents and children, parent are often denied the right to prepare for a hearing, to conduct discovery, and to cross-examine these professionals because they are either not informed of these rights because the 10 day limitation in section 3111 is too short. Moreover, there should not be an ambiguity in the law. Family Code §3111 should not be construed as overriding the Code of Civil Procedure or the Evidence Code. Therefore, a parent/party should have the right to make sure the Court carefully considers a request to extend time on a case by case basis and has the ability to extend time in those cases when it should to protect the rights of party litigants and their minor children to prepare for their custody hearing.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known

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RESPONSIBLE FLOOR DELEGATE: Vicki J. Greene

RESOLUTION 08-02-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3030, to read as follows:

1 § 3030

2 (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation
3 with, a child if the person is required to be registered as a sex offender under Section 290 of the
4 Penal Code where the victim was a minor, or if the person has been convicted under Section
5 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to
6 the child and states its reasons in writing or on the record. The child may not be placed in a home
7 in which that person resides, nor permitted to have unsupervised visitation with that person,
8 unless the court states the reasons for its findings in writing or on the record.

9 (2) No person shall be granted physical or legal custody of, or unsupervised visitation
10 with, a child if anyone residing in the person’s household is required, as a result of a felony
11 conviction in which the victim was a minor, to register as a sex offender under Section 290 of the
12 Penal Code, unless the court finds there is no significant risk to the child and states its reasons in
13 writing or on the record. The child may not be placed in a home in which that person resides, nor
14 permitted to have unsupervised visitation with that person, unless the court states the reasons for
15 its findings in writing or on the record.

16 (3) The fact that a child is permitted unsupervised contact with a person who is required,
17 as a result of a felony conviction in which the victim was a minor, to be registered as a sex
18 offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at
19 significant risk. When making a determination regarding significant risk to the child, the prima
20 facie evidence shall constitute a presumption affecting the burden of producing evidence.
21 However, this presumption shall not apply if there are factors mitigating against its application,
22 including whether the party seeking custody or visitation is also required, as the result of a felony
23 conviction in which the victim was a minor, to register as a sex offender under Section 290 of the
24 Penal Code.

25 (b)(1) No person shall be granted custody of, or visitation with, a child if the person has
26 been convicted under Section 261 of the Penal Code and the child was conceived as a result of
27 that violation

28 (2) Absent a conviction, no biological or alleged parent shall be granted custody of, or
29 visitation with, a child if there is clear and convincing evidence that the child was conceived due
30 to that person having engaged in conduct made unlawful under Section 261 of the Penal Code.

31 (c) No person shall be granted custody of, or unsupervised visitation with, a child if the
32 person has been convicted of murder in the first degree, as defined in Section 189 of the Penal
33 Code, and the victim of the murder was the other parent of the child who is the subject of the
34 order, unless the court finds that there is no risk to the child’s health, safety, and welfare, and
35 states the reasons for its finding in writing or on the record. In making its finding, the court may
36 consider, among other things, the following:

37 (1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to
38 form an intelligent preference.

39 (2) Credible evidence that the convicted parent was a victim of abuse, as defined in
40 Section 6203, committed by the deceased parent. That evidence may include, but is not limited
41 to, written reports by law enforcement agencies, child protective services or other social welfare
42 agencies, courts, medical facilities, or other public agencies or private nonprofit organizations
43 providing services to victims of domestic abuse.

44 (3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code,
45 that the convicted parent experiences intimate partner battering.

46 Unless and until a custody or visitation order is issued pursuant to this subdivision, no
47 person shall permit or cause the child to visit or remain in the custody of the convicted parent
48 without the consent of the child's custodian or legal guardian.

49 (d) The court may order child support that is to be paid by a person subject to subdivision
50 (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of
51 the Family Code and Division 17 (commencing with Section 17000) of this code.

52 (e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of
53 residence, place of employment, or the child's school, unless the court finds that the disclosure
54 would be in the best interest of the child.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law provides for termination of parental rights when the child is a result of a rape for which the parent was convicted. That is good, and could be better. Tons of rapes go unprosecuted, let alone not convicted. The safety and best interests of the child here should not solely depend on the criminal justice system, nor whether the rape can be shown beyond a reasonable doubt.

Although true that the "Best Interests of the Child" is the standard, that takes plenty for granted. Even if a rapist's requests for visitation are denied, a rape survivor can suffer extraordinary trauma from having to face the rapist in court every year and hire a lawyer. That trauma can make the survivor less effective at parenting, which is far from any best interest of the child. Although parenting often involves going against emotions for the child's sake, requiring the rape survivor interact with the rapist goes too far. A judge should not have discretion to keep the rapist in the survivor's life for the next 18 years.

The Solution: This proposal provides a solution for a parent to terminate the rights of a biological or alleged parent by showing the child is the result of a rape, by clear and convincing evidence ("unhesitating assent of every reasonable mind").

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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