

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2475

Introduced by Assembly Member Beall

February 19, 2010

An act to add Section ~~43.94~~ to the Civil 220 to the Family Code, relating to ~~immunity~~ family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2475, as amended, Beall. ~~Judicial immunity.~~ Family law: complaints.

Existing law governs family law proceedings. Existing law authorizes or requires, as specified, the court to appoint various professionals to assist in these proceedings, including counsel for the minor, mediators, and child custody evaluators, among others.

This bill would direct the Judicial Council, in consultation with judicial personnel, family law experts, and advocates to, on or before January 1, 2012, adopt a rule of court to establish a uniform, statewide procedure for handling and responding to complaints regarding family law experts employed or appointed by the court, including mediators, evaluators, investigators, special masters, and minor's counsel, as specified.

The bill would require the Judicial Council to develop a timetable for completion of the complaint process to ensure that all complaints

are resolved as expeditiously as possible, and to develop a list of appropriate responses to substantiated complaints. The bill would provide that a complainant shall not be retaliated against for having made a complaint.

The bill would require the local complaint coordinator to maintain sufficient information about each complaint and its disposition to identify any history or patterns of complaints submitted and shall report annually on complaints received and their disposition to the Judicial Council. The bill would require the Judicial Council to report to the Legislature, on or before February 1, 2013, until January 1, 2017, and then annually thereafter, on the complaint procedure, including whether it is being fully implemented locally, data on the number of complaints and their disposition, information on patterns of complaints, and any modifications made to the rule of court.

The bill would also require the Judicial Council, on or before January 1, 2012, to develop forms, information sheets, and other resources necessary to ensure the complaints process is easily accessible to the parties. The bill would require information on the complaint process to be provided to parties and their attorneys, and to be made available at the court self-help centers.

~~Existing law grants immunity from civil suit to judges for acts performed in the exercise of their judicial functions. Under the concept of quasi-judicial immunity, this absolute judicial immunity has been extended to persons other than judges if those persons act in a judicial or quasi-judicial capacity, including neutral 3rd parties engaged in attempts to settle disputes.~~

~~This bill would provide that the doctrine of judicial immunity or quasi-judicial immunity shall not apply to exonerate any private 3rd party appointed by the court in an advisory capacity based on his or her professional expertise, who provides a report or findings to the court in a proceeding under the Family Code, with the intention that the court act in one way or another based on the report or findings, from liability for acts performed within the scope of his or her appointment in violation of law, rules of court, or professional standards. The bill would provide for applicable statutes of limitation to be tolled, as specified. This bill would require the Bureau of State Audits to include a dedicated compliance official or division whose function it is to review compliance of family courts and public employees with state-mandated family laws and procedures, and to make recommendations to the Legislature, Governor, and Judicial Council, based thereon.~~

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 220 is added to the Family Code, to read:*

2 220. (a) *The Judicial Council, in consultation with judicial*
3 *personnel, family law experts, and advocates, shall, on or before*
4 *January 1, 2012, adopt a rule of court to establish a uniform,*
5 *statewide procedure for handling and responding to complaints*
6 *regarding family law experts employed or appointed by the court,*
7 *including mediators, evaluators, investigators, special masters,*
8 *and minor's counsel, in accordance with all of the following:*

9 (1) *The complaint process shall be available to all parties and*
10 *their attorneys and shall provide for the expeditious and effective*
11 *handling of complaints and procedural fairness.*

12 (2) *Each trial court shall have a complaint coordinator to*
13 *investigate all complaints received.*

14 (3) *Unless a complaint can be resolved informally, all*
15 *complaints, shall be investigated by the local complaint*
16 *coordinator. The complaint coordinator shall interview the*
17 *complainant. The person against whom the complaint is directed*
18 *shall be given notice of the complaint and an opportunity to*
19 *respond.*

20 (4) *The final decision on the complaint shall be made by the*
21 *presiding judge or his or her designee, who cannot be the*
22 *complaint coordinator.*

23 (b) *The Judicial Council shall develop a list of appropriate*
24 *responses to substantiated complaints.*

25 (c) *A complainant shall not be retaliated against for having*
26 *made a complaint.*

27 (d) *The Judicial Council shall develop a timetable for*
28 *completion of the complaint process to ensure that all complaints*
29 *are resolved as expeditiously as possible.*

30 (e) *The local complaint coordinator shall maintain sufficient*
31 *information about each complaint and its disposition to identify*
32 *any history or patterns of complaints submitted, and shall report*
33 *annually on complaints received and their disposition to the*
34 *Judicial Council.*

1 (f) *The Judicial Council shall report to the Legislature, on or*
2 *before February 1, 2013, and then annually thereafter, until*
3 *January 1, 2017, on the complaint procedure, including whether*
4 *it is being fully implemented locally, data on the number of*
5 *complaints and their disposition, information on patterns of*
6 *complaints, and any modifications made to the rule of court. A*
7 *report submitted pursuant to this subdivision shall be submitted*
8 *in compliance with Section 9795 of the Government Code.*

9 (g) *The Judicial Council shall, on or before January 1, 2012,*
10 *develop forms, including a complaint form, information sheets,*
11 *and other resources necessary to ensure the complaint process is*
12 *easily accessible to the parties. Information on the complaint*
13 *process shall be provided to parties and their attorneys, and shall*
14 *be made available at the court self-help centers.*

15 ~~SECTION 1. Section 43.94 is added to the Civil Code, to read:~~

16 ~~43.94. (a) The doctrine of judicial immunity or quasi-judicial~~
17 ~~immunity shall not apply to exonerate any private third party~~
18 ~~appointed by the court in an advisory capacity based on his or her~~
19 ~~professional expertise, who provides a report or findings to the~~
20 ~~court in a proceeding under the Family Code, with the intention~~
21 ~~that the court act in one way or another based on the report or~~
22 ~~findings, from liability for acts performed within the scope of his~~
23 ~~or her appointment in violation of law, rules of court, or~~
24 ~~professional standards.~~

25 ~~(b) This section shall apply to private individuals such as special~~
26 ~~masters, minor's counsel, investigators, therapists, evaluators,~~
27 ~~receivers, bankruptcy trustees, experts, factfinders, and other~~
28 ~~persons specifically appointed by the court in an advisory capacity~~
29 ~~based on their professional training or expertise.~~

30 ~~(c) This section does not apply to any judicial officer,~~
31 ~~subordinate judicial officer, arbitrator, or public employee protected~~
32 ~~by the doctrine of judicial immunity or quasi-judicial immunity~~
33 ~~at the time this section was enacted.~~

34 ~~(d) During a civil, criminal, or administrative investigation or~~
35 ~~proceeding in which a court appointee's alleged misconduct, as~~
36 ~~described in subdivision (a), is at issue, any statutes of limitation~~
37 ~~applicable to the underlying, or other related, civil litigation shall~~
38 ~~be tolled.~~

39 ~~(e) Notwithstanding any other law, any applicable statutes of~~
40 ~~limitation shall be tolled in an action for recovery of damages for~~

1 alleged misconduct perpetrated by a court appointee, as described
2 in subdivision (a), while the person seeking relief was a minor.

3 (f) ~~The Bureau of State Audits shall include a dedicated~~
4 ~~compliance official or division whose function it is to review~~
5 ~~compliance of family courts and public employees with~~
6 ~~state-mandated family laws and procedures and, notwithstanding~~
7 ~~Section 10231.5 of the Government Code, to make~~
8 ~~recommendations to the Legislature, Governor, and Judicial~~
9 ~~Council, based thereon. Recommendations submitted pursuant to~~
10 ~~this subdivision shall be submitted in compliance with Section~~
11 ~~9795 of the Government Code.~~