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Domestic Relations

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Domestic Relations

Domestic Relations; attorneys' fees and costs

Civil Code § 4370.6 (new); § 4370.5 (amended).
AB 2686 (Speier); 1990 STAT. Ch. 893

Existing law provides for litigation fees in family law cases to be divided equitably between the parties.¹ In determining fees, the court may consider the need of each party to have sufficient financial resources to properly present his or her case.² Under Chapter 893, the party's ability to pay is only one factor courts should consider in apportioning fees, and should not bar an order that the other party pay all or part of the fees.³

Additionally, existing law provides that fees may be awarded as a sanction if the conduct of either a party or the attorney frustrates attempts to settle the case.⁴ A sanction may not be imposed if the sanction would subject the party to undue financial hardship.⁵ Chapter 893 further provides that it is not necessary for the recipient of the sanction award to prove financial need.⁶ A sanction must not be imposed upon a party unless the party has been given an opportunity to be heard.⁷ The payment of sanctions may be made from any property owned exclusively by the

1. CAL. CIV. CODE § 4370.5(a) (amended by Chapter 893).

2. *Id.* § 4370.5(b) (amended by Chapter 893).

3. *Id.* § 4370.5(b) (amended by Chapter 893).

4. *Id.* § 4370.6(a) (enacted by Chapter 893). *See also* CAL. CIV. PROC. CODE § 128 (West Supp. 1990) (court may award fees for acts of bad faith intended to cause unnecessary delay).

5. CAL. CIV. CODE § 4370.6(a) (enacted by Chapter 893).

6. *Id.* § 4370.6(a) (enacted by Chapter 893). *See In re Marriage of Hatch*, 169 Cal. App. 3d 1213, 1221, 215 Cal. Rptr. 789, 794 (1985) (to promote a prompt settlement and a more equitable division of the resources, the court ordered a rehearing on the issue of fees where the wife was financially disadvantaged compared to the husband).

7. CAL. CIV. CODE § 4370.6(b) (enacted by Chapter 893)

sanctioned party and from the party's share of property held as community property.⁸

CLL

Domestic Relations; child abuse reporting

Penal Code § 11166.5 (amended).

AB 3521 (Bentley); 1990 STAT. Ch. 931

Support: California Association of Children's Homes; California State Juvenile Officer's Association; California Teachers' Association

Opposition: Christian Science Committees on Publication for California; California Business League; California Attorneys for Criminal Justice

Under existing law, child care custodians¹ and other specified persons² must report known or suspected incidents of child abuse³ to a child protective agency.⁴ Chapter 931 expands the definition

3. CAL. CIV. CODE § 4370.6(c) (enacted by Chapter 893). *See generally In re Marriage of Joseph*, 217 Cal. App. 3d 1277, 1288, 266 Cal. Rptr. 548, 555 (1990) (addressing the issue of fairness where the wife of a wealthy husband exhausted her liquidated assets to pay attorney fees, and discussing the possibility of awarding fees as a sanction to encourage cooperation between the parties to expedite settlement).

1. *See* CAL. PENAL CODE § 11166.5(a) (amended by Chapter 931) (enumeration of types of persons considered to be child care custodians).

2. *See id.* (includes health practitioners and child protective agency employees).

3. *See id.* § 11165.6 (West Supp. 1990) (definition of child abuse).

4. *Id.* § 11166.5 (amended by Chapter 931). Existing law also requires these persons to sign a statement stating that he or she is aware of and will comply with this requirement, upon commencing employment in that capacity. *Id.* The report must be made to a child protective agency immediately or "as soon as practically possible" by telephone, followed by a written report within 36 hours of the time the incident was discovered. *Id.* Failure to report as required is a misdemeanor. *Id.* § 11166.5(b) (amended by Chapter 931). *Cf.* N.Y. SOC. SERV. LAW § 413.1 (McKinney 1990) (requiring the person involved to report the known or suspected incident to his or her supervisor, who then becomes equally responsible for ensuring that a formal report is made). *See* CAL. PENAL CODE § 11165.9 (West Supp. 1990) ("child protective agency" includes a police or sheriff's department, county probation department, or county welfare department, but not a school district police or security

of a child care custodian to include administrators and employees of public and private youth centers, youth recreation programs, and youth organizations.⁵

FPC

Domestic Relations; court-appointed counsel in child custody and visitation hearings

Civil Code § 4606 (amended); Government Code § 77003 (amended).

AB 2708 (Hansen); 1990 STAT. Ch. 754

Existing law specifies that, in any child custody or visitation proceeding, the court may appoint private counsel to represent the interests of a minor child.¹ Under Chapter 754, upon its own motion or on motion of a party, the court must determine whether both parties are unable to pay all or any portion of the appointed counsel's fee.² The county must pay any portion of the appointed counsel's fee which the parties are financially unable to pay.³

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department).

5. *Id.* § 11166.5(a) (amended by Chapter 931). Only those persons trained in their respective duties must report the known or suspected incident. *Id.* Cf. NEV. REV. STAT. § 432B.220.2(f) (1989) (requiring the report to be made by employees of child care facilities and establishments, children's camps, or other public or private child care institutions or agencies).

1. CAL. CIV. CODE § 4606(a) (amended by Chapter 754). The counsel is to be paid by the parties in such proportions as the court determines to be fair. *Id.* § 4606(f) (amended by Chapter 754).

2. *Id.* § 4606(g) (amended by Chapter 754). The judicial council must issue guidelines for determining whether a party is financially able to pay the appointed counsel. *Id.*

3. *Id.* § 4606(g) (amended by Chapter 754). The funds to pay the appointed counsel are to be paid out of the court's operational costs. CAL. GOV'T CODE § 77003 (amended by Chapter 754).

Domestic Relations; custody of children

Civil Code §§ 4600, 4600.1, 4608 (amended).
AB 2700 (Roybal-Allard); 1990 STAT. Ch. 610

Under existing law, child custody is awarded according to the child's best interests¹ with an emphasis on continuing contact with both parents.² The court, in determining the best interests of the child, must consider the health and welfare of the child, any history of child abuse,³ and any other relevant factors.⁴ Chapter 610 requires the court to consider the abuse of one parent against the other⁵ as an additional factor when determining the best interest of the child.⁶

Under existing law, the courts must not grant or modify a custody order on an ex parte basis without some evidence of "immediate harm to the child."⁷ Chapter 610 includes any recent and continuing acts of domestic violence⁸ in the definition of "immediate harm to the child."⁹

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1. See *Burchard v Garay*, 42 Cal. 3d 531, 539-540, 724 P. 2d 486, 491, 229 Cal. Rptr. 800, 805-806 (1986) (determining the best interests of the child by evaluating the true emotional bonds between the parent and child focussing on attention, nurturing, and care and not the economic position of the parent).

2. CAL. CIV. CODE § 4600 (amended by Chapter 610).

3. See CAL. PENAL CODE § 11165.6 (West Supp. 1990) (definition of child abuse).

4. CAL. CIV. CODE § 4608 (amended by Chapter 610).

5. See CAL. CIV. PROC. CODE § 542(a) (West Supp. 1990) (definition of general abuse).

6. CAL. CIV. CODE § 4608(b) (amended by Chapter 610). See generally *Crites, What Therapists See That Judges May Miss*, JUDGES J., Spring, 1988, at 8. (spouse abuse does not usually come from the relationship of the parents but from the abuser's emotional problems; consequently, the abuser may be an inadequate role model).

7. CAL. CIV. CODE § 4600.1(e) (amended by Chapter 610).

8. See CAL. CIV. PROC. CODE § 542(b) (West Supp. 1990) (definition of domestic violence).

9. CAL. CIV. CODE § 4600.1 (amended by Chapter 610).

Domestic Relations; false allegations of child abuse--sanctions

Civil Code § 4611 (new).

AB 3546 (Waters); 1990 STAT. Ch. 297

Existing law requires a court to consider any history of child abuse¹ when determining the child's best interest in custody and visitation disputes.² Chapter 297 allows a court to impose reasonable money sanctions, and any attorney's fees incurred in recovering the sanction, against any person who knowingly makes a false accusation of child abuse or child neglect in a child custody proceeding.³ Chapter 297 thus creates an exception to existing law,

1. See CAL. PENAL CODE § 11165.6 (West Supp. 1990) (definition of child abuse).

2. CAL. CIV. CODE § 4608(b) (West Supp. 1990). Before considering allegations of child abuse, a court may require substantial independent corroboration. *Id.* Additionally, under existing law, a parent convicted of willful cruelty or unjustifiable punishment of a child, corporal punishment or injury of a child, or molesting a child under the age of 18 will not be granted custody or unsupervised visitation unless there is no significant risk to the child. *Id.* § 4610. See CAL. PENAL CODE §§ 273(a) (West 1988) (crime of willful cruelty or unjustifiable punishment of a child); 273(d) (crime of corporal punishment or injury of a child); 647.6 (West Supp. 1990) (crime of molesting or annoying a child under 18)). See also *In re Marriage of Lewin*, 186 Cal. App. 3d 1482, 1490, 231 Cal. Rptr. 433, 437 (1986) (wife's conduct, including wrongfully causing child abuse authorities to investigate husband, supported finding that best interests of child was served by a custody award to father); *Tushinsky v. Arnold*, 195 Cal. App. 666, 669-70, 241 Cal. Rptr. 103, 104-05 (1987) (discussing earlier malicious prosecution action in which the husband obtained a \$6.1 million judgment because of wife's false allegations of child sexual molestation during divorce proceedings).

3. CAL. CIV. CODE § 4611 (enacted by Chapter 297). Cf. *Grein v. Grein*, 364 N.W.2d 383, 386 (Minn. 1985) (mother's unfounded allegation of child and spousal abuse resulted in an interference with the father's custody rights); TEX. FAM. CODE ANN. § 34.031 (Vernon Supp. 1990) (a person who makes a report alleging child abuse in a suit affecting the parent-child relationship, knowing the report is without factual foundation, makes a knowingly false report); TENN. CODE ANN. § 37-1-413 (Supp. 1990) (a person knowingly and maliciously reports a false accusation of child sexual abuse commits a felony). See generally Thoennes & Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT: THE INT'L J. 151 (1990); ASSOCIATION OF FAMILY AND CONCILIATION COURTS, THE SEXUAL ABUSE ALLEGATIONS PROJECT, FINAL REPORT (1988); Meyers, *Allegations of Child Sexual Abuse in Custody and Visitation Litigation: Recommendations for Improved Fact Finding and Child Protection*, 28 J. FAM. L. 1 (1990).

under which any communication in a judicial or quasi-judicial proceeding is privileged for all torts except malicious prosecution.⁴

JSB

Domestic Relations; family law--mediation

Civil Code § 4607 (amended).

SB 1897 (Lockyer); 1990 STAT. Ch. 348

Under existing law, when the custody or visitation of a child¹ is in dispute, the goal of mediation² is to develop an agreement which assures the child's close and continuous contact with both parents.³ Chapter 348 provides that the overriding goal of mediation is to reach a settlement that serves the best interests of the child.⁴ Consistent with this goal, Chapter 348 requires the mediator to consider the child's best interests when attempting to resolve custody or visitation issues.⁵ Chapter 348 further mandates

4. CAL. CIV. CODE § 47(2) (West 1982). *See* *Silberg v. Anderson*, 50 Cal. 3d 205, 212, 786 P.2d 365, 368, 266 Cal. Rptr. 638, 641 (1990) *modified*, 50 Cal. 3d 343(a) (1990) (judicial communications are privileged). The judicial privilege is absolute. *Id.* at 215, 786 P.2d at 370, 266 Cal. Rptr. at 643. In most cases, the judicial privilege applies to any communication: (1) In a judicial or quasi-judicial proceeding; (2) communicated by litigants or other participants authorized by law; (3) that achieves the objects of the litigation; and, (4) that has some connection or logical relation to the action. *Id.* at 212, 786 P.2d at 369, 266 Cal. Rptr. at 641. *See* *Ribas v. Clark*, 38 Cal. 3d 355, 364, 696 P.2d 637, 643, 212 Cal. Rptr. 143, 149 (1985) (privilege applies to virtually all causes of action except malicious prosecution).

1. *See* CAL. PENAL CODE § 11165 (West Supp. 1990) (definition of child).

2. *See* CAL. GOV'T CODE § 3513(d) (West Supp. 1990) (definition of mediation).

3. *See* CAL. CIV. CODE § 4607(a) (amended by Chapter 348) (setting forth the purposes of mediation).

4. *Id.* § 4607(a) (amended by Chapter 348).

5. *Id.* *See id.* § 4607(e) (amended by Chapter 348) (if consistent with local court rules, the mediator is authorized to provide a recommendation to the court concerning the custody or visitation issue). *See generally In re Marriage of Rossen*, 178 Cal. App. 3d 1094, 1104, 224 Cal. Rptr. 250, 257 (1986) (absent a written local rule, it was error for the court to allow the mediator to testify and make recommendations).

that the court develop local rules to respond to any mediation problems or requests for a change of mediators.⁶

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6. *Id.* § 4607(g) (amended by Chapter 348).