

AMENDMENT TO RESOLUTION 01-13-05

TEXT OF RESOLUTION

RESOLVED, the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Family Code Sections 3150.5 and 3150.2 to read as follows:

- 1 §3150.5
- 2 (a) A parent or a party to a proceeding under Division 8 of the Family Code (Custody of
- 3 Children) may request the appointing Court to terminate the appointment of a particular private
- 4 counsel (previously appointed to represent the minor child(ren) in the case/matter) or resolve any
- 5 complaint by a parent or party regarding the actions of the appointed attorney.
- 6 (b) Such a request shall be by noticed motion to the appointing family law court. The motion
- 7 shall include a declaration under penalty of perjury by the moving party stating the basis and/or
- 8 reasons for the request. The motion shall be filed and served in the same manner and time limits as
- 9 any other family law motion.
- 10 (c) Such a motion shall be the only remedy at law to adjudicate any grievance or complaint
- 11 by a parent or party to the proceeding regarding the actions of minor's counsel.
- 12 (d) Private counsel appointed by the Court pursuant to §3150.2 and meeting the
- 13 requirements set forth therein and not retained by one party to advocate for the child, shall be
- 14 entitled to quasi-judicial immunity for any communications and/or conduct during the course of
- 15 counsel's duties as counsel for the minor child(ren) from date of appointment until the order relieving
- 16 counsel from said appointment. Quasi-judicial immunity provided herein is the same as that
- 17 currently provided to Court appointed mediators, investigators and evaluators by case law.
- 18
- 19 §3150.2
- 20 (a) In order to ensure a high quality of expertise for appointed private counsel for minors,
- 21 each court and/or county shall, within one year of this statute's enactment, create a Minor's Counsel
- 22 panel of attorneys meeting the minimum standards/qualifications set forth below, for appointment in
- 23 cases proceeding under Division 8 of the County Code requiring minor's counsel.
- 24 (b) Court-approved Minor's Counsel must provide verification of :
- 25 (1) licensure as an attorney for at least five (5) years during which time period at least 50
- 26 percent of the attorney's practice was devoted to family law with substantial emphasis in custody
- 27 cases;
- 28 (2) a minimum of eight (8) hours of training, accredited for MCLE and offered by the Judicial
- 29 Council, State Bar, local Bar associations, the Court or other groups in subjects specifically relating
- 30 to the representation of children;
- 31 (3) professional liability insurance.
- 32 (c) Each Court, subject to the exceptions below in (e) shall maintain a list of attorneys
- 33 certified/qualified per the above requirements (Family Code § 3150.2(b)). The qualified attorneys
- 34 shall provide proof and/or verification of their meeting the qualification requirements to the Court and
- 35 annually certify to the Court the following:
- 36 (1) current license in good standing and proof of liability insurance;
- 37 (2) completion of eight (8) hours per year of accredited continuing education in the area of
- 38 custody and representing children.
- 39 (d) Each attorney appointed to represent minors shall notify the Court within five (5) days of
- 40 any public or private disciplinary proceeding by the State Bar, stating the basis of the complaint,
- 41 result, notice of any reproof, probation and/or suspension.
- 42 (e) A Court may appoint an attorney not on the court-approved Minor's Counsel list/panel in
- 43 special circumstances, taking into consideration factors such as language, culture, special needs of
- 44 children, other specialized training of the attorney, etc., unless appointment from outside the
- 45 panel/list is otherwise prohibited by local Rule of Court.
- 46 (1) In counties where the attorney population and/or expertise does not make such a panel
- 47 possible, each county and/or court is encouraged to form a partnership and/or regional panel of
- 48 qualified attorneys willing to be appointed in the courts/counties participating in such a regional
- 49 endeavor.

RESOLUTION 01-13-05

DIGEST

Family Law: Qualifications and Immunity for Minor's Counsel

Adds Family Code sections 3150.5 and 3150.2 to provide for minimum standards and quasi-judicial immunity for minor's counsel.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Family Code sections 3150.5 and 3150.2 to provide for minimum standards and quasi-judicial immunity for minor's counsel. This resolution should be disapproved because granting immunity to minor's counsel would be unjustified and overreaching.

The main objective of this resolution is the improvement of representation for minors in family law matters. That is, of course, a goal of paramount importance. The creation of minimum standards of competence for minor's counsel would address that need. However, the resolution goes too far in granting immunity to private attorneys.

Unlike the examples of mediators and evaluators given by the proponent, minor's counsel are not appointed by the court as neutral adjudicators, but as advocates for an interested party. Aside from criminal prosecutors, there is no precedent for granting near-total immunity to private advocates. Parents who were genuinely injured by the unjustifiable actions of minor's counsel would be left without redress if such immunity were created. Inclusion of training is good, public policy goes too far. This result of this resolution is too drastic.

The proponent's suggestion of minimum standards of competency should be adopted. However, minor's counsel should not enjoy blanket immunity upon their actions. Although competent private attorneys should be encouraged to serve as minor's counsel, that objective should be accomplished through the standards suggested by the proponent, not by the grant of immunity.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION RECOMMENDATION

APPROVE IN PRINCIPLE

This resolution seeks to amend Family Code Sections 3150.5 and 3150.2 to provide for minimum qualifications for family law minor's counsel as well as statutorily creating quasi-judicial immunity for the attorneys who serve in this capacity. The proponent is the Sacramento County Bar Association.

The Committee recommends Approval of this resolution by a vote of fifteen Ayes and no Noes.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

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- 15 order relieving counsel from said appointment. Quasi-judicial immunity provided herein is the same
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- 47 qualified attorneys willing to be appointed in the courts/counties participating in such a regional
- 48 endeavor.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing Law: There are currently no provisions for qualifications of Minor's Counsel in Family Law or quasi-judicial immunity for family law minor's counsel.

This Resolution: Would introduce a new section to the Family Code setting forth minimum qualifications for family law minor's counsel as well as statutorily creating quasi-judicial immunity for family law minor's counsel.

The Problem: Minor's Counsel serve a valuable purpose for the Court, parents and children in Family Law cases. However, concerns expressed about the Minor's Counsel role can be addressed by statutorily creating a minimum criteria/qualifications for appointment of Minor's Counsel in family law cases.

The most significant deterrent to qualified attorneys accepting appointment as Minor's counsel is the growing number of parents who are bringing suits against Minor's Counsel in State and Federal Courts, more often than not primarily - if not solely - because they do not agree with Minor's Counsel's conduct on behalf of the child(ren) involved. These suits are seldom, if ever, well founded or determined to be meritorious but are exceedingly time-consuming and expensive to try and defend for attorneys. This is especially true since Minor's Counsel usually are serving for minimum hourly rates set by the County or pro bono.

Given the service Minor's Counsel provides to the Court and families as neutral third parties appointed by the Court, their value and efforts can be analogized to that of court appointed evaluators and mediators, who have quasi-judicial immunity conferred on them by case law. (See *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 853-854.) It is vital to address this issue for Minor's Counsel to stop the loss of qualified attorneys in this role.

IMPACT STATEMENT

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

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RESPONSIBLE FLOOR DELEGATE: Diane E. Wasznicky

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The resolution is unacceptable to the extent it provides absolute immunity for minor's counsel. Minor's counsel is acting as counsel for the child and if the attorney does not provide adequate representation for the child, the attorney should not be immune from malpractice liability. The litigation privilege under Civil Code §47 already protects concerns minor's counsel from lawsuits by other parties.