



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 4, 2019

Hon. Hannah-Beth Jackson, Chair
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: Senate Bill 435 (Moorlach), as introduced – Oppose
Hearing: Senate Judiciary Committee – April 23, 2019

Dear Senator Jackson:

The Judicial Council must regretfully oppose Senate Bill 435, which seeks to address the admissibility of hearsay in family law cases and directs the Judicial Council to promulgate standards and develop training.

The bill adds Family Code section 2670 which would allow a party in a proceeding for dissolution of marriage or for legal separation to rely on hearsay evidence in establishing the character and value of separate and community property in certain circumstances. It also amends Family Code section 3117 to permit hearsay in reports by Child Custody Recommending Counselors (CCRCs) if the hearsay statement is relied upon by an expert in forming the expert's opinion and the hearsay statement is of the type routinely relied upon by the expert, and the statement has been evaluated by the expert and determined to be trustworthy. Under the bill, the report and any hearsay evidence contained in the report, would be admissible in court and constitute competent evidence if the report is provided to the court and to all parties or their counsel at least 10 days prior to the custody hearing. Additionally, the bill would require the Judicial Council to, among other requirements, draft standards for recommendations made by private child custody recommending counsel (CCRC) professionals who make recommendations relating to child custody and visitation rights.

Hon. Hannah-Beth Jackson

April 4, 2019

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The Judicial Council opposes SB 435 because it creates a significant exception to *People v. Sanchez* (2016) 63 Cal. 4th 665 that would set Family Law apart from other case types in terms of evidentiary standards for hearsay without a compelling rationale for doing so. *Sanchez* stands for the proposition that experts are still entitled to rely on hearsay as background in establishing and applying their expertise but use of case-specific facts for the actual opinion turns on admissibility. The council is concerned that SB 435 seeks to upend this notion by requiring a judicial officer to admit case-specific facts as admissible hearsay if they are contained within a report that was prepared pursuant to council-promulgated guidelines. And then the bill requires the council to promulgate rules that presume the admissibility of this case-specific information, specifically in child custody matters.

From the perspective of the council, SB 435 is a circular attempt to allow hearsay from reports of CCRCs by requiring the Judicial Council to adopt standards that would declare a presumption in favor of admitting the hearsay contained in such reports if the reports are consistent with the rules promulgated by the Judicial Council. Because of the potential bias of the recommendations in a report paid for by one party to the child custody dispute. SB 435 could be seen to be an end-run around evidentiary standards and a method for removing a judicial officer's discretion to enforce hearsay provisions and require the party and the preparer of the report to prove up the information contained within the report for the benefit of the child and the parties.

For these reasons, the Judicial Council opposes SB 435.

Should you have any questions or require additional information, please contact Andi Liebenbaum at 916-323-3121.

Sincerely,

Mailed April 10, 2019

Cory T. Jasperson
Director, Governmental Affairs

AL/yc-s

cc: Members, Senate Judiciary Committee
Hon. John Moorlach, Member of the Senate
Ms. Michele Brown, Association of Certified Family Law Specialists
Mr. Josh Tosney, Counsel, Senate Judiciary Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy
Mr. Anthony Williams, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 4, 2019

Hon. John Moorlach
Member of the Senate
State Capitol, Room 2048
Sacramento, California 95814

Subject: Senate Bill 435 (Moorlach), as introduced – Oppose
Hearing: Senate Judiciary Committee – April 23, 2019

Dear Senator Moorlach:

The Judicial Council must regretfully oppose Senate Bill 435, which seeks to address the admissibility of hearsay in family law cases and directs the Judicial Council to promulgate standards and develop training.

The bill adds Family Code section 2670 which would allow a party in a proceeding for dissolution of marriage or for legal separation to rely on hearsay evidence in establishing the character and value of separate and community property in certain circumstances. It also amends Family Code section 3117 to permit hearsay in reports by Child Custody Recommending Counselors (CCRCs) if the hearsay statement is relied upon by an expert in forming the expert's opinion and the hearsay statement is of the type routinely relied upon by the expert, and the statement has been evaluated by the expert and determined to be trustworthy. Under the bill, the report and any hearsay evidence contained in the report, would be admissible in court and constitute competent evidence if the report is provided to the court and to all parties or their counsel at least 10 days prior to the custody hearing. Additionally, the bill would require the Judicial Council to, among other requirements, draft standards for recommendations made by private child custody recommending counsel (CCRC) professionals who make recommendations relating to child custody and visitation rights.

Hon. John Moorlach

April 4, 2019

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From the perspective of the council, SB 435 is a circular attempt to allow hearsay from reports of CCRCs by requiring the Judicial Council to adopt standards that would declare a presumption in favor of admitting the hearsay contained in such reports if the reports are consistent with the rules promulgated by the Judicial Council. Because of the potential bias of the recommendations in a report paid for by one party to the child custody dispute. SB 435 could be seen to be an end-run around evidentiary standards, a method for removing a judicial officer's discretion to enforce hearsay provisions and require the party and the preparer of the report to prove up the information contained within the report for the benefit of the child and the parties.

For these reasons, the Judicial Council opposes SB 435.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Mailed on April 9, 2019

Andi Liebenbaum

Attorney

AL/yc-s

cc: Ms. Michele Brown, Association of Certified Family Law Specialists
Mr. Anthony Williams, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California