



# SCMA

Southern California Mediation Association

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Date April 29, 2010

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Assemblyman James T. Beall, Jr.  
24<sup>th</sup> Assembly District  
100 Paseo De San Antonio Walk, Ste. 300  
San Jose, CA 95113-1402

Re: AB 2475 As Amended on April 22, 2010

Dear Assembly Member Beall:

On behalf of the Southern California Mediation Association ("SCMA"), I wish to thank you for being responsive to the many comments made to AB 2475 by amending it once again on April 22, 2010 so that the abolition of quasi-judicial immunity applies only "to an action or proceeding under the Family Code."

As noted in my April 22, 2010 letter to you, it is our understanding that AB 2475 is directed to the situation in which an evaluator (who is not a mediator) is submitting recommendations and findings to a court which frequently adopts them without any changes. However, AB 2475 with this latest amendment, seemingly still applies to mediators and other alternative dispute resolution professionals who are bound by mediation confidentiality (Foxgate Homeowner's Association v. Bramalea California, Inc. (2001) 26 Cal 4<sup>th</sup>, 1, 14, and California *Evidence Code* Sections 115 et. seq.) and thus who can not and will not be submitting any recommendations or findings to the court. As such, these individuals – whether privately hired or court appointed - should not be excluded from the protection of quasi-judicial immunity. To this extent, we believe AB 2475 still sweeps too broadly for the same reasons outlined in my previous letter to you. Again, in Los Angeles County Superior Court for the period of July 1, 2008 to June 30, 2009, there were 348 family law cases referred to mediation. Of these, 307 cases were opened of which 114 cases were resolved – a 66% resolution rate.

**SCMA Administration**

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More importantly, and as implied by the above statistics, the vast majority of family law disputes are handled privately by alternative dispute resolution professionals who will conduct several, if not many, mediation sessions with the parties to assist them in resolving the issues and reaching an agreement. These private family law mediators operating under mediation confidentiality never make any report to the court. Yet, AB 2475, as amended, seemingly abolishes quasi-judicial immunity for these private alternative dispute resolution professionals. Given the budget deficit in the courts, these individuals are needed more than ever by the family law courts. This bill, as amended, will cause these mediators to hesitate in indirectly assisting the courts with its burgeoning backlog by taking on private matters.

Finally, we believe that Section (b) as written is confusing as it appears to state a double negative such that it is not clear who does and does not have quasi-judicial immunity. Does a "private person appointed by the courts. . ." have or not have this quasi-judicial immunity? Does a "person involved in alternative methods of dispute resolution. . .who functions apart from the court pursuant to a private agreement. . ." have or not have this quasi-judicial immunity?

In sum, we respectfully request that all references to "mediators" and "mediation" be deleted from this draft legislation. As stated in my previous letter, SCMA has no objection to AB 2475 to the extent it addresses "evaluators" and others who are not bound by mediation confidentiality. To the extent it does include those bound by mediation confidentiality, we, again, request that the legislation be further narrowed and amended to address the very precise situation to which we believe it is meant to address: non-mediator family law evaluators who are providing substantive recommendations to the court.

Thank you for your continued consideration of our comments.

Very truly yours



Phyllis G. Pollack  
President