

ACFLS

ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS

EXECUTIVE DIRECTOR
DEANNA ROLEWICZ

PRESIDENT
JILL L. BARR

VICE-PRESIDENT
SETH D. KRAMER

TREASURER
KAREN C. FREITAS

SECRETARY
JOHN D. HODSON

IMMEDIATE PAST-PRESIDENT
LYNETTE BERG ROBE

JOURNAL EDITOR
DEBRA S. FRANK

ASSOCIATE JOURNAL EDITOR
CHRISTINE GILLE

LEGISLATIVE DIRECTOR
DIANNE FETZER

ASSOCIATE LEGISLATIVE DIRECTOR
MICHELE BROWN

TECHNOLOGY DIRECTOR
DAVID M. LEDERMAN

ASSOCIATE TECHNOLOGY DIRECTOR
AVI LEVY

EDUCATION DIRECTOR
SHERRY PETERSON

MEMBERSHIP AND BENEFITS DIRECTOR
JASON M. SCHWARTZ

OUTREACH DIRECTOR
FREDRICK S. (RICK) COHEN

CHAPTER DIRECTOR (1)
ANNE DAVIES

ASSOCIATE CHAPTER DIRECTOR (1)
KIMBERLY CAMPBELL

CHAPTER DIRECTOR (2)
STEPHANIE L. WILLIAMS

ASSOCIATE CHAPTER DIRECTOR (2)
MARY MOLINARO

CHAPTER DIRECTOR (3)
DORIE A. ROGERS

ASSOCIATE CHAPTER DIRECTOR (3)
CATHERINE GOODROW

REGIONAL DIRECTOR
PATRICIA A. RIGDON

COORDINATING DIRECTOR (1)
JOSEPH J. BELL

COORDINATING DIRECTOR (2)
STERLING E. MYERS

COORDINATING DIRECTOR (3)
DIANE WASZNICKY

ADMINISTRATIVE ASSISTANT
RACHELLE SANTIAGO

REPLY TO:

July 5, 2016

Hon. Jim Humes, Presiding Justice
Hon. Sandra L. Margulies, Associate Justice
Hon. Robert L. Dondero, Associate Justice
California Court of Appeal
First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102
(via electronic transmission)

Re: Request for Publication
Anne H. v. Michael B.
Case Number A146610
Superior Court San Mateo County No. 120660

Dear Presiding Justice Humes and Associate Justices Margulies and Dondero:

The Association of Certified Family Law Specialists requests publication of the recent decision in *Anne H. v. Michael B.* (A146610) under California Rules of Court, rule 8.1120. The decision would contribute materially to the body of law concerning the degree to which a trial court's comments regarding potential changed circumstances in a custody proceeding control a later court's consideration of the request. This case specifically finds that a trial court's comments regarding potential changed circumstances are not binding in any manner on the next judicial officer who hears the case if the trial court's comments were unnecessary to the trial court's position and were not actually litigated and decided. They are not the law of the case and have no preclusive effect under the doctrines of res judicata or collateral estoppel. The trial court's prediction of the future impact of events on the child is speculation and is not to be regarded as authority. See *Marriage of Rabkin* (1986) 179 Cal.App.3d 1071. As the appellate court indicated on page 12, "the issue of changed circumstances necessarily must be considered in light of all circumstances prevailing at the time of a request to modify the order." Similarly, the appellate court states on page 13, "it would be inadvisable to permit a family court judge to render a binding ruling with respect to changed circumstances prior to their occurrence."



California Court of Appeal
First Appellate District, Division One
July 5, 2016
Page 2

This case further involves legal issues of continuing public interest as it sets forth the bases for imposition of sanctions pursuant to Family Code section 271 and the burden of proof on a party challenging the imposition of sanctions. A party seeking sanctions need not demonstrate that the opposing party's conduct was frivolous or taken for the purpose of delay, nor demonstrate actual injury, or a correlation between sanctioned conduct and specific attorney fees. The only stricture is that the sanction may not impose an unreasonable financial burden on the party. Such awards are reviewed under the abuse of discretion standard and will only be overturned if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the award. In this case the sanction was upheld, despite mother's arguments, as mother had not sustained her burden of proof that the sanction imposed an unreasonable financial burden on her. The court, at page 17 of the opinion, states "If Mother wished to challenge her ability to pay the sanction, she could have submitted her own current income and expense declaration (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205 at p. 1227), but she did not do so."

The Association of Certified Family Law Specialists (ACFLS) is a nonprofit, statewide bar association with approximately 632 members certified by the State Bar of California, Board of Legal Specialization, as family law specialists. Since its founding at the inception of the certification of family law specialists by the State Bar, ACFLS has played an active public policy role when the Appellate Courts, Legislature and Judicial Council consider matters of significance to family courts, family court populations or the family law bar. ACFLS has appeared as amicus in many family law appellate cases, including cases where the organization's participation was invited by the appellate court.

ACFLS has an active amicus committee that reviews cases and makes recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or de-publication of opinions, letters supporting or opposing California Supreme Court review, and amicus briefs. ACFLS has successfully sought publication of important unpublished family law cases, including *In re Marriage of Metzger* (2014) 224 Cal.App.4th 1441, *In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, *Altafulla v. Ervin* (2015) 238 Cal.App.4th 571, *In re Marriage of Honer* (2015) 236 Cal.App.4th 687, *In re Marriage of Siegel* (2015) 239 Cal.App.4th 94, and *In re Marriage of Brandes* (2015) 239 Cal.App.4th 1461. ACFLS has also filed amicus briefs in several cases, including *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252 and *In re Marriage of Green* (2013) 56 Cal. 4th 1130.

ACFLS has no direct ties to or interest in the litigants in *Anne H. v. Michael B. Leslie Shear*, co-chair of the Amicus Committee, has recused herself from all consideration of this case because she represents one of the parties. ACFLS's interest is to promote the welfare of children whose lives and care are governed by orders of California Family Courts.

ACFLS requests the publication of this opinion because it: "(6) Involves legal issues of continuing public interest." (California Rules of Court, rule 8.1105(6).)

Publication of the holdings in this case will benefit families, their lawyers and family courts. Frequently trial courts comment regarding what they would consider to be changed circumstances which would require a new analysis of the custodial arrangement. This court has concluded that a statement in the custody order specifying changed circumstances which would require a reconsideration of custody arrangements is not binding on subsequent judges. This is an issue of first impression. Given the numbers of parties and counsel appearing in our family courts seeking changes of custody, it would be very helpful for trial courts, as well as attorneys and parties, to have the benefit of this opinion. Further, attorneys and parties regularly seek financial sanctions in family law proceedings. Given the substantial number of such requests, it would be helpful for trial courts, as well as attorneys and parties, to also have the benefit of this opinion.

Sincerely,



Debra S. Frank, CFLS
Member, ACFLS Amicus Committee

(See accompanying Proof of Service by Mail)

PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	FOR COURT USE ONLY
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.	
Case Name: Anne H. v. Michael B. Court of Appeal Case Number: A146610 Superior Court Case Number: 120660	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence business address is (*specify*):
1875 Century Park East, Suite 700, Los Angeles, CA 90067
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*): Letter Requesting Publication of Opinion
 - a. **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed: July 5, 2016
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name: Robert Roth; Leland, Parachini, Steinberg, Matzger & Melnick LLP; Attys Anne H.
 - (ii) Address:
199 Fremont Street- 21st Floor
San Francisco, CA 94105
 - (b) Person served:
 - (i) Name: Leslie Ellen Shear, Attorney for Respondent Michael E Bennon
 - (ii) Address:
16133 Ventura Blvd, Suite 700
Encino, CA 91436-2406
 - (c) Person served:
 - (i) Name: Alissa Kempton, Robin Ferguson & Kempton, Attys for Resp. Michael E Bennon
 - (ii) Address:
750 Menlo Avenue, Suite 320
Menlo Park, CA 94025
 - Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
 - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (*city and state*): Los Angeles, CA

APP-009, ITEM 3a

Additional Persons Served:

(D)

San Mateo County Superior Court, So. Court
400 County Center, 1st Floor,
Clerk, deliver to Dept.3, Hon.Greenwood
Redwood City, CA 94063
RE Anne H. Vs. Michael B., no. 120660
Court of Appeal Case no. A 146610
Letter Requesting Publication of Opinion

CASE NAME: Anne H. v. Michael B.

CASE NUMBER: A146610

3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/5/16

Debra S. Frank

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)