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February 29, 2012

Hon. Judith L. Haller, Judith McConnell, and James A. McIntyre  
State of California Court of Appeal,  
Fourth Appellate District, Division One  
750 B Street, Suite 300  
San Diego, CA 92101

Re: Publication request in *Tadros v. Doyne* (Case No. D057480)

Dear Justices:

The Association of Certified Family Law Specialists (ACFLS), joined by the California Psychological Association (CPA), requests publication of your recent decision in *Tadros v. Doyne* applying California's anti-SLAPP law to a civil damages action by a custody litigant against a child custody evaluator. As professional, nonprofit organizations, we have no interest in the parties, or the particulars of this individual matter. We seek publication solely because of the vital roles that the anti-SLAPP statute, the litigation privilege statute, and case law governing quasi-judicial immunity play in protecting the public and the integrity of family law courts.

ACFLS is a nonprofit, private bar association representing approximately 550 lawyers who have been certified as family law specialists by the State Bar of California, Board of Legal Specialization. ACFLS has an

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active amicus committee that works to promote access to justice, fair family law proceedings, and the development of family law in California. The Association monitors issues of interest to family law specialists, develops and promotes family law practice skills, publishes a quarterly newsletter for members and family court bench officers, and offers advanced educational programs for the family law bar and judiciary.

To further these goals, ACFLS has filed amicus briefs in cases before California appellate courts having a significant impact on the practice of family law, and the welfare of families and children served by California's family courts including *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252; *Strauss v. Horton, et al.* (2009) 46 Cal.4th 364; *Tyler v. California (The Marriage Cases)* (2008) 43 Cal.4th 757; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337; *Elisa B. v. Super. Ct. (Emily B.)* (2005) 37 Cal.4th 108; *K.M. v. E.G.* (2005) 37 Cal.4th 130; *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156; *In re Marriage of Harris* (2004) 34 Cal.4th 210; *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072; *Montenegro v. Diaz* (2001) 26 Cal.4th 249; *In re Marriage of Scheppers* (2001) 86 Cal.App.4th 646; *In re Marriage of Kelso* (1998) 67 Cal.App.4th 374 and *In re Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410. ACFLS members have appeared numerous times individually, on behalf of various organizations, and as an organization as amici curiae in California's appellate courts. California appellate courts have invited ACFLS to contribute an amicus brief on important family law issues.

ACFLS members include many of the most experienced and expert family lawyers in California. ACFLS members represent parents and children in family law proceedings, are appointed as neutral parenting coordinators in high conflict custody disputes, serve as judges pro tem in family courts, and volunteer as courthouse mediators and settlement officers. The ACFLS amicus committee and the ACFLS Executive Committee have voted unanimously to request publication of the decision in this matter.

The California Psychological Association is a 4,000 member non-profit organization responsible for carrying out the judicial, legislative, regulatory,

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educational, advocacy and public affairs activities on behalf of organized psychology in California. CPA is affiliated with the American Psychological Association, the largest professional association of psychologists in the United States. CPA works to ensure that those with mental health issues have access to high quality evaluation and treatment services. CPA is interested in this matter because of the significant impact the decision will have upon the practice of psychological evaluations and treatment in the State of California, and the well being and safety for individuals through access to psychological services in the State.

ACFLS and CPA do not take a position on the merits of the claims raised by appellant in his civil action. We request publication because this Court's decision, as binding precedent, will have a positive impact on all family law actions in California by extending the protections of the anti-SLAPP statute and the litigation privilege to civil actions filed against a court-appointed expert. The prospect of speedy disposition of civil cases, coupled with attorneys' fees awards will discourage the misuse of civil damage actions (and the threat of such actions) by disappointed family law litigants to undermine the independence of court-appointed private practice family court professionals.

The decision meets many of the criteria set forth in Calif. Rules of Court, rule Rule 8.1105(c). We have not seen another family law case applying the anti-SLAPP statute to civil actions against court-appointed neutrals. It has been many years since we have seen a published decision involving family court neutrals that addresses civil immunity or the litigation privilege. We have not seen a published case with this broad constellation of allegations against a court-appointed neutral.

Publication of this decision will educate the bench and bar that California law affords court-appointed neutrals the protections of civil immunity and the litigation privilege. Some California family courts have refused to incorporate language addressing immunity and the litigation privilege in stipulations and orders appointing neutrals – thereby creating uncertainty in the minds of both the parties and the appointees.

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California's family law courts rely heavily on private professionals acting as neutral, quasi-judicial dispute resolution professionals, minors' counsel, mediators, settlement officers, private judges, referees, parenting coordinators (child custody special masters) or expert witnesses on issues including business valuation, real property valuation, vocational assessment, forensic accounting, and child custody. Without civil immunity and the protection of the litigation privilege, few private practice professionals would be willing to serve in these high-conflict proceedings. California's court-funding crisis and the unmet need for hundreds of additional family and juvenile court judges make expanded use court-appointed neutrals essential to the continued functioning of our family courts. (See Administrative Office of the Courts (2012) *Special Assessment of the Need for New Judgeships in Family and Juvenile Law: Report to the Legislature as Required by Government Code Section 69614* posted at <http://www.courts.ca.gov/documents/AB-2763-Report.pdf>)

Service as a court-appointed neutral in child custody proceedings is a particularly high-risk form of practice,

Forensic mental health professionals (FMHPs) who specialize in domestic legal issues continue to be in high demand in the arena of assisting family courts with resolution of legal-psychological questions. Unfortunately, it is now well established that professional activity in this area is the most stressful and risk-laden venue in forensic psychology [Citations]

Bow and Quinnell (2001) surveyed 198 psychologists who perform child custody evaluations. They found that 35% of this national sample had encountered at least one licensure board complaint and 10% had been sued for malpractice. Malpractice statistics from the American Psychological Association (APA) Insurance Trust (the Trust) reveal that this compares to a less than 0.005% chance of being sued among the general practice

pool of practicing psychologists (Bennett, Bryant, VandenBos, & Greenwood, 1990).

Kirkland, et al. (2006) *Quasi-Judicial Immunity for Forensic Mental Health Professionals in Court-Appointed Roles*,  
3 *Journal of Child Custody* 1

Publication of this Court's holding that a parent's causes of action against a court-appointed (Evid. Code §730 and Fam. Code §3110 et seq.) child-custody evaluator "are subject to the anti-SLAPP statute because each claim arises, at least in part, from ... statements made in connection with an issue under consideration by a judicial body (the family court). (§ 425.16(e)(2).)" will provide better protection to families, witnesses and professional neutrals in family courts.

As this court notes in the opinion here, California's appellate courts have also extended the litigation privilege to collateral witnesses in child custody disputes, thereby making it less likely that members of the public will refuse to share information with child custody evaluators and family courts out of fear of legal retaliation. (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948) Publication of this opinion will establish the availability of the anti-SLAPP statutes to protect collateral witnesses, who are unlikely to have malpractice-carrier-funded defense teams, and thus are most vulnerable to threats, intimidation and witness-tampering.

Family law litigants have an important interest in the appointment of neutrals who are free from intimidation and who can accept appointments at reasonable cost. If some litigants are free to sue the neutrals, the majority of the other litigants in complex cases will suffer. Kirkland, et al., *supra*, at p. 4, observe,

The central thrust of immunity doctrines is not protection of the individual practitioner, but of the integrity of the judicial process and the court's needs in addressing certain legal questions ... what quasi-judicial immunity is designed to prevent, is the manipulative and inappropriate use of board

complaints and civil lawsuits where the goal is to subvert and prevent the intent of the court in obtaining thorough and objective opinions.

By affirming expeditious dismissal of a case against family court-appointed neutrals, and an award of substantial attorneys' fees and costs payable by plaintiffs under the anti-SLAPP statute in a published opinion, this Court can deter the filing of frivolous actions, or actions intended to intimidate family law neutrals - thereby protecting the public interest in continuation of these important adjunct services to our family court proceedings.

Without these protections, private practitioners are more likely to decline appointments in the cases where they are most needed, or increase their rates to build in the cost of legal defense in the event that an unhappy family law litigant brings a civil action. Because parties to high-conflict family law actions are often highly litigious, concern about exposure to civil litigation deters professionals from family-court-connected work.

Existing law provides strong mechanisms for policing the work of court-appointed private practice professionals. Court appointees are subject to supervision and direction by the appointing court. "[T]he original trial court and the adversarial process itself are the proper venues for review of the work of the court-appointed professional." (Kirkland, et al., *supra*, p. 5) An appointing court can remove an appointee, give no weight to the appointee's findings and decisions, and fashion other remedies for appointee misconduct within the family law case.

While the appointing court cannot award damages, it can provide other forms of relief to a party with a valid grievance against a court-appointed neutral. An appointing court can find an appointee in contempt of a court order. Some courts maintain lists of persons eligible for court appointments. Complaints of parties in a particular case or multiple cases may lead to protection of other litigants through exclusion of an individual from the list of potential appointees. Similarly, as the facts of this case

illustrate, court-appointed neutrals remain accountable to their licensing agencies, and are subject to professional discipline for misconduct or deviation from the standards of their respective professions.

“California has led the nation in terms of relative numbers of child custody evaluation complaints between 1990-1999.” (*Id.*, at p. 18) Publication of this decision including actions against child custody evaluators in the class of cases protected by the anti-SLAPP statutes will prevent the filing of many unwarranted actions, and provide for speedy dismissal of those that are filed.

This Court’s holding regarding use of case studies at professional conferences with the names and other identifying information about the parties redacted is also extremely important. Lawyers, judges, and forensic experts routinely draw on our practice experiences when conducting professional trainings, and use our best efforts to redact information that might identify the parties. Use of these case examples while redacting the names of the individuals is a critical element of professional development ensuring that court-connected professionals have the expertise to better serve the public.

This application of the anti-SLAPP statutes, together with case law conferring immunity on quasi-judicial dispute resolution professionals, ensures that private practice professionals can accept appointment as court-appointed neutrals in family law proceedings, and exercise their independent judgment free of intimidation and fear of reprisal arising from threats of civil litigation by family law litigants. Without these protections, few will accept the appointments that are essential for the functioning of our family courts – particularly under the budget constraints that create major challenges for those courts.

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For these reasons, the Association of Certified Family Law Specialists and the California Psychological Association have come together to request publication of your opinion in this matter.

Respectfully Submitted,

Leslie Ellen Shear, CFLS\*, CALS\*, IAML\*\*  
Co-Chair, ACFLS Amicus Committee  
State Bar No. 72623

A handwritten signature in black ink that reads "Craig R. Lareau, J.D., Ph.D., ABPP". The signature is written in a cursive, flowing style.

Craig R. Lareau, J.D., Ph.D., ABPP  
President - California Psychological Association  
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