

Resolution 05-16-2009

Paternity Records: Confidentiality

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code Section 7643 to read as follows:

1 §7643

2 (a) Notwithstanding any other law concerning public hearings and records, a hearing
3 or trial held under this part may be held in closed court without admittance of any person
4 other than those necessary to the action or proceeding. ~~Except as provided in subdivision (b),~~
5 ~~all papers and records, other than the final judgment, pertaining to the action or proceeding,~~
6 ~~whether part of the permanent record of the court or of a file in a public agency or elsewhere,~~
7 ~~are subject to inspection only in exceptional cases upon an order of the court for good cause~~
8 ~~shown.~~

9 (b) ~~Papers and records pertaining to the action or proceeding that are part of the~~
10 ~~permanent record of the court are subject to inspection by the parties to the action, their~~
11 ~~attorneys, and by agents acting pursuant to written authorization from the parties to the action~~
12 ~~or their attorneys. An attorney shall obtain the consent of the party to the action prior to~~
13 ~~authorizing an agent to inspect the permanent record. An attorney shall also state on the~~
14 ~~written authorization that he or she has obtained the consent of the party to authorize an agent~~
15 ~~to inspect the permanent record.~~

(Proposed new language underlines; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

Existing Law: Requires the court to maintain confidentiality of all paternity records (excepting the final judgment.) The public policy of maintaining privacy of records to avoid censure and stigma for unwed parents is no longer compelling. To the contrary, out of wedlock births have largely become normalized both in popular culture and in the regular lives of Californians. Parents, attorneys, service providers and other stake holders would benefit from the increased access to these records.

This Resolution: Would revoke confidentiality of public paternity records as referenced in the Family Code.

The Problem: Attorneys who represent paternity clients must personally travel to court to obtain records, as these records are not publically available. Attorneys and litigants who wish to review the status of their cases online may not do so, increasing uncertainty over the status of upcoming court hearings. Counties which issue tentative rulings do not do so in paternity cases, due to the confidentiality rules. This impacts clients and their attorneys as there is often no reason to appear

at court in the absence of objection to paternity. As paternity cases often involve clients with decreased financial resources, all of the above impacts further burden this population.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Dana L. Santos, 3160 Crow Canyon Place, Ste 205, San Ramon, CA, 94583, (925) 901-0592, danasantos@comcast.net.

RESPONSIBLE FLOOR DELEGATE: Dana L. Santos