

*Bergeron v. Boyd*

Attention: Please, please, read carefully any Stipulations or Court Orders appointing child custody evaluators. Make certain you are aware of the powers granted and that there exists full compliance with California Rules of Court, Rule 5.220. In *Bergeron*, it is unfathomable that (1) Mom did not object to the authority of the custody evaluator to issue interim custody orders, and (2) that she did not seek to set aside the evaluator's interim custody orders in the 13 months during which the evaluator was supervising the Court's underlying custody order, despite there being eight separate hearings in the family law court, at any one of which the issue could have been raised.

The *Bergeron* case prompts practice tips in other areas as well. For example, when reviewing mediation agreements (never standardized), family law practitioners should be aware of issues often not raised, *e.g.*, when does the mediation commence, what is the status of documents prepared for the mediation under *Evidence Code* Section 1119(b), can you draft enforceable exceptions to the strict public policy of mediation confidentiality (such as fraud or alleged breach of fiduciary duty)? In Collaborative Law stipulations and agreements, in the event counsel is forced to withdraw if the collaborative process fails, what is the status of the forensic accountants and their work papers, schedules, and reports? Conscientious and well-informed practitioners will realize that orders for custody evaluators, *Evidence Code* Section 730 appointment of expert witnesses, agreements to submit to mediation or collaborative law, are not standardized and deserve not only careful review, but careful drafting as to important and material provisions.

Awareness of inherent pitfalls and raising of timely objections could have saved the disastrous scenario in *Bergeron*. The later independent action against the psychologist and family court child custody evaluator foundered and failed upon the doctrine of absolute quasi-judicial immunity. Lesson learned. Please don't assume anything, and be diligent about timely objections and careful drafting.

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