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March 17, 2022

The Honorable Jordan Cunningham  
Member of the Assembly, 35<sup>th</sup> Assembly District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0068

Re: AB 2391 (Cunningham)  
Position: Support if amended

Dear Assemblymember Cunningham,

On behalf of the California Association of Certified Family Law Specialists, a non-profit organization with 661 members who are certified family law specialists by the State Bar of California, Board of Legal Specialization, I write to support Assembly Bill 2391 if amended.

AB 2391 has the laudable goal of protecting victims of domestic violence from their perpetrators. Such perpetrators can utilize the legal system to pursue meritless litigation to harass, intimidate, or maintain contact with their victim. AB 2391 seeks to limit the ability of perpetrators to engage in such improper litigation, and ACFLS supports the bill in this respect. However, ACFLS is concerned that the bill, as drafted, overly includes litigation that occurred prior to the issuance of a restraining order.

As AB 2391 is currently drafted, immediately after a restraining order is issued, a victim could request the perpetrator be declared a vexatious litigant based on litigation that occurred before the restraining order was issued (which, conceivably, could include the perpetrator's objection to the restraining order). In family law proceedings, it is not uncommon for there to be litigation between parties prior to issuance of a restraining order; e.g., litigation regarding child custody, child support, spousal support, property control, and/or payment of debts. If the trial court were requested to retrospectively evaluate prior litigation in family law cases, such request could place a substantial burden on the court and

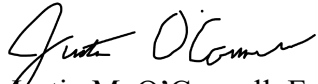
would require that the perpetrator justify instances of filing, initiation, advancement, or continuation of prior litigation which might go back for years. The goal of AB 2391 is to prevent prospective, improper litigation by a perpetrator. When considering the circumstances of family law litigation, that goal can be accomplished by evaluating the prospective litigation as it arises after issuance of the restraining order.

ACFLS suggests that AB 2391 be amended so that the new, proposed Code of Civil Procedure section 391.5, subdivision (a) read as follows (proposed additional language in bold):

The person who is the subject of the order filed, initiated, advanced, or continued litigation on one or more occasions **after issuance of the order** primarily for the purpose of harassing, intimidating, or maintaining contact with the other party if that litigation meets one of the following conditions:

Of note, if amended in this manner, the victim could still ask the trial court to consider past litigation. AB 2391 provides that, if, within the last ten years, the perpetrator was already sanctioned for improper litigation against the victim, then the trial court can declare the perpetrator a vexatious litigant. (See the proposed language in AB 2391 for the new Code of Civ. Proc., § 391.5, subd. (b).)

Respectfully submitted,



Justin M. O'Connell, Esq., CFLS  
Legislative Director, ACFLS