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REPLY TO:

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March 7, 2022

Court of Appeal of California
First Appellate District, Division Two
James A. Richman, Acting Presiding Justice
Marla J. Miller, Associate Justice
Anthony Kline (ret.), Associate Justice
350 McAllister Street
San Francisco, CA 94102

Re: Publication of *City and County of San Francisco v. Hale* (A161503)

Dear Justices:

The Association of Certified Family Law Specialists requests publication of *City and County of San Francisco v. Hale*. The Board of Directors adopted the unanimous recommendation of the amicus committee to seek publication.

The decision expressly mandates that family courts issue a statement of decision upon request when applying the Fam. Code §3044 presumption that a person who has committed domestic violence should not be awarded sole or joint custody. Unfortunately, family courts are frequently denying requests per Fam. Code §3022.3 and Code Civ. Proc. §632 in §3044 cases, and counsel often are uncertain about whether a statement of decision is required. *San Francisco v. Hale* cures that confusion. Hence publication under Cal. Rules of Court, rule 8.1105(c)(1),(2), (4),(6) and (8) will resolve the confusion and avoid the need for counsel and courts to tangle over whether a statement of decision is required.

Similarly, the very errors in awarding true joint custody without finding that the presumption has been rebutted described in this opinion recur frequently. The *San Francisco v. Hale* opinion provides a clear roadmap for family courts and the family law bar. Unfortunately, the Fourth

Court of Appeal of California
First Appellate District, Division Two
March 7, 2022
Page 2 of 3

District's opinion in *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 661–662 (*Celia S.*) has not sufficed and needs to be reinforced. Thus publication under Cal. Rules of Court, rule 1105(c)(6) and (8).

San Francisco v. Hale also provides an excellent review of the cases distinguishing between joint physical custody and visitation. Family Code §§ 3000 -3007 define joint legal custody, sole legal custody, joint physical custody, and sole physical custody, but do not define visitation. Consequently this review of the cases warrants publication under Cal. Rules of Court, rule 8.1105(c)(3),(4), (6), (7) and (8)

About ACFLS as Amicus

ACFLS is an independent non-profit bar association, composed of approximately 635 California certified family law specialists, and dedicated to promoting and preserving the practice of family law since 1980. ACFLS members represent parents, non-parents, child custody evaluators and others in child custody proceedings in California family courts. Our members also serve as court-appointed minors' counsel, mediators, private judges, judges pro tempore, and expert witnesses in child custody proceedings.

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 served as amicus curiae in important California child custody cases including *Montenegro v. Diaz*, and *In re the Marriage of LaMusga*.

ACFLS has an active all-volunteer amicus committee with 21 members who review cases, and makes recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or depublication of opinions, letters supporting or opposing California Supreme Court review, and amicus briefs.

ACFLS's active amicus committee includes all four California lawyers who hold dual certification as family law and appellate specialists, and other leaders in the family law community including Hon. Thomas Trent Lewis (ret.), Garrett C. Dailey and Dawn Gray.
Court of Appeal of California

First Appellate District, Division Two

March 7, 2022

Page 3 of 3

ACFLS's Board of Directors and Amicus committee have no direct ties to or interest in the litigants or their attorneys in this matter – ACFLS is solely concerned with the development of the law for children and families in California. This case came to our attention when it was featured in an appellate blog.

ACFLS requests publication of the *San Francisco v. Hale* opinion because it will provide important guidance for the family law bench and bar applying the Fam. Code §3044 presumption, and the right of the parties to a statement of decision upon timely request. Many custody litigants can

In the last two years, we've seen fewer published family law opinions than we have seen in the past. Yet family court is often a Californian's only contact with the civil justice system. Publication of cases like this one, and the resulting inclusion of these cases in annual review classes, improves the experience of the public in our family courts, and the efficiency of those courts. Each time a family court gets it right the first time, the family's resources and the Judicial Branch's resources are conserved.

Respectfully submitted,



Leslie Ellen Shear, CFLS, CALS
Co-chair ACFLS Amicus Committee

cc: Michele Brown, ACFLS President
Rick Cohen, ACFLS Amicus Committee Co-chair