

**2003 Assembly Bill 526 – Fee Waiver for Child Custody and Physical Placement
orders**

**Testimony of State Representative Sheryl K. Albers before the Assembly Committee
on Corrections and the Courts**

October 8, 2003

Thank you, Chairman Bies, for the opportunity to discuss AB 526, a bill that will make current law more consistent by creating a fee waiver for stipulated changes in child custody or physical placement arrangements.

Currently, filing fees are waived when parties stipulate to a revision in child or family support or maintenance. It is important that we encourage parties to work together in the best interests of their child. By eliminating filing fees for custody and placement, we can offer an incentive to do that, while also working to keep these matters from consuming time and resources in the legal system.

As you can see by the fiscal estimate, the projected effect of eliminating this fee is minimal, the benefits derived from encouraging parents to work together on issues of custody and placement outweigh those minor costs. Anything we can do to promote the development of cooperative, as opposed to adversarial, relationships between parents, is a step I believe we should take. Additionally, eliminating these barriers improves legal access for those who are indigent. Cost is always an issue when it comes to legal access, but this cost falls hardest on those who have the least.

Furthermore, the fiscal estimate cannot take into account the money saved by taxpayers when matters of this nature do not have to be litigated. Our courts are already overburdened, and by encouraging more people to reach agreements, we reduce the amount of time these cases take.

This change also makes our policies regarding filing fees more consistent. We already provide an exemption for a number of activities related to child support. I see no reason why we should not logically extend this exemption to child custody and placement.

It has been a pleasure to work with the Family Law Section of the State Bar of Wisconsin on this issue, and I am confident we can work together to move this bill ahead. I would also like to thank the Chairman, as well as Representatives Lasee and Staskunas, for cosponsoring this bill.

I would be happy to answer questions from the committee at this time.

MEMORANDUM

To: Members, Assembly Committee on Corrections and the Courts
From: Family Law Section,
State Bar of Wisconsin
Date: October 8, 2003
Re: Support for Assembly Bill 526, waiving filing fees for stipulated revisions to orders for legal custody or physical placement.

Background

The Family Law Section of the State Bar of Wisconsin represents about 1300 attorneys who devote all or much of their practice to family law matters.

The Family Law Section **supports** Assembly Bill 526, which provides that no filing fee is required for filing a petition, motion or order to show cause to revise a judgment or order for legal custody or physical placement if both parties have stipulated (i.e., voluntarily agreed) to the revision.

A similar statutory waiver of filing fees currently exists for stipulated revisions to child support, family support, or maintenance. This bill would provide parity for stipulated revisions to legal custody or physical placement.

Rationale

The Family Law Section of the State Bar of Wisconsin is pleased that Representative Sheryl Albers requested its assistance in drafting Assembly Bill 526. We believe it is good public policy to extend the waiver to stipulated changes in custody and placement for the following reasons:

- 1) This change will encourage parties to work together, cooperatively, toward voluntary agreements.
- 2) This change will make our laws more consistent... in that no filing fee is currently required if the parties stipulate to revisions in child support, family support or maintenance. The same principle should hold for stipulated revisions to legal custody or physical placement.

State Bar of Wisconsin

- 3) The Family Law Section can find no policy reason why fees should be waived for one kind of a stipulation but charged for the other, especially when and the fee provisions are contained in the same subsection and the wording of the two provisions is otherwise so similar.
- 4) This change will also help provide better legal access to the low-income and indigent families without dramatically affecting court budgets that are already tight.
- 5) Many parties in family law cases are appearing *pro se*, meaning they are representing themselves. Often this is because they cannot afford a lawyer. There is little reason to make these parties pay the additional cost of a filing fee when they are coming to the court to ask the court to approve an arrangement they have worked out on their own.

When Representative Albers contacted the Family Law Section to see if we would be supportive of this bill, our initial response was that we would support the bill because it is good policy; however, we were concerned about the potential fiscal impact of the bill given the state's budget situation.

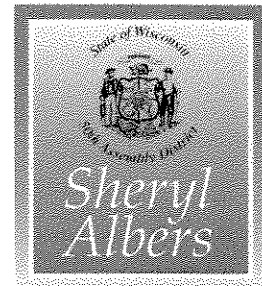
The Family Law Section contacted Michael Bruch, Milwaukee County Family Court Commissioner, in November 2002, to try to determine the fiscal impact of such a proposal on the state's most populous county. The Milwaukee County Family Court Commissioners' Office agreed to a sampling of filings over a two week period. It found that of the 38 modifications to custody and placement filed during that span, only 3 were stipulated. As a result of this admittedly small sample, the Family Law Section concluded that allowing a fee waiver for modifications to custody and placement where both parents stipulate will have a relatively minor fiscal impact on Milwaukee County and other counties.

Some may argue that this proposal will further erode court funding at a time when it is already precarious. They may argue that although the filing fee would be waived under the bill, judges and court commissioners will still spend time reviewing petitions or motions that are stipulated, that these are not automatically signed off on (i.e., they are not "rubber stamped" by any means) and that the time judges and court commissioners take to review these ought to be reflected in the filing fee.

The Family Law Section is persuaded that these costs are likely to be minimal and that the benefits of creating an incentive to encourage parties to voluntarily agree to changes in legal custody and physical placement of their children outweighs the costs involved in reviewing these stipulated changes.

The Family Law Section is convinced that if the fee waiver would encourage more stipulations it would be a good thing because it actually costs many counties more than the \$50 amount of the filing fee if a matter goes to a hearing. We believe the bill is good public policy and support its passage.

If you have any questions, please feel free to contact Dan Rossmiller, Public Affairs Director of the State Bar of Wisconsin, at (608) 250-6140.



December 3, 2003

Rep. Garey Bies, Chairman
Assembly Committee on Corrections and the Courts
125 West, State Capitol
Madison WI 53708

Hand-Delivered

Dear Rep. Bies,

When you are planning the agenda for the next executive session for your committee, I would respectfully request that you bring Assembly Bill 526 before the committee for action. After speaking to members of the committee, I am confident that the bill has the support necessary for passage to be recommended.

I also would like to thank you for your cosponsorship of this bill. Should you have any questions, please feel free to contact my office.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District

Assembly Republican Majority Bill Summary

AB 526: Waiver of Filing Fee

Relating to: waiver of filing fee if parties stipulate to certain revisions of judgment or order.

Introduced by Representatives Albers, Musser, Bies, Hahn, McCormick, F. Lasee, J. Lehman, Seratti and Staskunas; cosponsored by Senators Roessler, A. Lasee and Lassa.

Date: February XX, 2004

BACKGROUND

Under current law, a party who files a petition or motion to revise a judgment or order for child support, family support, or maintenance must pay a filing fee of \$30 to the clerk of circuit court. Fifty percent of the filing fee is retained for general use by the county and 50% is paid to the state treasurer for deposit in the general fund. No filing fee is required, however, if the parties stipulate to the revision in child or family support or maintenance.

Also under current law, a party who files a petition, motion, or order to show cause to revise a judgment or order for legal custody of, or physical placement with, a child must pay a filing fee of \$50 to the clerk of circuit court. Twenty-five percent of the filing fee is retained for general use by the county, 25% is paid to the state treasurer for deposit in the general fund, and 50% must be used exclusively for the county's family court counseling services, which include mediation.

SUMMARY OF AB 526

Assembly Bill 526 provides that no filing fee is required for filing a petition, motion, or order to show cause to revise a judgment or order for legal custody or physical placement if the parties stipulate to the revision.

FISCAL EFFECT

The fiscal estimate prepared by the Department of Administration indicates that the bill will result in a loss of revenue at the local level, but a concrete number was not able to be determined as it is unknown how many cases would utilize the provisions of Assembly Bill 526. The fiscal estimate provides the example that if 10% of cases filed include a stipulation and the filing fee is waived, the impact (based on 4900 cases filed during the 2002-2003 fiscal year) would be \$24,500.

PROS

1. Encourages voluntary settlement in cases.
2. Practice already in place for monetary settlements, this bill simply extends the option to stipulated revisions to orders for legal custody or physical placement judgments.
3. Will make Wisconsin law more consistent, as no filing fee is currently required if the parties stipulate to revisions in child support, family support or maintenance.

CONS

1. Estimated local fiscal impact of \$24,500.

SUPPORTERS

Rep. Sheryl Albers, author; State Bar of Wisconsin; Joseph Screnock.

OPPOSITION

No one registered or testified in opposition to Assembly Bill 526.

HISTORY

Assembly Bill 526 was introduced on September 18, 2003, and referred to the Assembly Committee on Corrections and the Courts. A public hearing was held on October 8, 2003. On January 14, 2004, the Committee voted 9-1 [Rep. Colon voting no] to recommend passage of Assembly Bill 526.

CONTACT: Andrew Nowlan, Office of Rep. Garey Bies

AB 526

FEE - \$24,000

Fee to file for a D in a
judgment already entered

Agreement already in hand.

~~Encourages~~
Encourages voluntary settlement.

Practice already in place for
settlements, why not placements?

Clawicki/Colon amendments?

Who's the issue?
