

**FISCAL NOTE**  
[First Reprint]  
**ASSEMBLY, No. 2289**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: MAY 29, 2012

**SUMMARY**

**Synopsis:** Requires affidavits for civil actions concerning certain mental health professionals.

**Type of Impact:** General Fund expenditure

**Agencies Affected:** Judiciary

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The bill would limit actions against court-appointed psychologists, psychiatrists, social workers, or other licensed mental health professionals appointed in family court.
- The Administrative Office of the Courts (AOC) states that the bill may have an effect on the number of legal actions filed against mental health professionals, which might impact Judiciary expenditures. However, the Judiciary does not maintain data on the number of litigants who file complaints against the mental health professionals assigned to their Family Court cases and can not determine how many may file complaints against the mental health professional assigned to their Family Court case under the affidavit of merit requirement of the bill.

**BILL DESCRIPTION**

Assembly Bill No. 2289 (1R) of 2012 would limit actions against court-appointed psychologists, psychiatrists, social workers, or other licensed mental health professionals appointed in family court.

Under the bill, a mental health professional who has been appointed by the Superior Court, Chancery Division, Family Part as a child custody evaluator, therapist, mediator, parent coordinator, parent educator, case manager, or any similar position would be presumed to be acting in good faith, consistent with accepted ethical standards of the profession, and be presumed to have reasonably complied with: (1) the regulations and requirements of the applicable professional licensing boards, and (2) all other applicable statutes and regulations.

Under the bill, in any civil action or administrative proceeding the mental health professional would not be held liable for any act or omission committed within the scope of his court-ordered appointment unless the appointing judge finds by clear and convincing evidence that he or she has acted in a reckless or grossly negligent manner or engaged in intentional misconduct, and such reckless or grossly negligent conduct or intentional misconduct was the proximate cause of the injury or damage alleged.

The bill requires a party in a family court proceeding that involves a child custody evaluation, therapy, mediation, parent education, or case management in which a mental health professional has been appointed to obtain an affidavit within 60 days following the date of filing the answer to the complaint. The affidavit, from a mental health professional, would state that there exists a reasonable probability that the defendant acted in a reckless or grossly negligent manner or engaged in intentional misconduct. Upon a finding of good cause, the court may grant no more than one additional period to file the affidavit, not to exceed 60 days.

Under the bill, an affidavit would not be required if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that: the defendant has failed to provide plaintiff with any records or information having a substantial bearing on preparation of the affidavit; a written request for the affidavit along with, if necessary, a signed authorization by the plaintiff for release of records or information requested, has been made by certified mail or personal service; and at least 45 days have elapsed since the defendant received the request.

If the plaintiff fails to provide an affidavit or a statement in lieu thereof it would be deemed to be a failure to state a cause of action.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Administrative Office of the Courts (AOC) states that the bill would have no impact upon the Judiciary's resources.

The AOC also states that the bill may have an effect on the number of legal actions filed against mental health professionals, which might impact Judiciary expenditures. However, the Judiciary does not maintain data on the number of litigants who file complaints against the mental health professionals assigned to their Family Court cases and can not determine how many may file complaints against the mental health professional assigned to their Family Court case under the affidavit of merit requirement of the bill. In this regard, the Judiciary is unable to determine the fiscal impact of this legislation with any accuracy.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Executive estimate.

*Section: Judiciary*

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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).