

## Memorandum 84-73

Subject: Study F-661 - Provision for Support if Support Obligor Dies

In May 1983, the Commission approved the following recommendation, which was published in the Commission's December 1983 Annual Report.

## RECOMMENDATION

*relating to*

### EFFECT OF DEATH OF SUPPORT OBLIGOR

A spousal support order does not survive the death of the support obligor.<sup>1</sup> This rule applies both to a contested court order and an order made pursuant to a marital termination settlement. However, the parties to a marital termination settlement may agree that support continues to be an obligation of the estate of the support obligor,<sup>2</sup> and a spousal support order based on such an agreement may survive death.<sup>3</sup>

Absent an agreement the support order is terminated by the obligor's death, even though support may be a necessity for the former spouse.<sup>4</sup> By comparison, a child support order does not terminate on death of the parent.<sup>5</sup>

California public policy is to provide adequate support for a person dependent on, and entitled to, support. A spousal support order is often inadequate for the needs of the former spouse,<sup>6</sup> needs that do not necessarily terminate upon the death of the support obligor.<sup>7</sup>

When the parties are negotiating a marital termination settlement, they may take into consideration the eventuality of the death of the support obligor and plan for it through life insurance, a trust fund, or other devices.<sup>8</sup>

<sup>1</sup> Parker v. Parker, 193 Cal. 478, 225 P. 447 (1924); Roberts v. Higgins, 122 Cal. App. 170, 9 P.2d 517 (1932); Miller v. Superior Court, 9 Cal.2d 733, 72 P.2d 868 (1937); former Civil Code § 139, as amended by 1951 Cal. Stats. ch. 1700, § 7, p. 3912, now recodified as Civil Code § 4801(b).

<sup>2</sup> See, e.g., Steele v. Langmuir, 65 Cal. App.3d 459, 135 Cal. Rptr. 426 (1976).

<sup>3</sup> See, e.g., Hilton v. McNitt, 49 Cal.2d 79, 315 P.2d 1 (1957).

<sup>4</sup> For a list of factors that determine the support order, see Civil Code Section 4801(a).

<sup>5</sup> 6 B. Witkin, Summary of California Law *Parent and Child* § 129, at 464-47 (8th ed. 1974).

<sup>6</sup> See, e.g., Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 UCLA L. Rev. 1181 (1981).

<sup>7</sup> Among the criticisms directed at the California spousal support scheme is that the support award terminates upon the death of the support obligor. See, e.g., Bruch, *The Definition and Division of Marital Property in California: Towards Parity and Simplicity*, 33 Hastings L.J. 769, 816 (1982).

<sup>8</sup> See, e.g., S. Walzer, *California Marital Termination Settlements* § 5.56, p. 195 (Cal. Cont. Ed. Bar 1971).

Where the parties are unable to reach an agreement, the court in a contested case should likewise be authorized to provide for the possibility that the support obligor's death will terminate the support obligation. The Law Revision Commission recommends that the court be authorized to make accommodation for the death of the support obligor, where proper. This could take the form of an order to name the supported spouse beneficiary of a life insurance policy, an order for purchase of an annuity, or other appropriate order.

Assembly Bill No. 835, which would have effectuated this recommendation, died in the Senate Judiciary Committee at the 1983 legislative session. Assembly Bill No. 781 was amended in the Senate in 1984 to effectuate the recommendation to the extent that it would permit the court to require the maintenance of insurance, and this bill became law as Chapter 19 of the Statutes of 1984. A copy of this chapter is attached as Exhibit 1.

Chapter 19 fails to provide an adequate solution to the problem of support after the death of the obligor spouse. This is because the obligor spouse may be uninsurable or the cost of insurance may be prohibitive, but the obligor spouse may have more than sufficient funds to purchase an annuity for the supported spouse or to create a trust to support the supported spouse should the obligor spouse die before the supported spouse. Attached as Exhibits 2 and 3 are letters that point out the need to expand the scope of the court's authority to deal with this situation. You should read these letters. The staff believes they represent a fairly common situation that needs a solution.

The staff recommends that the Commission recommend legislation at the 1985 session to effectuate the substance of its earlier recommendation. We suggest that the new language added to Civil Code Section 4801 (by Chapter 19 of the Statutes of 1984) be amended to read:

Where it is just and reasonable in view of the circumstances of the respective parties, the court, in determining the needs of the supported spouse, may include an amount sufficient to purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the payment of support to establish a trust to provide for the support of the supported spouse, so that the supported spouse

will not be left without means for support in the event that the order for support is terminated by the death of the party required to make the payment of support.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

**Exhibit 1**  
**Assembly Bill No. 781**

**CHAPTER 19**

**An act to amend Section 4801 of the Civil Code, relating to family law.**

[Approved by Governor March 1, 1984. Filed with  
Secretary of State March 1, 1984.]

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 781, McAlister. Family law: spousal support.**

Existing law authorizes a court, in a judgment decreeing the dissolution of a marriage or legal separation, to order a party to pay for the support of the other party in an amount, and for a period of time, that the court deems just and reasonable. The court is required to consider certain specified factors with respect to the circumstances of the parties. Such an obligation is extinguished by the death of the spouse required to make the payment or the remarriage of the supported spouse.

This bill would authorize the court, in determining the needs of the supported spouse, to include an amount sufficient to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, as specified.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 4801 of the Civil Code is amended to read:  
**4801. (a)** In any judgment decreeing the dissolution of a marriage or a legal separation of the parties, the court may order a party to pay for the support of the other party any amount, and for any period of time, as the court may deem just and reasonable. In making the award, the court shall consider the following circumstances of the respective parties:

- (1) The earning capacity of each spouse, taking into account the extent to which the supported spouse's present and future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported spouse to devote time to domestic duties.
- (2) The needs of each party.
- (3) The obligations and assets, including the separate property, of each.
- (4) The duration of the marriage.
- (5) The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse.
- (6) The time required for the supported spouse to acquire appropriate education, training, and employment.
- (7) The age and health of the parties.
- (8) The standard of living of the parties.
- (9) Any other factors which it deems just and equitable.

At the request of either party, the court shall make appropriate factual determinations with respect to the circumstances. Where it is just and reasonable in view of the circumstances of the respective parties, the court, in determining the needs of the supported spouse, may include an amount sufficient to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support so that the supported spouse will not be left without means for support in the event that the order for support is terminated by the death of the party required to make the payment of support. The court may order the party required to make

the payment of support to give reasonable security therefor. Any order for support of the other party may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. At the request of either party, the order of modification or revocation shall include a statement of decision and may be made retroactive to the date of filing of the notice of motion or order to show cause to modify or revoke, or to any date subsequent thereto.

(b) Except as otherwise agreed by the parties in writing, the obligation of any party under any order or judgment for the support and maintenance of the other party shall terminate upon the death of either party or the remarriage of the other party.

(c) When a court orders a person to make specified payments for support of the other party for a contingent period of time, the liability of the person terminates upon the happening of the contingency. If the party to whom payments are to be made fails to notify the person ordered to make the payments, or the attorney of record of the person so ordered, of the happening of the contingency and continues to accept support payments, the supported party shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the party to whom payments are to be made to notify the person ordered to make such payments, or his or her attorney of record, of the happening of the contingency.

(d) An order for payment of an allowance for the support of one of the parties shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order retains jurisdiction.

(e) In any proceeding under this section the court may order a party to submit to an examination by a vocational training consultant. The order may be made only on motion, for good cause shown, and upon notice to the party to be examined and to all parties, and shall specify the time, place, manner, conditions, scope of the examination and the person or persons by whom it is to be made. The party refusing to comply with such an order shall be subject to the same consequences provided for failure to comply with an examination ordered pursuant to Section 2032 of the Code of Civil Procedure.

(f) For the purposes of this section, "vocational training consultant" means an individual with sufficient knowledge, skill, experience, training, or education relating to interviewing, the testing and analysis of work skills, the planning of courses of training and study, the formulation of career goals, and the work market to qualify as an expert in vocational training under Section 720 of the Evidence Code.

Send to Sacto  
for reply10/18/84  
1870 Veteran Ave. #21  
Los Angeles, Cal. 90025415-419-535  
JAN 25 1984

Dear Seneca Rosenthal,

I urge you to support A.B. 781 when it comes before the Senate (It is now in the Senate Judiciary Committee). It is important that it be made retro-active for those of us who were divorced before its passage.

Without such a law, many of us will have to live in terror and anxiety the rest of our lives, not knowing whether our former husbands will predecease us and leave us without any means of support in the future. The present law does not make it mandatory for him to do so.

A.B. 781 provides for future spousal support by making it mandatory for him to take out life insurance for this purpose, with the former spouse as beneficiary. However, my former husband is too old to get life insurance. What could the alternative be? Could he be required to set up a trust for her in the event that he should die first? In which case, it need never be used in the event that she predeceases him. If he increased the amount of alimony, the wife could save enough for the future. However, he refuses to do either, although he is a wealthy man. He left me for a much younger woman and has provided very well for her future. She is also self-employed. He has also set up trusts for two nephews and a niece, who are employed, will inherit money from their parents and will never really need it. He refuses to provide for my future in the event that he predeceases me + says that no judge can make him do so. I shall have nothing + nowhere to turn in that case.

He and his present wife have an elegant home, a housekeeper and travel extensively (including two overseas trips within four months, plus shorter trips same year).

2.

I am seventy five. We were married for twenty five years,  
but she will get everything, whereas I shall be left  
destitute.

Senator Reason that, please help me and the  
other women in similar circumstances by supporting  
AB 781 and urging that it be retroactive to include  
all of us.

Thank you in advance,

Sincerely,

SoLoToY

Janice SoLoToY

477-0747

1870 Veteran ave. #214  
L.A. 90025

P.S. IT is urgent to find an alternative to  
life insurance for those men too old to be eligible.

July 16, 1984

Dear Mr. McAister;

I am writing to you regarding your Calif Assembly Bill # 781, passed March 1, 1984, as it applies to me.

My Army retired officer husband divorced me 3 months ago, after 32 years of marriage and 5 children, and removed me as beneficiary of the Military Survivor Benefit Plan, as is his option according to U.S. Congressional Public Law # 97-252, which appeared in the Dept of Defense Authorization Act of Feb 1983.

I am now age 60, and have helped defray the Army monthly allotment premium, currently in the amount of \$124.00 per mo, for many years since its inception on Sept 1, 1972, by my wages at jobs outside the home, and by thrifty, frugal budgeting of household expenses.

He also removed me as beneficiary of his current civilian employment life

insurance policy, altho, I have worked as an apartment manager for the last 6 years during his civilian employment, after military retirement after 28 years of active duty service.

My attorney referred to your AB 781 at our divorce court appearance and the judge awarded me the after divorce life insurance coverage required by AB 781.

Today, I showed the enclosed copy of my husband's insurance statement (not policy) to my local Metropolitan Life Insurance Agent and he analyzed it by saying \$5000.00 is a very meager, miniscule amount of life insurance. Also it is a group insurance policy with monthly premium of \$44.47, my husband (ex) is still the owner, and can cancel it at any time he wishes, in case he quits his job for a better one or moves out of Calif which he has threatened to do,

in the recent past, and he can cancel in case I re-marry. He is also allowed to use alimony paid to me as a very handy income tax deduction. His and his new wife's annual income is almost \$60,000.<sup>00</sup>.

I must start paying income tax, quarterly estimated, on my meager alimony, and not be able to live anyway near my previous way of life, including looking for a cheaper apartment to rent, and no longer affording nice birthday and Christmas presents for my 5 children & grandchildren.

Your AB 781 does not specify a minimum or equal amount of life insurance coverage, similar to what has been taken away from me at divorce. When my husband dies, my alimony stops, and I will have to go on Welfare, and his new young wife will start

receiving 55% of his military pension plus a 2nd check from his civilian job pension, monthly for the rest of her life.

I know many other older 1st, long term former military wives by attending the local San Diego Chapter of "National Action For Former Military Wives". Unfortunately, these women have lost medical, commissary, exchange, I.D. Card and all other military benefits because they were divorced before Feb 1983, due to Public Law # 97-252, of the Dept of Defense Authorization Act of 1983.

These women, mostly aged 50-60-70, and married 20-30-40 years, are flooding and overloading the public welfare rolls, especially in Calif, because military divorce is statistically, on the increase, in epidemic proportions, and we former military wives have maintained the home,

raised the children, stretched  
the household budget,  
participated in many Wives  
Club committees & activities,  
including many hours as  
Red Cross volunteers, and  
most importantly, we helped  
our husbands develop and  
advance their military careers  
so we have also served an  
invaluable service in the  
defense of this United States.  
We have earned and paid for  
more than our devious,  
cunning husbands, and their  
extremely clever attorneys  
have sold out to us at  
divorce by being stripped  
of irreplaceable benefits  
for our old age. We are not  
the responsibility of the taxpayer  
funded welfare rolls, A.P.C.,  
free clinics, or Section 8, low  
rent housing, and no burial insurance.

We must continue to  
attract attention to this  
dilemma until Congress and  
the Military establishment

return to us what we deserve.

May I earnestly request that you answer this letter, hopefully advising me how I can help myself. I desperately need advice from any one I can think of.

Sincerely,

Marilyn Silver  
1052 Del Mar Ave #3  
Chula Vista, Calif 92011  
619-425-8147.

P.S.

Calif Senator Rodie Hedden of Chula Vista gave me a copy of your AB# 781 for which I am very thankful.

Your name and AB 781 are very well known to many former military wives around San Diego County thru me.

