

Memorandum 90-5

Subject: Study F-1000 - Family Relations Law Questionnaire

As a first step in the family relations law project, the Commission has decided to send a questionnaire to interested persons. A draft of the questionnaire is attached to this memorandum.

You should review the questionnaire both for substance and form. Is there anything else that should be asked? Or do you find some of the questions repetitious? We would appreciate any suggestions for making the questionnaire clearer or easier to use. You might find it a useful exercise to fill out the questionnaire.

We plan to send the questionnaire to everyone on our mailing list. We believe that probate lawyers will have an opinion on whether provisions of the Probate Code should be moved to a new Family Relations Code. Likewise, lawyers generally will have an opinion on whether provisions in the Evidence Code should be moved to a new Family Relations Code.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

FAMILY RELATIONS LAW QUESTIONNAIRE

The 1989 Legislature directed the Law Revision Commission to make recommendations regarding the establishment of a Family Relations Code. See Assembly Concurrent Resolution No. 30 (copy attached). An examination of this resolution will give you a better understanding of the scope of this study.

Your answers to this questionnaire will assist the Commission in this study.

Please fill in your name, address, and telephone number:

(Name)

(Telephone #)

(Address)

(City, State, Zip Code)

NEED FOR AND CONTENT OF FAMILY RELATIONS CODE

Circle Yes or No to indicate your opinion on the following questions.

YES NO NO OPINION Should there be a separate Family Relations Code?

YES NO NO OPINION Should there be a separate Family Relations Act to be part of an existing code?

YES NO If you answered "YES" to either of the previous questions, do you believe that there should be a Family Relations Code (or Act) even if the Legislature does not establish a Family Relations Court?

Assuming that there will be a separate Family Relations Code, which of the existing statutes listed below should be included in the new code?

Existing Civil Code Provisions

YES NO Medical treatment of minors (various provisions of Civil Code §§ 25-42)

YES NO Minors contracts (various provisions of Civil Code §§ 25-42)

YES NO Conveyances or contracts by persons without understanding or of unsound mind, and other matters (various provisions of Civil Code §§ 25-42)

YES NO Personal rights (CC §§ 43-53)

YES NO Emancipation of Minors Act (CC §§ 60-70)

YES NO Parent and child (CC §§ 196-213)
 YES NO Adoption (CC §§ 221-230.8)
 YES NO Freedom from parental custody and control (CC §§ 232-239)
 YES NO Uniform Civil Liability for Support Act (CC §§ 241-254)
 YES NO Interstate Compact on Placement of Children (CC §§ 264-274)
 YES NO Priority for foster care and adoptive placement
 (CC §§ 275-276)
 YES NO Liability of parents and guardians for acts of minors
 (CC §§ 1714.1, 1714.3)
 YES NO Family Law Act (CC §§ 4000-5317)
 YES NO Uniform Parentage Act (CC §§ 7000-7021)

Existing Code of Civil Procedure Provisions

YES NO Uniform Reciprocal Enforcement of Support Act
 (CCP §§ 1650-1699.4)
 YES NO Family Conciliation Court Law (CCP §§ 1730-1772)

Existing Evidence Code Provisions

YES NO Presumption of legitimacy (Evid. Code § 621)
 YES NO Leading questions of minor under 10 (Evid. Code § 767)
 YES NO Blood test to determine paternity (Evid. Code § 890)
 YES NO Privileges (e.g. Evid. Code § 1037)
 YES NO Hearsay exceptions as to minors (e.g. Evid. Code § 1228)

Existing Probate Code Provisions

YES NO Surviving spouse's waiver of rights at death (Prob. Code §§
 140-147)
 YES NO Guardian of person of minor (Various provisions of Prob.
 Code §§ 1400-2944)
 YES NO Guardian of estate of minor (Various provisions of Prob.
 Code §§ 1400-2944)
 YES NO Conservatorship of person of adult (Various provisions of Prob.
 Code §§ 1400-2944)
 YES NO Conservatorship of estate of adult (Various provisions of Prob.
 Code §§ 1400-2944)
 YES NO Management or disposition of community property where spouse
 lacks legal capacity (Prob. Code §§ 3000-3154)
 YES NO Other protective proceedings (Prob. Code §§ 3300-3612)
 YES NO Personal property of absent federal personnel (Prob. Code §§
 3700-3720)
 YES NO Temporary possession of family dwelling and exempt property
 (Prob. Code §§ 6500-6501)
 YES NO Setting aside exempt property other than family dwelling
 (Prob. Code §§ 6510-6511)
 YES NO Probate homestead (Prob. Code §§ 6520-6628)
 YES NO Family allowance (Prob. Code §§ 6540-6645)
 YES NO Spouse or child unprovided for in will (Prob.
 Code §§ 6560-6680)
 YES NO Small estate set-aside (Prob. Code §§ 6600-6615)

Existing Welfare & Institutions Code Provisions

YES NO Dependent children under Juvenile Court Law (W&I Code §§
 200-987)
 YES NO Wards under Juvenile Court Law (W&I Code §§ 200-987)
 YES NO Interstate Compact on Juveniles (W&I Code §§ 1300-1308)
 YES NO District attorney enforcement of child support

List any other statutes or subjects that you believe should be included in a new Family Relations Code.

SUBSTANTIVE IMPROVEMENT OF FAMILY LAW STATUTES

The Legislature further directed that the Commission study

should highlight evidentiary and procedural provisions, including, in particular, as they relate to child victims; should include recommendations to amend statutes to ensure that appropriate information is exchanged among courts and investigative and other agencies serving the courts; and should include recommendations to consolidate those code sections which are appropriate to consolidate, to reduce or eliminate redundancies where appropriate, to make various code sections and procedures consistent with each other where appropriate, to improve cross-references and integration of related actions where appropriate, and to conform code sections where lack of conformity creates inappropriate inconsistencies

You may answer the following questions in the space provided or attach separate sheets as needed.

Do you have any specific suggestions for consolidating related laws in this area, making them more consistent, or eliminating redundancies?

Do you have any thoughts on what information concerning family relations matters should be exchanged between courts and investigative and other agencies, and how this might best be accomplished?

From your experience, are you aware of any problems that occur in practice that should be remedied in the new code? Are analogous situations treated differently, depending on the procedural framework? It would be helpful if you suggest solutions to any problems that you see.

If you have any other suggestions concerning the family relations law revision project, the Commission would like to hear them.

Please return your completed questionnaire and any other comments to:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303
(415) 494-1335

Assembly Concurrent Resolution No. 30

RESOLUTION CHAPTER 70

Assembly Concurrent Resolution No. 30—Relative to family relations.

[Filed with Secretary of State July 7, 1989.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 30, Speier. Law Revision Commission: Family Relations Code.

Under existing law, the California Law Revision Commission is required to study any topic assigned to it by the Legislature by concurrent resolution.

This measure would require the California Law Revision Commission to conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code, as specified.

WHEREAS, California statutory law is divided into numerous codes that deal with family relations matters, including the Civil Code, Welfare and Institutions Code, Probate Code, Health and Safety Code, Code of Civil Procedure, and Evidence Code; and

WHEREAS, California statutes relating to children and families have increased substantially over the past several years, but there has been no comprehensive review of state law as it relates to children and families; and

WHEREAS, Cases involving family relations matters are frequently adjudicated in multiple legal forums using numerous codes, and these codes are often inconsistent or contradictory in the application of evidentiary and procedural rules to the matter at hand involving a child victim; and

WHEREAS, California's laws regarding children and families are often contradictory and inappropriate, and as applied by a variety of court procedures and jurisdictions, state law causes unnecessary hardships to children and their families; and

WHEREAS, The California Child Victim Witness Judicial Advisory Committee has recommended that the Legislature conduct a careful review of all statutes relating to the civil adjudication of child and family relations matters and that legislation be enacted to establish a Family Relations Code, consolidating all civil child and family relations law; and

WHEREAS, A Family Relations Code would provide the legal framework for a Family Relations Division of the Superior Court, would allow for the legal integration of related actions involving one child or his or her family, and would streamline and improve judicial

practices and procedures as they pertain to child victim witnesses as well as other child and family civil proceedings; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That pursuant to Section 8293 of the Government Code, the California Law Revision Commission shall conduct a review of all statutes relating to the adjudication of child and family civil proceedings, excluding proceedings initiated under Section 602 of the Welfare and Institutions Code, and make recommendations to the Legislature regarding the establishment of a Family Relations Code; and be it further

Resolved, That this review should highlight evidentiary and procedural provisions, including, in particular, as they relate to child victims; should include recommendations to amend statutes to ensure that appropriate information is exchanged among courts and investigative and other agencies serving the courts; and should include recommendations to consolidate those code sections which are appropriate to consolidate, to reduce or eliminate redundancies where appropriate, to make various code sections and procedures consistent with each other where appropriate, to improve cross-references and the integration of related actions where appropriate, and to conform code sections where lack of conformity creates inappropriate inconsistencies; and be it further

Resolved, That the California Law Revision Commission shall commence this project giving it the same priority as the Administrative Law project and shall thereafter deliver its report to the Legislature; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the California Law Revision Commission.

O