

First Supplement to Memorandum 92-54

Subject: Study F-1001 - District Attorney Support Enforcement (Staff Meeting with District Attorneys)

On August 28, the staff met with two representatives of the District Attorney Family Support Council, John S. Higgins, Jr., Visalia, and Jeanne M. Miskel, Redwood City. The purpose of the meeting was to review the staff draft of a proposal to move the district attorney support enforcement provisions from the Welfare and Institutions Code to the Family Code. (This draft is discussed in Memorandum 92-54.) The staff had hoped to work through technical details in the draft before presenting it to the Commission, but the discussion was at a more basic level and it became clear that it was premature to present the draft statute to the Commission.

One of the principal reasons the staff proposed moving the district attorney support enforcement provisions into the Family Code was that we were informed and believed that the district attorneys desired this move. This is not the only reason for making the move, as discussed in Memorandum 92-54, but it was an important reason. However, the Family Support Council at this stage is concerned about the prospect of relocation of the statute. We do not know the complete background, but apparently the original enthusiasm for incorporation in the Family Code has been blunted as the Council's Executive Committee has given further consideration to the issue.

On the other hand, as we understand it, the Council is fully aware that the district attorney enforcement statutes need revision, both technical and substantive. In response to this awareness, we understand that the Council is proposing consideration of a joint project with the Commission to revise the governing statutes to eliminate inconsistent and obsolete and rules, to make substantive improvements, and conform the statute to federal regulations.

In the course of the comprehensive review now being suggested by the Family Support Council, a major issue would be the extent to which

enforcement provisions should be moved to the Family Code. The Council is not interested in simply moving the enforcement statutes to the Family Code and doing minor technical improvements when there are greater substantive issues that need to be considered. A major part of the Council's concern is that the move would subject the district attorney enforcement program to some undesirable consequences, that unwanted general rules would become applicable, and that unique procedures would be disrupted. The staff believes that careful drafting can avoid any problems that have been identified in our discussions with district attorney personnel. Any of their special rules and procedures could be preserved through drafting and organizational techniques. For example, it could be made clear that general support provisions do not apply to the part or division in which the district attorney provisions are placed unless specifically so provided.

The Family Support Council is also interested in exploring the possibility of a joint project funded to some extent by non-Commission sources including federal money. As far as the staff can recall, this would be a new arrangement. We do not have any details yet, but if the Commission is interested, we will assemble the information and present it at a later meeting. Any such project would need to be structured in a way that does not impinge on the Commission's independence. Perhaps receipt of any funding would be limited to reimbursement for travel and materials. Or funding might be used to hire consultants to review and comment on drafts.

Consideration of substantive issues, going beyond a mere reorganization and relocation of the district attorney enforcement provisions in the Family Code, would push outside the scope of the Family Code authority itself. However, the Commission has independent authority to study family law (as well as enforcement of judgments) and the staff has concluded that this type of project is within the Commission's existing authority.

In sum, the staff believes that this is an important area that merits Commission study. The staff would not propose taking on a study of district attorney support enforcement were it not for its important relation to the Family Code project. Support enforcement procedures

should be unified, particularly since the sections in question apply to persons who do not receive public assistance. We do not foreclose a study that would leave the major statutes in the Welfare and Institutions Code with only cross-reference provisions in the Family Code, since a case can be made for the importance of revising this area of the law independent of the Family Code project. However, at this stage, the staff sees this as significantly related to the Family Code.

The staff believes that this study can be conducted with a relatively modest investment of staff resources. We anticipate that much of the burden of conducting a thorough review of these statutes would be borne by the experts in the field who are willing to work with us and the (potential) additional funding. A complete review would probably not be ready until the 1994 legislative session, taking into account the time it would take to set up a joint project and work through the drafting and review process with the district attorneys and other interested persons. It is possible, however, that legislation could be prepared for amendment into a Family Code bill in the 1993 session.

Respectfully submitted,

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