

Memorandum 83-30

Subject: Study F-661 - Continuation of Support Obligation After Death
of Support Obligor

The staff has revised the recommendation relating to the effect of the death of the support obligor on a spousal support obligation, consistent with the discussion at the March meeting. As revised, the support obligation is terminated by the death of the support obligor, but the dissolution court is authorized to make orders such as maintenance of life insurance or purchase of an annuity, in appropriate cases, to accommodate the possibility that the support order will be terminated by death. Under the staff draft the court will not make accommodating orders automatically in every case, but must determine that the order is just and reasonable under the circumstances of a particular case.

The staff has had amendments drawn for Assembly Bill 835 consistent with this draft. If the Commission approves the draft, we will request Assemblyman McAlister to so amend the bill.

Respectfully submitted,

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STAFF DRAFT

RECOMMENDATION

relating to

EFFECT OF DEATH OF SUPPORT OBLIGOR

A spousal support order does not survive the death of the support obligor.¹ 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,² and a spousal support order based on such an agreement may survive death.³

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

California public policy is to provide adequate support for a person dependent on, and entitled to, support. A spousal support order

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1. 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).
 2. See, e.g., Steele v. Langmuir, 65 Cal. App.3d 459, 135 Cal. Rptr. 426 (1976).
 3. See, e.g., Hilton v. McNitt, 49 Cal.2d 79, 315 P.2d 1 (1957).
 4. For a list of factors that determine the support order, see Civil Code Section 4801(a).
 5. 6 B. Witkin, Summary of California Law Parent and Child § 129, at 4646-47 (8th ed. 1974).

is often inadequate for the needs of the former spouse,⁶ needs that do not necessarily terminate upon the death of the support obligor.⁷

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, trust funds, and other devices.⁸ 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 provision.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 4801 of the Civil Code, relating to spousal support.

The People of the State of California do enact as follows:

6. 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).

7. 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).

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

Civil Code § 4801 (amended)

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 findings with respect to the circumstances. 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 findings of fact 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 a party under any an order or judgment for the support and maintenance of the other party shall terminate terminates upon the death of either party or the remarriage of the other party. If the court determines that it is just and reasonable under the circumstances of the particular case to make such an order, the court may make an appropriate order, including but not limited to an order requiring the maintenance of life insurance or the purchase of an annuity, to provide for the support of the other party in the event the order for support is terminated by the death of the party required to make the payment of support.

(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.

Comment. Subdivision (b) of Section 4801 is amended to give the court authority to make an order requiring insurance or some other provision for support after the death of the support obligor. Such an order may be appropriate in a case where long-term support is ordered. This authority is consistent with the practice of parties in a marital termination settlement. See, e.g., S. Walzer, California Marital Termination Settlements § 5.56, p. 195 (Cal. Cont. Ed. Bar 1971).