

Memorandum 83-49

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

Except as otherwise agreed by the parties in writing, the obligation of a party under a court order for the support of the other party terminates upon the death of either party or the remarriage of the other party. For example, in a case where the parties have been married 20 years and the wife is unable to work and lacks resources to support herself, the court will order payment of support to the wife. But, if the husband dies before the wife, the wife will no longer receive any support, even where the husband leaves a substantial estate.

Assembly Bill 835 was introduced to effectuate a Commission recommendation designed to deal with this problem. In its latest amended form, the bill would have added the following to Section 4801 of the Civil Code:

If the court determines that to do so is just and reasonable under the circumstances of the particular case, the court may make an order requiring the maintenance of life insurance, the purchase of an annuity, the creation of a trust fund, or other appropriate comparable order to provide for 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.

Assembly Bill 835 passed the Assembly but was held in the Senate Judiciary Committee. None of the members of the Senate Committee were in favor of the bill.

The staff believes that the bill is a desirable one. However, it appears that the authority of the court to require insurance or other similar protection against the death of the support obligor must be more narrowly drawn if the bill is to have a chance for approval in the Senate. Also, the support of the State Bar Family Law Section would be almost essential in obtaining approval of the bill.

The staff recommends that the Commission recommend that Section 4801 of the Civil Code be amended to read as set out below:

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.

Respectfully submitted,

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