

Memorandum 91-5

Subject: Study F-1000 - FAMILY CODE (REPORT ON PROGRESS OF STUDY)

The Legislature directed that the Family Code study be given equal priority with the Administrative Law Study. We have received a call from the office of Assembly Member Speier asking for a report on the progress we have made on the Family Code study and whether we will have any recommendations to submit to the 1991 legislative session.

The Commission has determined that it will recommend a new Family Code. The staff has commenced work on drafting the new code. This memorandum sets out a suggested schedule for this project and a suggested procedure that will permit us to produce a substantial portion of the new code for submission to the 1992 legislative session.

Tentative Schedule for Work on New Family Code

The staff recommends that we submit recommendations for enactment of portions of the new Family Code as work on a particular portion is completed. We would divide the portions as follows:

1992 legislative session - Provisions (excluding those relating to support) now contained in the Family Law Act, together with related provisions in other codes.

1993 legislative session - Provisions relating to support.

1994 legislative session - Provisions relating to adoption and minors.

1995 legislative session - Provisions relating to Juvenile Court Proceedings and any other provisions that will be included in the new Family Code.

This schedule, if approved by the Commission, would of course be a tentative schedule. It would be revised if necessary as work on the Family Code proceeds.

There will be significant substantive issues that will arise in the course of preparing the Family Code. The schedule set out above

does not take these issues into account. These issues will require a study and recommendation apart from the task of drafting the Family Code itself. For example, the Commission has retained Professor Jerry Kasner to prepare a background study on donative transfers. A separate recommendation would be submitted on the subject matter of the Kasner study to deal with the substantive problems in existing law.

Recommendation to 1992 Legislature

We estimate that the recommended provisions (with official Comments) scheduled for submission to the 1992 legislative session will consist of approximately 400 pages. The draft with Comments could consist of as many as 600 pages.

We are now working on a preliminary draft of this portion of the new code. A working outline of a portion of this draft is attached as Exhibit 1. (Radical changes in the outline will be necessary, since we already have determined to shift material from one place to another in the new code, will be eliminating some provisions by consolidating them with others, and will be making revisions in light of amendments, additions, and repeals made by the 1990 Legislature.) We plan to repeal the entire Family Law Act (except for the provisions relating to support) when this portion of the new Family Code is enacted.

Although the existing statutory provisions will be completely reorganized, we do not propose to make any substantive changes of great significance in the recommendation to the 1992 legislative session. However, there are gaps in existing law, overlaps, duplications, and inconsistencies that will need to be dealt with. In some cases, it will be a difficult drafting job to consolidate various overlapping provisions.

The staff draft of this portion of the new code will need to be carefully reviewed by the State Bar Section and others. The question is: At what stage does the Commission itself wish to review this material? The material is interrelated; there are many internal references from one section to another, and the material can only be reviewed as one unit. Reviewing 400-600 or more pages of xeroxed material will be an exceedingly burdensome task.

The staff suggests the following procedure for consideration by the Commission. The staff will produce a "Staff Working Draft" of the material scheduled to be recommended to the 1992 legislative session. This draft will be produced before July 1, 1991, and will be printed in the form of a pamphlet, which will make clear that it is a "Staff Working Draft," and is not even a tentative recommendation of the Commission. We will have money available in the current fiscal year to print the pamphlet. (We may not have funds to print anything after July 1, 1991.)

Interested persons and organizations can review the printed Staff Working Draft. The Commission can consider the comments of these persons at one or more meetings, and can make any revisions it wishes and then make its recommendation to the 1992 Legislature. Since the work on the portion of the new code to be submitted in 1992 is primarily an organizational and drafting task, it should not require a great deal of time for the Commission to review the comments of interested persons and organizations.

We believe that this procedure will permit the work on this portion of the new code to be completed in time for submission to the 1992 legislative session. Obviously, it will be a major undertaking for the staff to prepare the Staff Working Draft in a form suitable for printing for distribution for review and comment. The Executive Secretary plans to devote a major portion of his time to preparing the Staff Working Draft, and it may be necessary that Mr. Murphy or Mr. Ulrich also devote substantially all of his time to work on this draft. One consequence of this course of action may be that there will be significantly less material prepared for discussion at Commission meetings between February and June, 1992.

What is the Commission's reaction to the staff schedule and suggestions concerning publication of the Staff Working Draft?

Recommendation to the 1993 Legislature

During the last half of 1991, the Commission will begin its consideration of the provisions of the new Family Code relating to support.

The provisions relating to support are complex, overlapping, and inconsistent. Provisions were enacted in fairly recent years without

attempting to eliminate inconsistent provisions already on the books. To provide a clear statute will require that decisions be made concerning issues that are perhaps controversial. For example, what is the duty of support owed by a child to a parent? What is the duty of support owed by a parent to an adult child? The law may not be entirely clear on these issues.

We believe that the Commission should follow its normal procedures in studying the support provisions of the new code. The staff will prepare memoranda on various policy issues, obtain a Commission decision, and prepare a draft of statutory provisions. We would expect that the input of the State Bar Section on each staff memorandum would be available at the time the Commission considers the memorandum.

A tentative recommendation will be prepared. If funds are available, the tentative recommendation will be distributed in xerox form to interested persons and organizations for review and comment. The comments received will be considered when the Commission determines the recommendation it will submit to the 1993 legislative session.

Recommendations to the 1994 and Subsequent Sessions

When work is completed on the recommendations to be submitted to the 1993 legislative session, the Commission can review the tentative schedule set out above and revise it if necessary.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

OUTLINE OF FAMILY CODE

[All material for 1992 Legislative Session Unless Otherwise Indicated. Material for 1993 and Subsequent Sessions in Italic]

Note. Radical changes in this outline will be necessary, since we already have determined to shift material from one place to another in the new code, will be eliminating some provisions by consolidating them with other provisions, and will be making revisions in light of amendments, additions, and repeals made by the 1990 Legislature.

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 1. PRELIMINARY PROVISIONS

- § 1. Title of code
- § 2. Continuation of existing law
- § 3. Construction of provision drawn from uniform act
- § 4. Construction of amendments, additions, and repeals
- § 5. Effect of headings in code
- § 6. Certified mail sufficient compliance with requirement of use of registered mail
- § 7. Construction of code
- § 8. Reference to statute includes amendments and additions
- § 9. Reference to division, part, chapter, article, section, or part of section
- § 10. Construction of tenses
- § 11. Construction of singular and plural
- § 12. Severability of provisions
- § 13. Meaning of "shall" and "may"

PART 2. DEFINITIONS

- § 100. Application of definitions
- § 110. "Employee pension benefit plan"
- § 120. "Family Law Act"
- § 130. "Income and expense declaration"
- § 140. "Property declaration"
- § 150. Construction of terms "husband" and "wife"

DIVISION 2. GENERAL PROVISIONS

PART 1. TERMINATION OF MARRIAGE

- § 200. Methods of dissolution

PART 2. JURISDICTION

- § 300. Jurisdiction of court in proceedings under Family Law Act
- § 301. Order or judgment not enforceable against employee pension benefit plan unless plan joined as party to proceeding
- § 302. Continuing jurisdiction to award community property or debts

PART 3. PROCEDURAL PROVISIONS

Chapter 1. General Procedural Provisions

- § 401. Rules of practice and procedure
- § 402. Responsive pleading

- § 403. Responding party request for affirmative relief alternative to moving party's requested relief
- § 404. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance
- § 405. Joinder of interested person and employee pension benefit plan as parties
- § 406. Production of federal and state income tax returns
- § 407. Effect of failure to submit required documents to court
- § 408. Financial declaration not required in certain default cases
- § 409. Private trial
- § 410. Evidence collected by eavesdropping
- § 411. Payment of obligation directly to creditor
- § 412. Assignment of rights to reimbursement under health plan
- § 413. Appeal of bifurcated issue

Chapter 2. General Provisions Relating to Temporary Restraining Orders and Support Orders Made Without Notice

- § 440. Application of provisions of this chapter
- § 441. Granting temporary restraining order without notice
- § 442. Order to show cause
- § 443. Readiness for hearing; continuance; counter-affidavits
- § 444. Precedence for hearing and trial

Chapter 3. Ex Parte Protective Orders in Proceedings for Dissolution or for Judgment of Nullity of Marriage

- § 450. Ex parte protective orders during pendency of proceeding; purposes of order
- § 451. Required statements in order
- § 452. Transmittal to local law enforcement agency
- § 453. Law enforcement agency to make information concerning order available to law enforcement officers
- § 454. Enforcement of order
- § 455. Service of restraining order against domestic violence by law enforcement officer
- § 456. Penalty for violation of restraining order against domestic violence
- § 457. Judicial Council forms and instructions

Chapter 4. Spousal and Child Support During Pendency of Proceeding

- § 470. Order for support during pendency of proceeding
- § 471. Modification or revocation of order
- § 472. Child support order continues in effect until revoked or terminated
- § 473. Order not enforceable where parties are reconciled and living together
- § 474. Rights with respect to subsequent order not prejudiced

Chapter 5. Expedited Child Support Order

- § 500. Designation of order as expedited support order
- § 501. Court order, made without hearing, requiring child support during pendency of action; amount of support
- § 502. Application for order
- § 503. Jurisdiction of court on application

- § 504. Order automatically becomes effective 30 days after required documents served unless response served by obligated parent
- § 505. Obligated parent's response to application
- § 506. Setting application for hearing
- § 507. Giving notice of hearing
- § 508. Effect of failure to give notice of hearing
- § 509. Production of tax returns at hearing
- § 510. Amount of support
- § 511. Order after hearing
- § 512. Effective date of order after hearing
- § 513. Modification of order
- § 514. Judicial council to prepare necessary forms

Chapter 6. Employee Pension Benefit Plan as Party

- § 550. Application and order for joinder of plan
- § 551. Pleading of party requesting joinder
- § 552. Service upon trustee, administrator, or agent of plan
- § 553. Notice of appearance and responsive pleading by plan
- § 554. Plan need not pay filing fees
- § 555. Entry of default of plan
- § 556. Provisions governing proceeding in which plan has been joined
- § 557. Notice to plan of proposed property settlement; response by plan
- § 558. Appearance by plan at hearing
- § 559. Order affecting plan made at hearing not attended by plan
- § 560. Motion to set aside or modify order

Chapter 7. Provisions for Attorneys' Fees and Costs

- § 570. Costs and attorney fees during pendency of proceeding
- § 571. Notice of application for order
- § 572. Attorneys' fees for enforcement of support order
- § 573. Support award to be just and reasonable under circumstances of parties
- § 574. Property from which payment may be ordered
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Chapter 8. Enforcement of Judgments, Orders, and Decrees

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- § 580. Methods of enforcement
- § 581. Effect of lack of diligence in seeking enforcement
- § 582. Renewal of judgment for support
- § 583. Enforcement of support judgment, order, or decree not entered pursuant to the Family Law Act
- § 584. Effect of reconciliation of parties
- § 585. Effect of failure to implement custody or visitation rights

Article 2. Enforcement by Writ of Execution

- § 590. Enforcement of child or family support without prior court approval
- § 591. Enforcement of spousal support without prior court approval
- § 592. Period for enforcement of installment payments
- § 593. Enforcement of support against employee pension benefit plan
- § 594. Application for writ

Chapter 9. Earnings Assignment Order for Support

Article 1. Definitions

- § 600. Application of definitions
- § 602. "Assignment order"
- § 604. "Due date of support payments"
- § 606. "Earnings"
- § 608. "Earnings assignment order for support"
- § 610. "Employer"
- § 612. "IV-D Case"
- § 614. "Obligee"; "assigned obligee"
- § 616. "Obligor"
- § 618. "Support"
- § 620. "Timely payment"

Article 2. General Provisions

- § 630. Support order must include earnings assignment order
- § 631. Order binds existing and future employers
- § 632. Manner of service on employer
- § 633. Commencement of withholding by employer
- § 634. Delivery of copy of order and statement of rights to obligor
- § 635. Employer to withhold and forward support
- § 636. Consolidated check by employer
- § 637. Support paid through designated county officer
- § 638. Obligee's notice of change of address
- § 639. Priorities where order includes both current support and arrearages
- § 640. Manner of computing arrearages of support payments
- § 641. Termination of order
- § 642. Penalty for employer failing to comply with order
- § 643. Service of order creates lien
- § 644. Priority of order over attachment, execution, or other assignment
- § 645. Application of chapter to district attorney
- § 646. Use of other civil and criminal remedies not limited

Article 3. Support Orders Issued or Modified Before July 1, 1990

- § 650. Article applies to support orders first issued or modified before July 1, 1990
- § 651. Procedures available for obtaining assignment order
- § 652. Application for order under this article
- § 653. Issuance of assignment order

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- § 660. Finding of good cause required to stay order
- § 661. Termination of stay

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- § 670. Grounds for motion of quash
- § 671. Filing motion and notice of motion to quash; setting for hearing; service on obligor
- § 672. Modification of order to reflect correct or allowable amount

Article 6. Information Concerning Address and Employment of Obligor

- § 680. Use of California parent locator service

- § 681. Obligor to inform obligee of change of employment
- § 682. Employer to notify obligee when obligor leaves employment
- § 683. Employer to provide information to district attorney

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- § 690. Assignment not grounds for refusal to hire, discharge, or disciplinary action

Article 8. Judicial Council Forms

- § 695. Forms to implement statute

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- § 800. Restoration of wife's former name
- § 801. Restoration not to be denied for any reason other than fraud
- § 802. Common law right to change name not limited
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- § 900. Short title
- § 901. Purposes of this part
- § 902. Right of "presumed parent" to proceed under this part
- § 903. No filing fee
- § 904. Order limiting visitation to situations in which third person is present
- § 905. Required statement and notice on order
- § 906. Remedies in addition to other remedies
- § 907. Judicial Council forms and instructions

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- § 920. Application of definitions
- § 921. "Abuse"
- § 922. "Domestic violence"
- § 923. "Family or household member"

Chapter 3. Temporary Restraining Orders

- § 930. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse
- § 931. Persons who may be granted temporary restraining order

Chapter 4. Ex Parte Protective Orders

- § 935. Types of orders that may be issued ex parte
- § 936. Service on defendant where temporary restraining order granted without notice
- § 937. Requirement for issuance of order excluding party from residence or dwelling

Chapter 5. Emergency Protective Orders

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- § 940. Application of provisions of this article

- § 941. Designation of judge or court officer to orally issue ex parte emergency protective order when court is not in session
- § 942. Reducing order to writing and signing order
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- § 944. Officer to carry copies of order
- § 945. Service, filing, and delivery of copy of order
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Article 2. Emergency Protective Order Where Danger of Domestic Violence

- § 950. Issuance of ex parte emergency protective order where danger of domestic violence
- § 951. Finding required to issue order
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Article 3. Emergency Protective Order Where Child in Danger of Abuse

- § 955. Issuance of ex parte order where child in danger of abuse
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- § 961. Order determining temporary custody of child
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Chapter 7. Registration and Enforcement of Orders

- § 970. Transmittal to local law enforcement agency
- § 971. Law enforcement agency to make information concerning order available to law enforcement officers
- § 972. Service of restraining order against domestic violence by law enforcement officer
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PART 6. CONCILIATION PROCEEDINGS

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- § 1011. Assignment of judges; number of sessions
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- § 1017. Probation officers; duties
- § 1018. Confidentiality of hearings, conferences, and papers
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- § 1020. Agreement between counties for joint family conciliation court services

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- § 1031. Petition; right to file; purpose
- § 1032. Caption of petition
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- § 1035. Fees
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- § 1037. Time and place of hearings
- § 1038. Informal hearings; aid of specialists or experts
- § 1039. Orders; duration; reconciliation agreement; temporary support
- § 1040. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding
- § 1041. Other pending proceeding involving minor child; transfer to family conciliation court
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- § 1500. Judicial Council duties
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§§ 2000-2990 [Reserved]

- Part 1. Minors Generally (CC §§ 25, 26, 27, 29, 25.1, 42) (consider H & S Code § 1530.6, 1795.14; CCP 376)*
- Part 2. Medical Treatment of Minors (CC §§ 25.5-25.9, 34.5-34.10)*
- Part 3. Minor's Capacity to Contract (CC §§ 33-34, 35-37)*
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§§ 3000-3294

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- § 3001. Capacity of adult to consent to and consummate marriage
- § 3002. Capacity of minor to consent to and consummate marriage
- § 3003. Consent of superior court
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- § 3005. Validity of foreign marriages
- § 3006. Action to have validity of marriage determined

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- § 3061. Contents of license
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- § 3070. Informational brochure

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CHAPTER 3. SOLEMNIZATION OF MARRIAGE

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- § 3150. Persons authorized to solemnize
- § 3151. Commissioner of civil marriages; deputies
- § 3152. Officials of nonprofit religious institutions

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- § 3160. Essential element of solemnization
- § 3161. Determining correctness of facts stated in license
- § 3162. Certificate of registry required
- § 3163. Return of license and statement to local registrar
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- § 3204. Issuance of license on request of approved notary public
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- § 3250. Only approved notary may authorize confidential marriage
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- § 3252. Required course of instruction before approval
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- § 3270. Record of confidential marriage; disclosing information concerning confidential marriage

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- § 3287. Certificate forms from other states
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- § 3289. Standard serological test; approved laboratory; checking accuracy of tests
- § 3290. Submission of laboratory reports or records; destruction of copies of old reports
- § 3291. Court waiver of examination and test requirements; confidential proceedings; no court fee required
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DIVISION 5. HUSBAND AND WIFE (§§ 3500-4499)

§§ 3500-4499

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- Part 5. Marital Agreements
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DIVISION 7. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE

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- Part 1. General Provisions (CC §§ 4501-4516)
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- § 6031. Action by man not a presumed father to establish that he is natural father of child
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- § 6036. Effect of judgment determining existence or nonexistence of parent and child relationship
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Part 5. Priorities of Foster Care and Adoptive Placement (CC §§ 275-276)

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DIVISION 11. SUPPORT (§§ 6500-7499) [1993 LEGISLATIVE SESSION]

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Part 3. Support of Children (CC §§ 4700-4709)

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Part 5. Other Provisions Relating to Enforcement of Support

Chapter 2. Spousal and child support during pendency of proceeding

Chapter 3. Expedited support order

Chapter 4. Earnings assignment order for Support (CC §§ 4390-4390.19) (This material might be included under Part 4 above or under Division 10 (Obligation to Support).)

Chapter 5. Security for support

Chapter 6. Enforcement by State and Local Agencies (W & I C

§§ 11475-11492.1)

Chapter 7. Agnos Child Support Standards Act (CC §§ 4720-4732)

Chapter 8. Child Support Delinquency Reporting (CC §§ 4750-4752)

DIVISION 12. JUVENILE COURT LAW (§§ 7500-8999) [1995 LEGISLATIVE

SESSION]

(W & I Code §§ 200-987 (relevant portions) includes

Interstate Compact on Juveniles -- W & I Code §§ 1300-1308)

DIVISION 13. ADOPTION (§§ 9000-9999) [1994 LEGISLATIVE SESSION]

(CC §§ 221-230.8)