

#30

6/28/71

First Supplement to Memorandum 71-24

Subject: Study 30 - Child Custody

At the July meeting, the Commission must decide whether to go ahead with the child custody study without requesting that the scope of this study be expanded or to request that the study be expanded. If the scope of the study is to be expanded, the Commission must decide whether to request that it be expanded in a concurrent resolution to be introduced at the current legislative session or to include in the next Annual Report a request that the study be expanded.

Attached is a draft of a statement that could be included in the next Annual Report if the Commission determines that the scope of the study should be expanded. We suggest that you examine the guardianship and adoption statutes if you have any question as to the desirability of expanding the scope of the study. If a concurrent resolution were to be introduced at the current session, the attached statement could be used to justify the expansion of the scope of the study.

Respectfully submitted,

E. Craig Smay
Legal Counsel

EXHIBIT I

TOPICS FOR FUTURE CONSIDERATION

A study to determine whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised.

Resolution Chapter 42 of the Statutes of 1956 authorized the Law Revision Commission to study "whether the law relating to jurisdiction of courts in proceedings affecting the custody of children should be revised."¹ The Commission retained Professor Brigitte M. Bodenheimer, Research Professor of Law, University of California, Davis, to prepare a background study on this topic. Professor Bodenheimer's study has been completed and published in the Stanford Law Review.² Perhaps the most important of Professor Bodenheimer's recommendations is that the standards for custody determinations be made uniform, whether the custody issue is raised in a proceeding under the Family Law Act or in a guardianship, adoption, or other proceeding.

One problem in attempting to achieve such uniformity is that the present provisions relating to child custody are hopelessly intertwined with other matters in the various statutes dealing with the subject. For example, the statute governing guardianship proceedings commingles provisions relating to guardianship of the person of a minor with provisions relating to guardianship of the person of an adult incompetent and, in addition, commingles these provisions with provisions relating to guardianship of the estates of such persons. To deal with the child custody problems in a guardianship proceeding, it will be necessary to sort out the provisions relating to guardianship of

-
1. See 1 Cal. L. Revision Comm'n Reports, 1956 Report at 29 (1957).
 2. See Bodenheimer, The Multiplicity of Child Custody Proceedings--Problems of California Law, 23 Stan. L. Rev. 703 (1971).

the person of a minor and to completely reorganize the entire guardianship statute. Any useful reorganization of the guardianship statute should also include revisions needed to modernize the statute generally. However, the study previously authorized covers only child custody and does not permit a study of other needed changes in the guardianship law.

Similarly, some reorganization of the existing statutory provisions relating to adoption is absolutely essential in order to draft legislation to effectuate Professor Bodenheimer's recommendations. But, in addition, the Commission believes an overall reorganization of this body of law is needed. In reorganizing a new adoption statute, it would no doubt be desirable to also make substantive revisions that might not be within the scope of the previously authorized study.

In short, the Commission believes that the maximum return for the resources expended can be realized only if other aspects of the various statutes that will need to be reorganized in effectuating the child custody recommendations are reviewed at the time these statutes are redrafted. Accordingly, the Commission recommends that the scope of the study previously authorized be expanded to permit this review.³

-
3. In connection with the study of the law relating to guardianship proceedings, it should be noted that a special committee of the State Bar has been appointed to study the Uniform Probate Code. This committee has under study the provisions of the Uniform Probate Code dealing with the protection of persons under disability and their property. See California and the Uniform Probate Code, 46 Cal. S.B.J. 290, 294 (1971). If the previously authorized study is expanded as recommended, the Commission would defer work on child custody aspects of guardianship law until the State Bar committee has completed its study of the related portion of the Uniform Probate Code.