#D-501 11/20/79

Memorandum 79-58

Subject: Study D-501 - Agreements for Entry of Paternity and Support Judgments

BACKGROUND AND GENERAL REACTION TO TENTATIVE RECOMMENDATION

The Commission distributed for comment a tentative recommendation relating to agreements for entry of paternity and support judgments. The reaction to the tentative recommendation was mixed. The district attorneys who are responsible for obtaining support for children approved the tentative recommendation with numerous suggested revisions. See Exhibits 1, 2, 6, 7. The Marshal of San Diego County approved it. See Exhibit 3. Three private attorneys who commented also approved the tentative recommendation with suggested revisions. See Exhibits 8, 11, and 15. One private attorney disapproved it. See Exhibit 5. An attorney for the Legal Aid Foundation of Long Beach (Family Law Unit) approved the tentative recommendation with a suggested change. One private citizen approved the tentative recommendation (Exhibit 14). The tentative recommendation was disapproved by the following who believe that an agreement for entry of a paternity or support judgment should be allowed only when the alleged father or support obligor is represented by an attorney: Attorney for Legal Aid Society of Orange County (Exhibit 9); attorney for Channel Counties Legal Services Association (Exhibit 10); California Rural Legal Assistance (Exhibit 12); Western Center on Law and Poverty (Exhibit 13). One of these, while opposing the tentative recommendation, also made a number of suggestions to improve the content of the advisory statement to be signed by the alleged father or support obligor. See Exhibit 10. Exhibit 16 is a thoughtful letter from a deputy district attorney of Monterey County pointing out five difficulties he has with the tentative recommendation.

GENERAL STAFF REACTION TO COMMENTS

The tentative recommendation obviously presents a conflict between those commentators who seek to obtain support for a child and those who represent persons from whom support is sought. Those who oppose the

proposal to permit entry of a judgment for paternity or support based on a signed statement waiving specified rights do so because they believe that an attorney can best represent the alleged father or support obligor. However, when it is recognized that a default judgment may be taken, the staff continues in its belief that the tentative recommendation (with a number of revisions recommended below) is well designed to provide a practical, fair, and constitutional method of dealing with this matter. The summons in a civil action for a determination of paternity or support fails adequately to advise the defendant of his rights and the consequences of the default. At the same time, the delay and costs of instituting civil actions waste public moneys in cases where the defendant has no objection to the entry of a judgment. Accordingly, the staff believes that the tentative recommendation is basically sound, but we recognize that some modifications are needed to deal with matters raised in the comments.

Scope of Recommendation

A number of suggestions were made that the Commission's recommendation should be expanded.

Extension of procedure to private counsel. The district attorneys suggest that the procedure provided in Section 11476.1 be extended to private counsel representing the child. They believe that this would facilitate resolution of the cases before they get to the office of the district attorney. The staff is reluctant to so extend the section. We are concerned with the effect that a judgment so obtained by the custodial parent would have in a welfare case. We fear that the proposal would require complex provisions to deal with these and other practical problems.

Stipulations or agreements in cases where the defendant has been served with a complaint and summons. The Deputy District Attorney of Monterey County (Exhibit 16) comments:

> Although the Castro decision dealt only with section 11476.1, Welfare and Institutions Code, there appears to be no reason why the next step required by the logic of the court should not be the prohibition of stipulated judgments in cases where the defendant has been served with a summons and complaint. If the court is concerned that defendants properly waive their due process rights when agreeing to judgments determining paternity, there appears to be no basis for requiring special precautions for those defendants

> who agree to the entry of judgment without first being served with a complaint and a summons, but not requiring anything extra when the defendant is served and then decides to accept an offer to stipulate to the entry of judgment.

The staff agrees that there is concern that the court will extend the recent due process requirements in confession of judgment cases to default or stipulated judgment cases. However, we believe that it would be premature to attempt to deal with these situations in the present recommendation. The impact on the judicial system would be substantial if defaults or stipulated judgments could be taken only if the defendant is advised in some manner of his rights. Accordingly, there is no assurance that the court would be willing to extend the confession of judgment requirements to default and stipulated judgment cases.

Recovery of welfare aid provided family during period of separation or desertion. Section 11350 of the Welfare and Institutions Code provides for an action instituted by the district attorney to recover for delinquent support or, in the absence of a support order, for welfare aid provided to the defendant's family during a period of separation or desertion.

The Deputy District Attorney of Monterey County (Exhibit 16) suggests that the Commission's proposal be expanded to cover this situation:

> Second, the language of your proposal (as well as the language of the original statute) limits the agreements to judgments determining paternity and for child support payments. Frequently, if not in the majority of cases handled by district attorneys, there is also the issue concerning the amount of reimbursement the defendant should pay to the county pursuant to section 11350, Welfare and Institutions Code. If this issue cannot be resolved in the agreements authorized by your proposed statute, the use of these agreements will be greatly restricted. A district attorney can use the agreement to set out terms for reimbursement, but this will always be done with the hope that no one will object and no court will interpret your proposal to mean what it says.

The staff is reluctant to extend the scope of the proposal to cover this situation. The existing provision does not cover the situation and we have concern that the statute will be much more complex if we attempt to cover it. The general confession of judgments statute (which requires certificate of an independent attorney representing the defendant) is

available to permit confession of judgment in a situation covered by Section 11350.

Welfare & Institutions Code § 11476.1

Technical changes. The staff suggests that the last sentence of subdivision (a) be deleted. This section is unnecessary in view of the requirements of subdivision (b).

The introductory clause of subdivision (b) should be revised to read:

> (b) A judgment based on the agreement shall be entered only if one or more of the following requirements ~~is~~ are satisfied:

Certificate of independent attorney. Subdivision (b)(1) permits entry of judgment upon the certificate of an independent attorney representing the noncustodial parent. The private lawyers who commented on the tentative recommendation expressed concern as to the content of the certificate and one suggested that the certificate be accompanied by a waiver signed by the noncustodial parent. The staff believes that there is merit to this suggestion. We suggest that subdivision (b)(1) be revised to read:

> (1) The noncustodial parent is represented by the public defender or private counsel and both of the following requirements are met:
>
> (A) The attorney signs a certificate stating: "I have examined the proposed judgment and have advised my client to agree to the entry of the judgment and my client has executed the attached statement or statements in my presence."
>
> (B) The certificate of the attorney is accompanied by a statement that satisfies the requirements of Section 11476.2 if the agreement is for the entry of judgment determining paternity and a statement that satisfies the requirements of Section 11476.3 if the agreement is for the entry of judgment for periodic child support payments.

Reference to disposition by plea bargain. The district attorneys suggest that subdivision (b)(2) be revised to indicate that the court can accept an agreement for entry of judgment determining paternity or child support and suspend further proceedings in a criminal action for nonsupport. There is recognition in the sections cited in Exhibit 2 for this practice. The staff suggests that the following be added to the section:

(h) After arrest and before plea or trial, or after conviction or plea of guilty under Section 270 of the Penal Code, if the defendant appears before the court and the requirements of paragraph (1) or (2) of subdivision (b) are satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce such judgment.

The language of this provision is drawn from Section 270b of the Penal Code (copy attached as Exhibit 17).

Enforcement of judgment. The district attorneys suggest that it be made clear that the judgment entered by agreement may be enforced the same as any other judgment for support. This clarification could be accomplished by adding the following sentence at the end of subdivision (c):

A judgment for support so entered may be enforced by any means by which any other judgment for support may be enforced.

We doubt that this sentence will be sufficient to permit a criminal prosecution under Section 270 of the Penal Code without proof in the criminal action that the person is a parent of the child; Section 270 requires either such a determination in the criminal action or a prior "final adjudication" by "a court of competent jurisdiction" that the person is a parent of the child.

Technical revisions in subdivision (d). In response to a suggestion from the district attorneys, the staff suggests that the first sentence of subdivision (d) be revised to read:

(d) Upon request of the district attorney in a case described in paragraph (2) of subdivision (b) , the clerk shall set the matter for hearing by the court. The hearing shall be held within 10 days after the clerk receives the request ~~in a case described in paragraph (2) of subdivision (b)~~ .

The district attorneys also suggest the substance of the following additional sentence to be added to subdivision (d):

The presence of the person who signed the agreement for entry of judgment at the hearing shall constitute the presence of the person in court at the time the order is pronounced for the purposes of Section 1209.5 of the Code of Civil Procedure if the court makes the findings required by paragraph (2) of subdivision (b).

Section 1209.5 relates to use of contempt as a sanction for failure to comply with a support order. Section 1209.5 is set out in Exhibit 18.

Subdivision (e). The district attorneys have several concerns about the language of this subdivision. Exhibit 15 suggests that service be made in the manner of service of a summons. To deal with these concerns, the staff suggests that the subdivision be revised to read:

> (e) The district attorney shall cause the following to be served, in the manner specified in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, upon the person who signed the agreement for entry of the judgment and shall file proof of service thereof with the court:
>
> (1) A copy of the judgment as entered.
>
> (2) If the judgment includes an order for child support payments, a notice stating the substance of the following: "The court has continuing authority to make an order increasing or decreasing the amount of the child support payments. This can be done only after a court hearing of which notice has been given. You have the right to request that the court order the child support payments be decreased or eliminated entirely."

This notice could be stamped on the copy of the judgment before it is served. We would revised the Comment to so state. The only question that the staff has is whether the notice is necessary; the content of the notice will duplicate one of the required provisions of the statement required to be executed by the support obligor.

Subdivision (f). Taking into account suggestions of the district attorneys, the staff suggests that this subdivision be revised to read:

> (f) An order for child support included in a judgment entered under this section may be modified or revoked as provided in Section 4700 of the Civil Code. The court may modify the order to make the support payments payable to a different person.

The reference to Civil Code Section 4700 is included to pick up the following provision of Section 4700: "Any order for child support 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. The order of modification or revocation may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or revoke, or to any date subsequent thereto. The order of modification or revocation may include an award of attorney fees and court costs to the prevailing party." We will add a statement to the Comment indicating that the reference to Civil Code Section 4700 has this effect.

Exhibit 16 suggests that the right to modify the order not be restricted to a case of changed circumstances (which is the restriction under the existing section). The revised language does not so restrict the court's power, but instead refers to Section 4700.

Subdivision (g). Subdivision (g) is the same in substance (with the addition of the last paragraph) as Civil Code Section 246 prior to its amendment in 1976. As a result, subdivision (g) now provides a standard that is inconsistent with the general Civil Code provision that designates the circumstances to be taken into consideration. To remedy this, the staff suggests that subdivision (g) be revised to read:

> (g) For the purposes of this section, in making a determination of the noncustodial parent's reasonable ability to pay, the court shall consider the circumstances set out in Section 246 of the Civil Code.

A copy of Section 246 is set out as Exhibit 19.

Modification of paternity judgment to include support order. The district attorneys suggest that if a judgment of paternity is entered and the support term is left open, the agreement may be modified to later enter an amount by noticed motion, the same as a motion to modify. The staff does not like this suggestion. We think it will serve as a trap to the support obligor. If it is desired to fix the amount of support, we believe that either a support order should be obtained following ordinary procedures or a separate agreement for entry of the support order should be made as provided in the tentative recommendation. We believe that the Comment should make clear that this is required and that the agreement for entry of a paternity judgment that does not include a support order does not permit modification of the judgment on motion to impose a court order for support in a designated amount.

Entry of judgment contingent on happening of certain event. The district attorneys suggest that some provision be made for the judgment to be entered on the happening of a certain event (i.e., on nonexclusion after certain standard blood tests or the springing into effect of the order after the birth of the child, etc.). The staff believes that the blood tests should be completed before the agreement is made. If the Commission believes that the statute should authorize the agreement for

entry to include a provision that the judgment is to be entered upon the birth of the child, the following sentence should be added to subdivision (a):

> An agreement for entry of a judgment under this section may be executed prior to the birth of the child and may include a provision that the judgment is not to be entered until after the birth of the child.

Welfare & Institutions Code § 11476.2

In response to various suggestions, the staff suggests that this section be revised to read:

> 11476.2. A judgment determining paternity based on agreement may be entered under Section 11476.1 if the agreement for entry of the judgment includes a statement signed by the noncustodial parent in substantially the following form.

AGREEMENT FOR ENTRY OF JUDGMENT DETERMINING PATERNITY--STATEMENT ACKNOWLEDGING AND WAIVING RIGHTS

I have been asked to sign an Agreement for Entry of Judgment Determining Paternity. I understand that by signing the agreement, I will be admitting I am the father of the child or children named in the agreement. [ ]

I understand that I have the following rights in connection with this matter:

1. The right to be represented by a lawyer. [ ]

   I may hire the lawyer of my choice at my own expense. If I cannot afford a lawyer, I can ask the court to appoint a lawyer to represent me free of charge in any proceeding to determine whether I am the father of the child or children. I understand that the district attorney does not represent me. [ ]

2. The right to have a trial by jury to determine if I am the father. [ ]

   If I request, I may have a jury decide whether I am the father. Or, with my consent and the consent of the person bringing a proceeding to determine whether I am the father, a judge alone may decide whether I am the father. [ ]

3. The right to confront and cross-examine witnesses against me. [ ]

   I understand that, in a trial, the person bringing the proceeding to determine whether I am the father must prove that I am the father. I may be present with a lawyer when that person's witnesses testify and ask them

questions. I may also present evidence and witnesses in my own defense. Procedures are available prior to the trial that will permit me to determine what the witnesses against me claim are the facts concerning whether I am the father. [ ]

4. The right to remain silent. [ ]

I understand that I cannot be required to admit or deny that I am the father. If I refuse to sign the agreement, I cannot be prosecuted for refusing to sign. If I admit that I am the father, my statement can be used as evidence against me if I am ever prosecuted for failing to support the child or children. [ ]

5. The right to have blood tests. [ ]

I understand that if a trial is held to determine if I am the father, I will have the right to have the court order the mother, the child or children, and myself to submit to blood tests. Blood tests sometimes show that a person claimed to be the father of a child could not possibly be the father of the child. The court decides who pays for the blood tests. The court could order that I pay none, some, or all of the cost of the tests, depending on whether I can afford to pay. [ ]

6. The right to have a judge decide the following matters if I am found to be the father:

(1) The amount of child support I must pay.

(2) How long I will have to pay child support. [ ]

I also understand the following:

1. If I sign this agreement, I will have the duty to contribute to the support of the child or children named in the agreement and that this duty of support can continue until the child reaches the age of 18. [ ]

2. If I sign this agreement, the court can order that I make payments for the support of this child. [ ] If I fail to make the payments ordered by the court, the court order may be enforced by any of the following means:

(i) The court may order my employer to withhold the support payments from my wages and pay them to the person named by the court.

(ii) The court may find me in contempt and order me jailed.

(iii) The court may authorize the seizure of my property (except exempt property) and order the property sold to pay the support payments.

(iv) The district attorney may bring a criminal prosecution against me. If convicted, I can be punished by a fine of not more than $1,000, or jailed for not more than one year and a day, or both. [ ]

3. I understand that, if I sign this agreement, this child may have the right to inherit my property when I die and other rights as my child. [ ]

4. Before I sign this agreement, I can have a lawyer I hire, or a court-appointed lawyer, look at the agreement and give me advice about what I should do. [ ]

I have read and understand each item printed above. I have initialed each item I have read. Having in mind all of the rights mentioned in this statement and the consequences of admitting I am the father of the child or children named in the agreement, I willingly, knowingly, and intelligently give up those rights. It is my choice to resolve this matter by signing the agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California, on _____.

STOP. YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. IF YOU HAVE ANY QUESTIONS OR DOUBT AS TO THIS MATTER, SEE AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED.

_____
(signature of person agreeing to entry of judgment)

Welfare & Institutions Code § 11476.3

In response to various suggestions, the staff suggests that subdivision (b) of this section be revised to read:

(b) The agreement for entry of judgment shall include a statement by the noncustodial parent in substantially the following form.

AGREEMENT FOR ENTRY OF JUDGMENT REQUIRING PERIODIC CHILD SUPPORT PAYMENTS--STATEMENT ACKNOWLEDGING AND WAIVING RIGHTS

YOU ARE NOT REQUIRED TO SIGN THIS PAPER. YOU ARE NOT REQUIRED TO PARTICIPATE IN THIS PROCEDURE. YOU MAY REFUSE TO SPEAK WITH THE DISTRICT ATTORNEY AND MAY SEEK THE ASSISTANCE OF AN ATTORNEY. IF YOU HAVE ANY QUESTIONS OR DOUBTS, DO NOT SIGN THIS PAPER AND SEE AN ATTORNEY.

I have been asked to sign an Agreement for Entry of Judgment Requiring Periodic Child Support Payments. I understand that by signing this agreement, I am agreeing to make the child support payments for the child or children named in the agreement in the amount or amounts stated in the agreement.

I understand I have the following rights in connection with this matter:

1. The right to be represented by a lawyer. [ ] I may hire a lawyer of my choice at my own expense. If I cannot afford a

lawyer, I can request the assistance of a lawyer from an organization that provides legal assistance to persons who cannot afford lawyers. [ ]

2. The right to have a judge decide the following matters:

(1) The amount of child support I must pay.

(2) How long I will have to pay child support. [ ]

I also understand the following:

1. If I refuse to sign the agreement, I cannot be prosecuted for refusing to sign. [ ]

2. If I sign this agreement, I will be required to support the child or children by the amount stated in this agreement, but that the court has authority, after a hearing of which notice has been given, to increase or decrease this amount. I understand that my duty to support the child or children by the amount stated in this agreement can continue until the child reaches the age of 18 or until such earlier time as is stated in this agreement.

3. If I sign this agreement and I fail to make the payments required by this agreement, the duty to make the support payments will be enforced and may be enforced by any one or more of the following means:

(i) The court may order my employer to withhold the support payments from my wages and pay them to the person named by the court.

(ii) The court may find me in contempt and order me jailed.

(iii) The court may authorize the seizure of my property (except exempt property) and order the property sold to pay the support payments.

(iv) The district attorney may bring a criminal prosecution against me. If convicted, I can be punished by a fine of not more than $1,000, or jailed for not more than one year and a day, or both.

4. Before I sign the agreement, I can have a lawyer representing me look at the agreement and give me advice about what I should do. [ ]

I have read and understand each item printed above. I have initialed each item I have read. Having in mind all of the rights mentioned in this statement and the consequences of signing the agreement, I willingly, knowingly, and intelligently give up those rights. It is my choice to resolve this matter by signing the agreement.

I declare under penalty of perjury the foregoing is true and correct.

Executed at _____, California, on _____.

STOP. YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. IF YOU HAVE ANY QUESTIONS OR DOUBT AS TO THIS MATTER, SEE AN ATTORNEY.

_____
(Signature of person agreeing to entry of judgment)

Visitation Rights

Exhibit 10 suggests that the agreement for support should also contain provisions for child visitation rights. There is some merit to this suggestion. The staff would add an additional sentence to subdivision (a) of Section 11476.1 to read:

> If both parents of the child agree to the entry of a judgment under this section providing for periodic child support payments, the judgment may include provisions granting child visitation rights to the noncustodial parent.

Right to Have Judgment Vacated for Fraud, etc.

The proposed legislation is silent on the circumstances when the judgment entered pursuant to an agreement may be vacated for fraud, lack of understanding, or on some other ground. The staff believes that it would be useful to include a provision dealing with this matter. We suggest the addition to Section 11476.1 of the following subdivision, which is drawn from Civil Code Section 4555 (Summary Dissolution of Marriage) (copy of Section 4555 set out as Exhibit 20):

> (i) A judgment entered pursuant to this section does not prejudice or bar the rights of the person agreeing to the entry of the judgment to institute an action to set aside the judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to Section 473 of the Code of Civil Procedure.

Spanish Language Forms

Exhibit 10 suggests that there be a requirement that the waiver forms be in the language of the declarant. The staff does not believe that this would be a desirable requirement--we believe the question is whether the person executing the agreement understood what he was doing. The explanation of rights would have to be in a language understood by the person in order for the person to be able to understand what he was doing. We would prefer to add the provision permitting the judgment to

be vacated on the grounds of mistake than to impose a technical requirement concerning the various languages in which the form is to be provided. We would anticipate, however, that forms would be provided in commonly-used languages and, absent a form that was understandable to the person, it would be necessary to use normal procedures for obtaining the judgment or to bring the person before the court for the explanation of rights.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT 1

SUTTER COUNTY DISTRICT ATTORNEY

FAMILY SUPPORT DIVISION
204 "C" Street – P.O. Box 689
Yuba City, California 95991
Telephone (916) 674-9050

TED HANSEN
DISTRICT ATTORNEY

RONALD G. BORDEN
DEPUTY DISTRICT ATTORNEY

October 10, 1979

California Law Revision Commission
Stanford School of Law
Stanford, California 94305

Dear Sir or Madam:

I agree with the tentative recommendation relating to Agreements for Entry for Paternity and Support Judgments.

I have no comment on the Recommendations Relating to the Application of Evidence Code Property Valuation Rules in Noncondemnation Cases, the tentative Recommendation Relating to the Probate Homestead, for tentative Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities and the staff draft relating to Enforcement of Obligations after Death.

Very truly yours,

Ronald G. Borden

RONALD G. BORDEN
Deputy District Attorney

RGB:bjs

EXHIBIT 2

DISTRICT ATTORNEY

SACRAMENTO COUNTY

DOMESTIC RELATIONS

P.O. Box 160937 • 1725 - 28th Street • Sacramento, California 95816
(916) 440-5811

HERB JACKSON
District Attorney

L. ANTHONY WHITE
Chief Deputy

MICHAEL E. BARBER
Supervising Deputy

JON T. HEINZER
Division Chief

October 11, 1979

JOHN H. DEMOULLY
Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

RE: Revised TENTATIVE RECOMMENDATION RELATING TO AGREEMENTS FOR ENTRY OF PATERNITY AND SUPPORT JUDGMENTS (9-17-79)

Dear John

Thank you for your efforts to remedy Castro. I have several suggestions as to substance and will leave the form of the language up to you.

A. CHANGES TO PROPOSED SECTION 11476.1 WELFARE & INSTITUTIONS CODE

1. I would like to see the remedy under Section 11476.1 open to private counsel as well as the District Attorney. It might facilitate resolution of these cases even before they get to our office.

2. I suggest that in any case resolved as part of a plea bargain under Section 270 PC, some reference to that disposition be incorporated in (2) (b). I also think your statement surrounding the use of civil resolution of PC 270 cases could be stated more positively. Realize that under Section 1377-79 PC and Section 270(b) PC, civil compromise is a recognized and judicially approved method of resolving certain types of misdemeanors (see People V. O'Rear, 220 C.A.2d Supp.927, 34 Cal Rptr 61; People v. Sorensen, 68 Cal 2d 280, 66 Cal Rptr 7; Witkin, California Crimes, Vol. 1, p.527). This fact is all too often ignored or not understood by critics of the program. Some reference to compromise and satisfaction might be included in sections (b)(3) and (4) of your proposed statute.

3. Please add to "(c)": "... and may be enforced by any and all means as any other order for support."

4. You say "...within 10 days" under item "(d)." Please clarify by stating "...within 10 days of said request."

5. State in "(d)" that appearance at said hearing shall constitute presence when the order is pronounced in the context of Section 1209.5 CCP.

6. There are three things wrong with "(e)":

   a. Under (e), please change the language back "to effect service." It may not be economically feasible for the District Attorney to personally serve the judgment and order, yet this is implied in your language.

   b. Your requirement that the judgment be served "promptly" upon entry is just an excuse for litigation. What if the defendant conceals himself? What does the word "promptly" mean when you have a large amount of process to be served? Does failure to serve "promptly" void the judgment? Rest assured that it being in the public's best interest to get prompt service, particularly if the individual is not present when the order is pronounced, we don't need a vague statutory requirement to prod us to do so.

   c. The requirement of notice concerning modification should also include notice of the right to modify the order upward. Otherwise it could be implied that no such right exists. If this right does not exist, then the whole modification section could be construed as being fatally defective by denying equal protection to the county, the mother, and the child.

7. While "(f)" clearly implies that there must be a finding of a sufficient change of circumstances to permit a modification (by the use of the word "justifying"), I believe that this section should be strengthened. The use of the word "showing" suggests to me a prima facia case. I do not believe an order should be modified upward or downward on such a flimsy basis. Further, the order for modification ought to have the same legal effect as any other modification; that is, effective back to the date of filing the motion. I see no reason for the reference to Section 11350 W&I. I would prefer that if any reference is necessary, it be to the Family Law Act. Finally, it should be made clear that if a judgment of parentage is entered and the support term is left open, this agreement may be modified to later enter an amount by noticed motion, the same as a motion to modify.

8. I do not see why the words "all of" add anything to the list of items to be considered in making a determination of the amount the absent parent can pay. Suppose some of the items are uncertain or not ascertainable (i.e., item #7)? Does this void the judgment if one of these cannot be ascertained?

9. Make some provision for the judgment to be entered on the happening of a certain event (i.e., on non-exclusion after certain standard blood tests; or the springing into effect of the order after the birth of the child, etc.).

10. The statute should state explicitly that the court may also change the payee, to permit direct support if the child goes off welfare.

B. CHANGES TO SECTION 11476.2 WELFARE & INSTITUTIONS CODE

1. "(a)" should be amended to permit entry of judgment where the child has not yet been born.

2. "(b)" should be amended to advise the defendant he may have to pay jury fees if he has a civil jury. Also, it should state that if he is found guilty criminally, a probation order may be entered that would require support.

3. The section should be amended to provide for later modification of the agreement to enter a support order as described in A-7 above.

C. SUGGESTED CHANGES TO SECTION 11476.3 WELFARE & INSTITUTIONS CODE

1. Subsection (b) (5) or (b)(6) should be amended to include a reference to contempt of court.

2. Subsection (b)(4) should be amended to include a reference to prior notice before a modification may be entered. Right now it does not make clear that the defendant is entitled to a hearing thereon.

The above are only my thoughts on this matter. I have not cleared then yet with the Family Support Council. I am forwarding a copy of

this letter to other deputies with a request they get back to you directly with a copy to me.

Thanks again.

Very truly yours

Michael E. Barber

MICHAEL E. BARBER
Legislative Representative

MEB:deR

cc: L. Anthony White
Steven White
Chris Wilcox Lorenzi
Robert Barton
Gloria DeHart
George Grenfell
W. Trueblood
Albert Wells
Bruce Patterson
Herbert Jacobowitz

DEPARTMENT OF THE MARSHAL
MUNICIPAL COURT OF CALIFORNIA
County of San Diego
MICHAEL SGOBBA, MARSHAL

October 15, 1979

California Law Revision Commission
Stanford Law School
Stanford, CA. 94305

Gentlemen:

We have reviewed the tentative recommendations relating to:

1. The Probate Homestead Dated 09-14-79
2. Enforcement of Claims and Judgements Against Public Entities Dated 09-17-79
3. Agreements for Entry of Paternity and Support Judgements Dated 09-17-79
4. Enforcement of Obligations after Death Dated 10-02-79

The proposals appear to be appropriate reforms in their respective areas and we have no comment on them other than to indicate our approval.

Yours truly,

MICHAEL SGOBBA, Marshal

by R.A. Aguilar, Lieutenant

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236-2711

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VISTA DISTRICT
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LAW OFFICES OF

LEGAL AID FOUNDATION OF LONG BEACH

FAMILY LAW UNIT

4790 E. PACIFIC COAST HIGHWAY • LONG BEACH, CALIFORNIA 90804 • 434-7421

October 30, 1979

IN REPLY PLEASE REFER TO:

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Recommendations relating to
Paternity Judgments.

Dear Commission:

I have reviewed the tenative recommendation relating to Welfare and Institutions Code Sections 11476 etcetera. I find myself in general agreement therewith but would like to make one additional recommendation.

I believe that the non-custodial parent should acknowledge that he or she understands that the support might well last up until the child attains the age of eighteen. It has been my experience here at Legal Aid that many non-custodial parents assume that child support is, for some reason, a temporary phenomenon which will atrophy within a few years. I do not think it necessary to go through the entire definition of emancipation, but merely to have the non-custodial parent acknowledge in writing that he or she understands the support could last eighteen years.

Aside from the above recommendation, I foresee non-custodial parents attempting to unload their burden by stating that the attorney who signed the certificate did not fully explain the provisions. Of course, any case so litigated would turn into a swearing contest between attorney and former client.

However, on the whole, I would agree with and endorse the tenative recommendation as it stands.

Very truly yours,

DOUGLAS M. HAIGH
Attorney at Law

KMH:JH

EXHIBIT 5

LAW OFFICES
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RUTH CHURCH GUPTA
KAMINI K. GUPTA

October 31, 1979 File: 00499

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

My Dear Mr. DeMoully:

Thank you for sending the copies of tentative recommendations among others relating to "Agreements for Entry of Paternity and Support Judgments".

Due to the crush of responsibilities that had to be diverted elsewhere, we have only been able to read and comment on the named recommendation above.

I hope to get to the others to meet your deadline but at least you will have the benefit of my thinking on this particular point.

I have read the tentative recommendation and cannot from its four corners really decide what moved the Law Revision Commission to provide for a "confession of judgment" procedure in cases of this kind. It would not appear that the statistics or the experience that has been reported requires such a drastic procedure to be adopted. Further, reading the case, County of Ventura vs Castro, it would appear that any attempt to arbitrarily cut off rights are going to be subject to greater and greater scrutiny by the Courts.

Particularly, it would appear that something is missing in the treatment of the subject in that there seems to be a new developing concept that a natural father has rights in relation to a child that he has or may have sired. In my practice over the last three decades, I have had a couple of cases which are strange on their face but can only be described as nuts who would be happy to acknowledge ability to father a child even if legally, physically, biologically it were impossible. And now there seem to be a rage to have multi exposures to many potential semen bearing instruments and thus make it almost impossible to determine which is the actual sire.

In view of these "modern" and otherwise revolting developments, it would seem that any attempt to solve statutorily by a shortcut method is going to bring new problems instead of solving old problems.

This is the end of my observation with respect to this subject matter. I hope it is useful.

We will be trying to get the others to you by your deadline but

the likelihood is poor.

Yours very truly,

GUPTA & GUPTA

By
Kamini K. Gupta

KKG:ls

JAMES M. CRAMER
District Attorney

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OFFICE OF THE DISTRICT ATTORNEY

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Chief of Division

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October 31, 1979

John H. Demolly
Executive Secretary
California Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. Demolly:

Thank you for your letter of September 24, 1979, inviting comments on the tentative recommendation for revisions to Section 11476.1 of the Welfare and Institutions Code.

The comments which I submitted were incorporated at your September 13, 1979 meeting in Los Angeles. I have no further comments to offer, other than to fully endorse the recommendations made by Mike Barber in his October 11, 1979 letter to you.

I join Mr. Barber in thanking you for your efforts to remedy the Castro decision.

If I can be of any assistance to you or your committee, please do not hesitate to contact me.

Very truly yours,

JAMES M. CRAMER
District Attorney

By Billy L Trueblood
BILLY L. TRUEBLOOD
Deputy District Attorney
In Charge, Legal

BLT:nu

cc: Mike Barber
Sacramento County
District Attorney
Domestic Relations
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Sacramento, CA 95816

OFFICE OF THE DISTRICT ATTORNEY

County of Ventura, State of California

MICHAEL D. BRADBURY
District Attorney

ROBERT C. BRADLEY
Assistant District Attorney

RAYMOND J. SINETAR
Chief Deputy District Attorney

November 5, 1979

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: 11476.1, 11476.2 & 11476.3 Welf. & Inst. Code

Dear Mr. DeMoully:

I have received your Tentative Recommendations (9/17/79) and Michael Barber's written comments of October 11, 1979. I would like to "second" Mike's thanks to you for the work done to date and indicate my agreement with his suggested polishing.

I do have a comment on one point not mentioned by Mike. The existing 11476.1 sets out factors (a) through (g) for determination of a non-custodial parent's ability to pay. I see that you have suggested numbering rather than lettering to fit the outline form in the proposed statute. This language has bothered me since its 1975 codification. It appears the two definitive support statutes in California law, 246 and 4801 C.C., apply to both spousal and child support. Case law makes it clear, however, that the two basic considerations in determining child support are:

(1) the needs of the child, and
(2) the parent's ability to pay.[1]

Neither of these points is expressly covered in 246 C.C. or 4801 C.C. Some of the points on the lists in 246 and 4801, though applicable to spousal support, are downright misleading in setting child support.

[1]Mattos v. Correia, 274 Cal. App. 2d 413 (1969).

The "ability" of the custodial parent to "earn" has little, if any part, in determining child support levels, particularly as to necessities of life. I am at a loss to know what the "age of the parties" has to do with child support as a factor unto itself. A glance at some of the child support case law[2] shows that the 246/4801 points, if admissible, are little considered in setting child support. Spousal support standards have therefore been written into this child support statute.

If points (a) through (g) in 11476.1 are really applicable, then we have, to my knowledge, the only child support scheme in California using spousal support factors. Child support under the Family Law Act, Uniform Parentage Act, 11350 W&IC, and 4703/248 C.C. all use the same standards. As California case law regarding child support develops, the difference between 11476.1 and all other sections of the law promises to become more pronounced.

The "list" in 11476.1 should be replaced by simple language somehow directing us to standards consistent with other child support actions. Paraphrasing Uniform Parentage Act section 7010(d), a suggestion might read:

> "In determining the amount to be paid by a parent for the support of a child, consideration shall be given to the needs of the child, the ability of the parent to earn, and all other relevant facts."

Thanking you for the opportunity to comment, I remain,

Very truly yours,

Stephen T. Tucker

STEPHEN T. TUCKER
Director, Child Support Division

STT:vl

cc: Michael Barber
O. Guy Frick

[2]See Armstrong v. Armstrong, 15 Cal. 3d 942 (1976).
In re Marriage of Muldrew, 61 Cal. App. 3d 327 (1976).
Moore v. Moore, 274 Cal. App. 2d 698 (1969).
In re Marriage of Ames, 59 Cal. App. 3d 234 (1976).

EXHIBIT 8

ROBERT J. SCOLNIK
ATTORNEY AT LAW
100 BUSH STREET
SUITE 2000
SAN FRANCISCO, CALIFORNIA 94104

GARFIELD 1-2345

November 7, 1979

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Gentlemen:

I have been out of town in a civil trial for the past three weeks, and during my absence your four Tentative Recommendations arrived. (#D-310, -315, -320, -501.)

With all the work that has piled up and the shortness of time before your November 10 deadline, I cannot review all of these recommendations.

I have looked over #D-501 and am enclosing my comments.

I have only been able to look over a portion of #D-315. I am in complete agreement with the first two matters dealt with, but I have not had a chance to review the third.

I will not have the time to review the other two recommendations.

I apologize for not being able to review this matter and submit detailed comments.

However, I hope you will send me the final recommendations on all of these matters; and please keep me on your list to receive future material.

Very truly yours,

Robert J. Scolnik

encl.

RJS/nj

Comments of Robert J. Scolnik, Esq.
100 Bush St. Suite 2000
San Francisco, CA 94104

Re: Agreements for Entry of Paternity and Support Judgements:

1. Commission's tentative recommendation, including reasons and proposed legislation, is eminently sound.

2. Not clear what is purpose of proposed new Section 11476.3. It seems to duplicate 11476.2.

3. Discussion points out need for independent counsel to advise the noncustodial parent re the waiver. Section 11476.2(d) specifically provides that such person signify his understanding of his right to be represented by counsel and that the court will appoint one if he cannot afford to hire a lawyer but wishes to do so.

However, none of the other proposed provisions spell out that such person has this right or that the court shall appoint a lawyer for him, etc.

Would it not be desirable to cover this point more specifically?

Perhaps subsection (d) should also include the term "independent" counsel, since that term is referred to in proposed section 11476.1((b)(1), and in the Commission's preliminary discussion and explanation.

In this connection, "independent" obviously means independent of the D.A.'s office. But would an attorney in once of the social welfare agencies qualify? Presumably an attorney in the Public Defender's office would qualify as "independent;" but that is just my guess of the Commission's intention.

4. Since the function of the independent attorney is to advise the person signing the judgment of his rights and to sign a certificate to that effect, would it make sense to try to establish a simple procedure for accomplishing this? For example, to designate certain governmental agency attorneys to perform such function?

5. In view of the seriousness attached to this function by the Commission and the courts, ought the form of such certificate to be prescribed? For example, if the certificate merely states that the independent attorney advised the person of his rights, or even spelled out each item (as, for example, it is spelled out in the waiver document the person himself is required to sign), is this not insufficient unless the attorney also certifies that in his opinion the person understood the advice which such attorney gave him?

LEGAL AID SOCIETY OF ORANGE COUNTY
2700 North Main, 11th Floor, Santa Ana, California 92701
(714) 835-8806

EXHIBIT 9

November 7, 1979

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Study D-501 - Tenative Recommendation relating to Agreements for Entry of Paternity and Support Judgments

Dear Mr. DeMoully:

The Commission's tentative recommendation for revision of Section 11476.1 of the Welfare and Institutions Code is of special interest to me because I served as counsel for the plaintiffs in a recent Orange County case challenging the constitutionality of that section. The case here has been resolved after trial by a judgment declaring the statute unconstitutional in accordance with County of Ventura v. Castro (1979) 93 Cal.App.3d 462, 156 Cal.Rptr. 66. Based upon my involvement in that case and upon my representation of many paternity defendants, I am convinced that only the attorney advice provision of the tenative recommendation is adequate to assure a valid waiver of rights.

I believe that the signed waiver alternative would prove to be meaningless in practice and that it is constitutionally suspect under the holding of Isbell v. County of Sonoma (1978) 21 Cal.3d 61, 145 Cal.Rptr. 368. As the Court stated in Isbell, 145 Cal.Rptr. at 373: "[E]xperience has shown that the confession of judgment procedure lends itself to overreaching, deception, and abuse. Such a confession cannot on its face represent a voluntary, knowing and intelligent waiver." A document, standing alone, is insufficient to assure a valid waiver no matter what the contents. There is no assurance that the signer even read the document, much less that he understood the contents or that he voluntarily waived his rights.

As the Court in Castro realized, the voluntariness of a signed waiver is especially suspect where a party is confronted by the inherently coercive presence of the prosecuting attorney. The conditional disclaimers in proposed Section 11476.2 (b) and Section 11476.3 (b)(7) would, I believe, serve not to dissipate the implicit threat of criminal prosecution by the district attorney but to emphasize it. The implicit threat of prosecution is inevitably present and it would be unrealistic to assume that lay persons would not be intimidated by that threat. It would also be unrealistic to ignore the probability that child support officers would often resort to explicit threats of criminal prosecution in order to obtain a signed waiver. Accordingly, the voluntariness of any signed waiver would always be questionable.

Although the court appearance alternative would be legally adequate, it would unnecessarily burden the courts with waiver hearings when the same objective of insuring a valid waiver could be accomplished through the attorney advice alternative. And since the court is not in a position to be an advocate, the attorney advice provision would also provide more complete protection of the party's rights.

The recent amendment to the general confession of judgment statutes permits a confession of judgment only upon the advice of independent counsel. Certainly no less protection should be provided in the more specific case of Section 11476.1. First, the district attorney obtains the judgment in such cases and his inherently coercive presence undermines the voluntariness of any waiver in the absence of counsel. Second, a judgment for paternity and child support entails more severe consequences than an ordinary civil judgment, including imprisonment for nonpayment. Finally, a judgment for paternity and child support has profound effects on a third party, the child, who has a right to have such a judgment determined in a fair and efficient manner. [See Salas v. Cortez (1979) 154 Cal. Rptr. 529 at 537] For these reasons I urge you to revise your tenative recommendation to permit judgments under Section 11476.1 only upon the advice of independent counsel.

Very truly yours,

Robert Klotz

ROBERT KLOTZ
Attorney at Law

RK:ls

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Services Association

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November 8, 1979

John H. De Moully
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Recommendation on W. & I. Code Section 11476.1

Dear Mr. De Moully:

This letter is directed to your committee's recommendations on the above mentioned code section.

I would join those who support a statute allowing for a judgment of paternity by way of stipulation, only after consultation with an attorney. Most of those who will be subject to the pitfalls of a stipulated judgment, are those of a limited education and income, and unable to comprehend the full consequence of the judgment.

However, in light of Castro v. County of Ventura, and Isbell, if it is determined that a stipulated judgment of paternity may be entered by way of a waiver, and without attorney consultation, I would suggest the following modifications:

1. BOLD TYPE ADMONISHMENT. The present language covering the right to counsel in these matters is embedded in the body of the waiver. This has a tendency to disguise the advisement of the right to counsel. We would suggest that the waiver at the top of the form contain language, in bold type, advising of the right to an attorney.

EXAMPLE: "YOU HAVE THE RIGHT TO AN ATTORNEY IN THIS MATTER. IF YOU CANNOT AFFORD AN ATTORNEY, AN ATTORNEY WILL BE APPOINTED FOR YOU. YOU ARE NOT REQUIRED TO SIGN THIS DOCUMENT, IF YOU HAVE ANY QUESTIONS, DO NOT SIGN IT, AND SEE AN ATTORNEY."

The present language does not clearly state that one is not required to participate in this procedure. It seems to imply that this procedure must first be followed prior to a court proceeding being brought. Language in bold type should be included advising the defendant that he is not required to participate in this procedure, and has the right to refuse.

EXAMPLE: "YOU ARE NOT REQUIRED TO PARTICIPATE IN THIS PROCEDURE. YOU MAY REFUSE TO SPEAK WITH THE DISTRICT ATTORNEY, AND SEEK THE ASSISTANCE OF AN ATTORNEY."

This same language, or something to its effect should also be at the bottom of the form, directly above the signature line, in bold type.

EXAMPLE: "STOP. YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. IF YOU HAVE ANY QUESTION OR DOUBT AS TO THIS MATTER, SEE AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED."

2. SPANISH LANGUAGE.

The current recommendation do not provide for the waiver forms to be in the language of the declarant. This can be very detrimental to the Spanish speaking clients, as they will be at the mercy of the District Attorney staff, who may or may not be certified interpreters. We would suggest that provisions be made for the waiver forms to be provided in the language of the declarant.

3. COURT PROCEEDING, (Subsection b)

The current language advising of the right of trial by court or jury, is intimidating. The reference as to a criminal proceeding possibly being brought should be omitted. I would offer the following language in its place:

> "I understand that I do not have to sign this agreement, and that I have a right to a trial by court or jury to determine if I am the father of this child."

Any other language as to civil or criminal proceedings being brought if the document is not signed, will only serve to confuse and intimidate accused fathers. It will also detract from insuring that they are aware of their rights to a trial on this matter.

4. INHERITANCE RIGHTS

The recommendations as set do not fully advise the declarant of the full consequences of signing this agreement. Language should be added advising that this agreement may also grant rights to inheritance, social security benefits, veterans benefits, etc.

5. DUTY OF SUPPORT (Subsection (e))

The language should be supplemented to advise clients of full consequence of an agreement to support. They should be expressly made aware that the support obligation can be a continued obligation for a period of eighteen (18) years or longer. Also language should be added advising that a modification can only be made by a court order.

EXAMPLE: "I understand that if I sign this agreement, I have the duty to contribute to the support of this child. I also understand that the duty to support will continue for a period of up to eighteen (18) years or longer.

I also understand that any modification or change of this agreement may only be done by a court order, which will require a court hearing."

6. VISITATION RIGHTS

The agreement for support should also contain provisions of child visitation rights.

Again, I will state that the best manner of insuring an accused father has knowingly, intelligently and voluntarily executed a waiver of his rights is by way of attorney advice.

Additionally, I would offer that there is no language that will insure that every defendant has been made fully aware of the rights afforded, and impress the full impact of the judgment on the defendant. However, I do believe that a change of language as suggested,would help to minimize the instances of a judgment being taken against an accused father that has not been made fully aware of his rights, or does not understand the full impact of a judgment of paternity.

I hope the above comments will be useful to you and your committee. If there are any questions,please contact me.

Yours truly,

Manuel Jose Covarrubias

MANUEL JOSE COVARRUBIAS
Attorney at Law

MJC:vad

EXHIBIT 11

Kenneth James Arnold
Attorney at Law
P. O. Box 14218
San Francisco, California 94114

November 9, 1979

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford, CA 94305

Dear Mr. DeMoully:

The recommendations relating to The Probate Homestead (#D-310) and to Enforcement of Obligations After Death (#D-315) appear well thought out and effective to correct the defects noted in existing law. I have no comment with respect to the recommendation relating to Enforcement of Claims and Judgments against Public Entities (#D-320) except to wonder, if I've correctly read the recommendation, why a judgment against the state should expire after 10 years where the Legislature has refused during that period to make an appropriation for its payment and, hence, effectively prevented the judgment creditor from prosecuting a mandate proceeding to compel payment [see Gov C § 942 as amended and Gov C §§ 965.6, 965.8].

I do have a problem with the recommendation relating to Agreements for Entry of Paternity and Support Judgments (#D -501). I'd hoped to do some research in this area before writing this letter, but my heavy workload has prevented my doing so. Generally, I favor the recommendation. But to the extent that W & I C § 11476.1 would be amended to authorize an attorney to sign a certificate that he/she has examined the proposed judgment and advised the noncustodial parent with respect to the waiver of rights and defenses [W & I C § 11476.1(b)(1)] it is, in my opinion, replete with difficulties.

First, I believe that any waiver of constitutional rights (or even statutory rights) should be made personally by the person whose rights are being waived and a record of the waiver made - either by having the person sign a written waiver which is filed with the court or by having the person orally waive these rights in open court, in either case after the rights have been fully explained to him. If the waiver is signed by the person in the attorney's presence, the attorney could of course execute a certificate of the circumstances under which the waiver was signed and that the signature is indeed that of the person.

Secondly, I am disturbed over the conclusory nature of the certificate - that the attorney "has advised the noncustodial parent with respect to the waiver of rights and defenses . . . ." The attorney should at least be required to state the rights and defenses of which he/she advised the person. (Certainly, every attorney is not aware of all the rights and defenses being waived.) I believe that any attorney who would sign such a certificate in conclusory terms may be subject to a subsequent action for malpractice or to State Bar investigation should the person subsequent

deny that he was advised of any specific right or defense and hence did not waive it, where the only evidence of such advice is the attorney's recollection. For self protection, the attorney should require that the person actually sign a written waiver which also specifies the rights and defenses being waived. If such a waiver is signed, it should be attached to the attorney's certificate and filed with the court.

I am also concerned about the completeness of the rights enumerated in W & I C § 11476.2. Were the rights enumerated by the courts in the opinions cited intended to be illustrative or comprehensive. Or were the enumerated rights merely the specific issues raised in those cases. If the courts intended the rights and defenses enumerated to be anything other than comprehensive, then the cited code section may be incomplete. Some of the other important rights being waived are: (1) the right to confrontation by witnesses against the person; (2) the right to testify and produce evidence; (3) the right to have plaintiff prove the case against the person by a preponderance of the evidence (civil), or beyond a reasonable doubt (criminal). While these rights are implicit in the right to trial, I don't believe a layperson can be expected to know that.

I also would advise the person that any judgment against him, either pursuant to the waiver or as the result of trial, can be enforced by contempt, execution on his nonexempt property, execution against his salary or wages [W & I C §11476.2(f)], or by criminal prosecution [W & I C § 11476.3(b)(6)] and will be so enforced if support payments are not voluntarily made.

of W+I C §11476.3(b)(5)

I hope these comments are of some help.

Very truly yours,

Kenneth James Arnold

Kenneth James Arnold

EXHIBIT 12

LAW OFFICES OF
CALIFORNIA RURAL LEGAL ASSISTANCE

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November 9, 1979

California Law Revision Commission
Stanford Law School
Stanford, CA. 94305

Re: Tentative Recommendation on Agreements for Entry of Paternity and Support Judgments Pursuant to Welfare and Institutions Code § 11476.1

Gentlepeople:

Please consider the following comments on the tentative recommendation on W. & I. Code § 11476.1.

Subsection (b)(1) should be the only basis for entry of judgment for several reasons. First of all, this basis would be wholly consistent with the current legislative enactment to conform the confession of judgment procedures with the decisional law of Isbell v. County of Sonoma, 21 Cal. 3d. 61. The enactment of AB 714 is found at Statutes of 1979, Chapter 568. This legislation is an enactment of a Law Revision Commission recommendation. The LRC should not recommend a certificate of attorney advice requirement for confession of judgment and then recommend signed waivers as an adequate alternative.

Secondly, the signed waiver alternative is definitely unconstitutional under Isbell. The specific holding in Isbell was that the confession of judgment "cannot on its face represent a voluntary, knowing, and intelligent waiver." The document, standing alone, is insufficient to insure a valid waiver no matter what the contents. There can be no guarantee that the obligor even read the document, much less that he understood the contents or that he voluntarily waived his rights.

Third, the decision in Salas v. Cortez, 24 Cal. 3d. 22, requires that a defendant in a paternity action have the benefit of consulting a lawyer prior to entry of judgment. This decision renders the other proposed bases for entry of judgment of no use, since none of them includes advice of counsel.

The alternative contained in subsection (b)(2) is probably a valid basis for entry of judgment under due process standards. As a practical matter, the court appearance consumes unnecessary time for the parties and the courts, and does not differ significantly from proceeding under a contested civil suit. The court appearance without counsel would, at any rate, fail to meet the standards of Salas.

As stated above, the signed waiver alternatives are constitutionally defective. They might meet due process standards by adding a requirement of notice and opportunity for hearing after signing the agreement but before entry and enforcement of the judgment. See for example Delaware Code, Title 10 § 2306.

Thank you for your consideration of these comments.

Sincerely yours,

David C Lewis

David C. Lewis
Directing Attorney

DCL:ct

WESTERN CENTER ON LAW AND POVERTY, INC.
Legislative Information Center
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November 9, 1979

John DeMoully
Executive Secretary
Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: Tentative Recommendation Relating to Agreement for Entry of Paternity & Support Judgments

Dear Mr. DeMoully:

As you know from our previous discussions involving confessions of judgment, the Western Center has a strong interest in maintaining the highest level of protection available to our clients who are signing cognovit documents.

The issues for our clients are multifaceted. On the one hand, the level of education, sophistication, understanding and language skills which a person possesses will be determinative of the "knowing and intelligent" element of any waiver represented by one's signature. On the other hand, the disparity of bargaining power between the parties and resources available to them, in combination with each party's level of education, sophistication, understanding and language skills are all elements of the "voluntariness" of one's assent to a cognovit provision. Obviously, one element is not determinative of the other. The range of disparity in these factors can be infinite. Yet, there is substantially greater uniformity among the staffs of family support divisions of county district attorneys' offices than among those from whom support obligations are being sought.

We do not think it unreasonable to assume that there is a distinct advantage available to the district attorney's staff in all but the most exceptional cases. The Supreme Court in Isbell v. County of Sonoma, 21 Cal. 3d 61 (1978) and the Court of Appeal in County of Ventura v. Castro, 93 Cal. App. 3d 462, recognized this disparity and demanded closer constitutional scrutiny of these cognovit provisions.

It is true that the court in Castro mentions specific elements of advice which were glaringly absent from the requirements of Welfare and Institutions Code §11476.1. However, the mere inclusion of these elements in the body of the document neither insures the understanding of their meaning nor the voluntariness of their acceptance. Certainly, we believe the admonitions contained in the language of the Commission's proposal (§11476.2 and 11476.3) ought to be embodied in any document one voluntarily chooses to sign. But the recitation must be accompanied by some process whereby the potential obligor can even out the obvious disparity that undoubtedly exists between the parties.

The element of coercion is so clearly evident whenever the district attorny accepts an agreement in lieu of criminal prosecution, that the scrutiny of the voluntariness of a supposed knowing and intelligent waiver ought to be of the highest standard. Without a complete explanation of the consequences, privileges and rights one acquires or resigns given by someone who can render professional advice as to the appropriate course of action, there will always be substantial doubt as to the appropriateness of the process.

In almost every case, the consequences of the signing of an agreement under the provisions of W&I §11476.1 are going to be as great or greater than those which result from the signing of a confession of judgment under CCP §1132. The process under W&I §11476.1 should not allow for alternatives which are any less stringent.

It can be argued that the alternative to a quick and easy agreement is to file an action in hope of obtaining a default judgment. It is our experience that most persons faced with a summons tend to seek legal advice and if paternity is at all an issue, counsel may be provided.

We recognize the difficulty that an absolute requirement of attorney advice engenders. However, as long as the district attorneys have the dual authority of criminal prosecution and support collection, the inconvenience is, in our view, an essential element of procedural due process.

It is our suggestion that W&I code §11476.1 not include the provisions contained in subsections (b)(2) through (b)(4) of the Commission's recommendation.

Sincerely,

RUDOLFO C. AROS
Staff Attorney

EXHIBIT 14

Nov. 11, 1979

To: Calif. Law Revision Commission
From: Wanda Underhill
Re: Agreements for Entry of Paternity and support Judgements

PP. 9-10.

Welfare & Institations Code § 11476.3 (added)

Sec. 3. Section 11476.3 is added to the Welfare and Institutions Code, to read:

(5)
(6) "I understand that my intentional failure to support the child, [change to "my"] ..., is a crime."

Commentator would like to see sec. (b)(6) given greater emphasis.

The rights of the child might be included in the form of a philosophical statement or guiding principles and placed in a footnote, addenda, or appendix.

These legal steps are for the welfare of the child; and it would seem that this point should be given greater attention.

Suggested guiding principles are enclosed.

Wanda Underhill

Enclosure

WANDA UNDERHILL
2079 Market Street, No. 27
San Francisco, California 94114

WANDA UNDERHILL
2079 Market Street, No. 27
San Francisco, California 94114

BAR MITZVAH READINGS*

CHILDREN LEARN WHAT THEY LIVE

If a child lives with criticism, he learns to condemn.

If a child lives with hostility, he learns to fight.

If a child lives with ridicule, he learns to be shy.

If a child lives with shame, he learns to feel guilty.

If a child lives with tolerance, he learns to be patient.

If a child lives with encouragement, he learns confidence.

If a child lives with praise, he learns to appreciate.

If a child lives with fairness, he learns justice.

If a child lives with security, he learns to have faith.

If a child lives with approval, he learns to like himself.

If a child lives with acceptance and friendship,

he learns to find love in the world.

[If a child lives with legal battles over his welfare, what does he learn?! W.L.H.]

* From Congregation Sherith Israel Bulletin, Shabbat 12th of Tammuz 5739, July 6-7, 1979. San Francisco.

EXHIBIT 15

LAW OFFICES OF

ALLEN, IVEY, MARKS, CORNELL,
MASON & CASTELLUCCI
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
650 WEST 19TH STREET
POST OFFICE BOX 2184
MERCED, CALIFORNIA 95340
(209) 723-4372

TERRY L. ALLEN
A PROFESSIONAL CORPORATION
WILLIAM T. IVEY, JR.
RONALD H. MARKS
DENNIS A. CORNELL
MICHAEL L. MASON
PHILIP R. CASTELLUCCI
GARY B. POLGAR
RALPH J. COOK

LOS BANOS OFFICE:
840 6TH STREET
POST OFFICE BOX 471
LOS BANOS, CALIFORNIA 93635
(209) 826-1584

REPLY TO: Merced

November 19, 1979

California Law Revision
Commission
Stanford Law School
Stanford, CA 94305

Gentlemen:

I apologize for the tardiness of my comments on your Tentative Recommendation relating to Agreements for Entry of Paternity and Support Judgments.

Basically, I find the legislation satisfactory, with the exception of one provision. Your recommendation for amendments to Section 11476.1 (e) require the District Attorney to serve a copy of the judgment on the obligor. It further requires that the proof of service shall be filed with the Court. As this judgment can lead to criminal sanctions, it would appear advisable to me to require the most stringent form of service. This would not place too great a burden on the District Attorney as the person has voluntarily signed the agreement in the first place so his whereabouts should be well known to the District Attorney. It appears to me that the amendment should include the requirement that service be made in accordance with Sections 415.10, 415.20, 415.30, and 415.40 of the Code of Civil Procedure.

Absent such specification, the service may be made merely by placing the judgment in an envelope and mailing it to the last known address of the obligor. Such a contingency would be hardly in keeping with the spirit of the amendments you have proposed.

Thank you for the opportunity to comment on your Tentative Recommendation.

Very truly yours,

ALLEN, IVEY, MARKS, CORNELL,
MASON & CASTELLUCCI

BY Dennis A. Cornell
DENNIS A. CORNELL

DAC:mw

EXHIBIT 16

MONTEREY COUNTY

OFFICE OF THE DISTRICT ATTORNEY November 16, 1979

(408) 758-4626-COURTHOUSE ☐
P. O. BOX 1369
SALINAS, CALIFORNIA 93902

(408) 758-0941-COURTHOUSE ☒
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☐ (408) 373-2184-1200 AGUAJITO ROAD
P.O. BOX 1070
MONTEREY, CALIFORNIA 93940

☐ (408) 372-7303-1200 AGUAJITO ROAD
P.O. BOX 1070
MONTEREY, CALIFORNIA 93940

PLEASE REPLY TO ADDRESS CHECKED

WILLIAM D. CURTIS
DISTRICT ATTORNEY

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Sir:

There are five difficulties with your proposed statute authorizing agreements for entry of paternity and support judgments. First, it does not address the problem of stipulations or agreements in cases where the defendant has been served with a complaint and summons. Second, it does not permit an agreement concerning the amount the defendant will pay as reimbursement pursuant to section 11350, Welfare and Institutions Code. Third, it changes the law concerning the basis for a judicial modification of a child support order. Fourth, your proposed signed statement in section 11476.2 may be misleading about the defendant's right to legal representation. And finally, your list of the legal rights and facts the defendant should be informed of may not be complete.

Although the Castro decision dealt only with section 11476.1, Welfare and Institutions Code, there appears to be no reason why the next step required by the logic of the court should not be the prohibition of stipulated judgments in cases where the defendant has been served with a summons and complaint. If the court is concerned that defendants properly waive their due process rights when agreeing to judgments determining paternity, there appears to be no basis for requiring special precautions for those defendants who agree to the entry of judgment without first being served with a complaint and a summons, but not requiring anything extra when the defendant is served and then decides to accept an offer to stipulate to the entry of judgment.

Second, the language of your proposal (as well as the language of the original statute) limits the agreements to judgments determining paternity and for child support payments. Frequently, if not in the majority of cases handled by district attorneys, there is also the issue concerning the amount of reimbursement the defendant should pay to the county pursuant to section 11350, Welfare and Institutions Code. If this issue cannot be resolved in the agreements authorized by your proposed statute, the use of these agreements will be greatly restricted. A district attorney can use the agreement to set out terms for reimbursement, but this will always be done with the hope that no one will object and no court will interpret your proposal to mean what it says.

Third, the general rule is that an order for child support will only be modified if the court is satisfied that changed circumstances justify the modification. However, where the original amount of child support payments was determined by agreement of the parties, it is not necessary for either party to show changed circumstances before the court can modify the order. Moore v. Moore (1969) 274 Cal. App. 2d 698, 703. 2 Markey, California Family Law section 23.32[1]. Your proposal will change that rule. And to the extent your statute does not cover defendants who stipulate to the entry of judgment after service of a summons and complaint, your proposal will result in two different rules. The rule embodied in the Moore decision will be the law for those who stipulate after receiving a complaint. Changed circumstances will be the rule for those who stipulate pursuant to your proposal.

Fourth, the signed statement you propose in section 11476.2 may mislead those who do not contest the paternity issue about their right to counsel. You propose two different signed statements. The one set forth in section 11476.2 is apparently to be used where there is an agreement on paternity. The one detailed in section 11476.3 appears to be for use when there is an agreement on the amount of child support payments. That you have devised two statements suggests that you envision circumstances where only one of the two will be used. In fact, there are many cases ended by a determination of paternity but without an order for support because the parent has no ability to pay support. However, in every case where there is an agreement for a support order, there must also be an agreement about paternity so that both signed agreements must be used. A defendant who does not dispute that he is the father, in reading both statements together, can get the mistaken impression from proposed section 11476.2(d) that he is entitled to free legal counsel even though he has no intention of disputing paternity. The decision in Salas v. Cortez does not go so far. Your proposal will either mislead some defendants or be an invitation to the courts to extend the holding in Salas.

Finally, the Castro decision does not recite at any point exactly what rights and what facts a defendant must have in mind when he waives his rights and signs an agreement. The decision establishes some of these in a negative way when it recited the shortcomings of section 11476.1. Your incorporation of the court's criticisms in your proposal does not prevent another court from finding later that you omitted advice about other important rights. Enclosed is a draft waiver three of us devised in the wake of Castro for use in cases where a complaint was served, since we could not distinguish stipulations in these cases from the stipulation in the Castro case. I send it only as an example of a declaration covering rights other than those listed in Castro. Your proposal shows advice we neglected to give in our version. In rereading Castro, I noted that none of us picked up on the court's reference to advice about the defendant's

discovery rights.

These criticisms of your proposal are my views. They are not necessarily the views of the District Attorney for Monterey County.

Sincerely,

TERRY L. SPITZ
Deputy District Attorney

TLS:bdm

Enclosure: a/s

cc: Michael E. Barber
District Attorney's Office
P. O. Box 160937
1725 28th St.
Sacramento, CA 95816

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

Plaintiff, vs. Defendant.	NO. DECLARATION ACKNOWLEDGING AND WAIVING RIGHTS

I, _____ declare:

I am the defendant in this action. I have been asked to sign a Stipulation for Entry of Judgment Determining Paternity and Support. I understand that by signing the agreement, I will be admitting I am the father of the child(ren) named in the stipulation and agreeing to pay child support as well as to reimburse Monterey County for welfare benefits paid for the child(ren) as set forth in the stipulation. [ ]

I understand I have the following rights in connection with this action:

1. The right to be represented by a lawyer. [ ]

I may hire the lawyer of my choice at my own expense. If paternity is in question and I cannot afford a lawyer, I can ask the court to appoint a lawyer to represent me free of charge. I understand that the Monterey County District Attorney does not

represent me in this case. [ ]

2. The right to be tried by a jury. [ ]

If I request, I may have a jury decide whether I am the father of the child(ren). Or, with my consent and the consent of the plaintiff, a judge alone may decide whether I am the father of the child(ren). [ ]

3. The right to have a judge decide the following matters, if I am found to be the father:

a) The amount of child support I must pay;

b) How long I will have to pay child support;

c) How much money, if any, I must pay to Monterey County for welfare benefits given to the child(ren). [ ]

4. The right to confront and cross-examine witnesses against me. [ ]

I understand that in a trial, the plaintiff must prove that I am the father. I may be present with a lawyer when the plaintiff's witnesses testify and ask them questions. I may also present evidence and witnesses in my own defense. [ ]

5. The right to remain silent. [ ]

I understand that I cannot be required to admit or deny that I am the father of the child(ren). If I refuse to sign the agreement, I cannot be prosecuted for refusing to sign. If I admit that I am the father of the child(ren), my statement can be used as evidence against me if I am ever prosecuted for failing to support the child(ren). [ ]

I also understand the following:

1. If I sign the agreement, I am obligating myself to support the child(ren) named in the agreement until the child(ren)

is (are) eighteen years old, unless my obligation is ended earlier by death or emancipation. [ ]

2. Before I sign the agreement I can have a lawyer I hire, or a court-appointed lawyer, look at the agreement and give me advice about what I should do. [ ]

I have read and understand each item printed above. I have initialed each item I have read. Having in mind all of the rights mentioned in this declaration and the consequences of admitting I am the father of the child(ren) and of signing the agreement, I willingly, knowingly and intelligently give up those rights. It is my choice to resolve this case by signing the agreement.

I declare under penalty of perjury the foregoing is true and correct.

Executed at _____, California, on _____ _____.

_____

DEFENDANT

EXHIBIT 17

Penal Code Section 270b

§ 270b. Undertaking to provide support; suspension of proceedings or sentence; proceedings on breach of undertaking

After arrest and before plea or trial, or after conviction or plea of guilty and before sentence under either Section 270 or 270a * * *, if the defendant shall appear before the court and enter into an undertaking with sufficient sureties to the people of the State of California in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such child or to such * * * spouse, such sum per month as may be fixed by the court in order to thereby provide * * * such minor child or * * * such spouse as the case may be, with necessary food, shelter, clothing, medical attendance, or other remedial care, then the court may suspend proceedings or sentence therein; and * * * such undertaking is valid and binding for two years, or such lesser time which the court shall fix; and upon the failure of defendant to comply with * * * such undertaking, * * * the defendant may be ordered to appear before the court and show cause why further proceedings should not be had in * * * such action or why sentence should not be imposed, whereupon the court may proceed with * * * such action, or pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.
(Amended by Stats.1976, c. 1170, p. 5250, § 2.)

EXHIBIT 18

Code of Civil Procedure Section 1209.5

§ 1209.5 Noncompliance with order for care or support of child

When a court of competent jurisdiction makes an order compelling a parent to furnish support or necessary food, clothing, shelter, medical attendance, or other remedial care for his child, proof that such order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced and proof of noncompliance therewith shall be prima facie evidence of a contempt of court.

EXHIBIT 19

Civil Code Section 246

§ 246. Determination of amount due for support; circumstances

When determining the amount due for support the court shall consider * * * the following circumstances of the respective parties:

(a) The * * * earning capacity and needs of each party.

(b) The * * * obligations and assets, including the separate property, of each.

(c) The * * * duration of the marriage.

(d) The ability of the obligee to * * * engage in gainful employment without interfering with the interests of dependent children in the custody of the obligee.

(e) The * * * time required for the obligee to acquire appropriate education, training, and employment.

(f) The age and health of the parties.

(g) The standard of living * * * of the parties.

(h) Any other factors which it deems just and equitable.

(Added by Stats.1955, c. 835, p. 1452, § 1. Amended by Stats.1976, c. 130, p. 208, § 4.)

EXHIBIT 20

Civil Code Section 4555

§ 4555. Right to institute action to set aside final judgment

A final judgment made pursuant to Section 4553 shall not prejudice nor bar the rights of either of the parties to institute an action to set aside such final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to Section 473 of the Code of Civil Procedure. (Added by Stats.1978, c. 508, p. —, § 2.)