

Memorandum 84-43

Subject: Study F-660 - Awarding Temporary Use of Family Home (Status of Recommendation to 1984 Session)

A copy of the Commission's recommendation relating to awarding temporary use of the family home (Duke award) is attached to Memorandum 84-42. The recommendation would permit the court to require as a condition of a Duke award that the award automatically terminates upon remarriage or cohabitation of the custodial spouse in the family home, thus overruling the Escamilla case.

Although most legislators we spoke with favor the proposal, we encountered some difficulty in finding an author for the bill. Assembly Member Isenberg agreed to carry the bill for the Commission on condition that the bill not authorize automatic termination, but merely create a presumption in favor of termination. It is Mr. Isenberg's belief that although termination will be proper in most circumstances, there may be some cases where it is desirable to continue the Duke award, and the custodial spouse should have an opportunity to make an appropriate showing to rebut the presumption favoring termination.

We accepted this change, and a copy of AB 2739 as so revised is attached. Even in this form the bill is opposed by the State Bar Family Law Section (which has reversed itself on this issue). Amendments have been suggested to weaken the effect of the presumption, but Mr. Isenberg, who is a knowledgeable practitioner in this area, has resisted the amendments on the basis that a fairly strong presumption is necessary in order to encourage husbands to agree to and courts to order Duke awards. The bill has been reported out in this form by the Assembly Judiciary Committee and sent to the Assembly floor.

Respectfully submitted,

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