

## Memorandum 91-59

Subject: Study F-1000 - Family Code

BACKGROUND

Materials Distributed for Comment

In April 1991, a Staff Working Draft of the new Family Code was made available to interested persons for review and comment. The Staff Working Draft consisted primarily of a revision of the Family Law Act which is contained in Sections 4000-5317 of the Civil Code. We asked for comments by September 1, 1991.

In August 1991, a Revised Staff Working Draft was distributed for review and comment. The Revised Draft included all the material in the April 1991 Staff Working Draft (with some revisions and corrections) and also added the portion of the new Family Code relating to support (approximately 100 pages) and adoption (approximately 60 pages). We asked for comments by October 1, 1991.

In September 1991, the remainder of the Staff Draft of the Family Code (consisting of the portion relating to Minors, approximately an additional 25 pages), together with a revised Table of Disposition of Existing Sections, was made available to interested persons for review and comment. We asked for comments on the portion relating to minors by October 23, 1991.

Attached to this Memorandum (in the hard-cover binder) is a copy of the latest version of the Family Code. This version contains the Revised Staff Working Draft (distributed in August 1991) and the later distributed provisions relating to minors and a revised Table of Disposition of Existing Sections.

We sold approximately 100 copies of the Revised Staff Draft (August 1991). (The price was \$25 per copy except that purchasers of the first version were allowed to purchase the Revised Draft at a reduced price.) We distributed the portion relating to minors and the revised Table of Disposition of Existing Sections free of charge to persons who purchased the Revised Staff Draft.

### Recommended Schedule for Family Code Project

We have received some fairly detailed comments on the initial Staff Working Draft (April 1991) from the Executive Committee of the Family Law Section of the State Bar. However, the State Bar Section did not respond to many of the questions raised in the staff Notes found under various sections of the Staff Draft. At the time this memorandum was written, we had not received any comments from the State Bar Section on the Family Code provisions relating to support and adoption (we asked for these comments by October 1) or on the provisions relating to minors (we asked for these comments by October 23).

We have not received detailed comments from other sources, although we have received several comments suggesting areas of family law that are in need of study. It may be that interested persons and organizations are awaiting further refinement of our product before reviewing the product.

The staff proposes that the Commission at this time review the comments received on the staff draft and some of the significant staff Notes that have not been commented on by the State Bar Section. The Commission can then approve the introduction of the staff draft (with the revisions the Commission determines to make) as a preprint bill at the 1992 legislative session.

In preparing the preprint bill, the staff would include the revisions made in the attached draft by the Commission at the October meeting and also would:

(1) Incorporate the changes and additions to existing law made by 1991 enactments.

(2) Make a careful comparison of the provisions of the staff draft with existing law, and make any needed technical and corrective revisions.

(3) Review the staff Notes to the various section and make some technical changes indicated in the staff Notes. (We would defer Commission consideration of some of the staff Notes that raise technical matters until after we receive the reaction of the State Bar Section.)

The suggested course of action would make the draft of the new code available in a fairly convenient form (a preprint bill) for review

by interested persons and organizations. These persons might take the draft more seriously and review it if it is in bill form. Assembly Member Jackie Speier has indicated she is very interested in introducing the new Family Code in 1992. See Exhibit 1 (attached as page 1 of Exhibits).

The staff also recommends that the Commission approve the printing of the Comments (and the Notes to the extent they are still relevant) prepared by the Commission's staff to each section of the preprint bill. The Comments show where each section of the new code comes from existing statutes. The Notes raise questions concerning various sections. The Comments and Notes are essential material to be considered in a review of the new code as it will be set out in the preprint bill. We have money encumbered from the 1990-91 fiscal year that would permit the printing of the Comments and Notes if they can be ready for the printer early in December 1991 at the latest.

If this course of action were followed, the Commission would request interested persons and organizations to review and comment on the preprint bill. The comments received would be considered in 1992 and the recommendation proposing enactment of the new code would be submitted to the 1993 legislature with a view to enacting the new code in 1993. Hopefully, giving interested persons and organizations an opportunity to make a careful review of the staff work product (to be set out in the preprint bill) during 1992 would permit the Commission to recommend a draft of the new code for enactment in 1993 that would be substantially defect free.

#### GENERAL COMMENTS ON STAFF DRAFT

##### **Do We Want a New Family Code?**

In an effort to determine whether lawyers and judges believed that a new Family Code is desirable, the Commission prepared a questionnaire that was distributed in 1990 to approximately 4,000 individuals. More than 660 responses were received. The great majority (83 %) of those who responded favored a new code (or act). Only 17 percent wanted neither a new code nor a new act. This great support for a new code persuaded the Commission to undertake to draft a new Family Code.

Matthew Bender (Exhibit 4) notes the cost of enacting a new Family Code:

We note, at the outset, that the adoption of a new Family Code will require the family law bench and bar to purchase revised primary and secondary source material at considerable cost. Increased overhead costs will, of course, be passed along to the client. Furthermore, since the passage of the Family Law Act, a substantial body of law has developed around particular code sections, so that a complete renumbering of the statutes relating to family law will require considerable time and effort by the bench and bar to become familiar with the organization of the new law and will probably increase research costs at least initially, even if little or no substantive change is made in the law.

Thus, if the Family Code is to be undertaken, we hope that the Commission will attempt to ensure that the end product really does something to clarify the law and improve the operation of the family law courts, rather than merely renumbering code sections. . . .

#### REVIEW OF COMMENTS CONCERNING PROVISIONS OF STAFF DRAFT

The comments we received from interested persons and organizations are reviewed below. Generally, we note only comments that suggest changes in the staff draft or react to a change or clarification of existing law proposed in the staff draft. Comments that suggest significant substantive revision in existing law or that identify areas of existing law in need of study are considered later in this memorandum.

The most significant comments are those received from the State Bar Family Law Section. In this connection, the Section advises:

The lack of a specific comment in this response may only signal that we lacked time to study the section, having first prioritized sections that we thought needed most attention. If we have failed to concentrate on areas that the LRC believes needs our attention, please advise us with later drafts.

In this portion of the memorandum, the following comments (reproduced as Exhibits to this memorandum) are reviewed:

Exhibit 2 (pages 2-13 of Exhibits). Executive Committee, Family Law Section, State Bar (hereinafter referred to as "State Bar Section").

Exhibit 3 (pages 14-15 of Exhibits). California Land Title Association Forms and Practices Committee (hereinafter referred to as CLTA).

Exhibit 4 (pages 16-18 of Exhibits). Matthew Bender.

Exhibit 5 (page 19 of Exhibits). Michael C. Schwerin

Exhibit 6 (pages 20-30 of Exhibits). Office of City Attorney of Los Angeles

Exhibit 7 (pages 31-32 of Exhibits). Josanna Berkow, Deputy Attorney General

Exhibit 8 (pages 33 of Exhibits). Lawrence M. Gassner

References to page numbers of the Family Code provisions are to the version of the Staff Draft attached to this memorandum.

THE ATTACHED STAFF DRAFT CONTAINS STAFF NOTES TO VARIOUS SECTIONS. THESE NOTES RAISE TECHNICAL OR SUBSTANTIVE ISSUES IN CONNECTION WITH THE SECTIONS OF THE STAFF DRAFT TO WHICH THEY RELATE. IN MANY CASES, THE STATE BAR SECTION FAILED TO RESPOND TO THE STAFF NOTE. NEVERTHELESS, SOME OF THE STAFF NOTES SHOULD BE GIVEN COMMISSION CONSIDERATION BEFORE THE DRAFT OF THE PREPRINT BILL IS PREPARED. CONSIDERATION OF OTHERS MIGHT BE DEFERRED UNTIL COMMENTS OF THE STATE BAR SECTION AND OTHER INTERESTED PERSONS ON THE PREPRINTED BILL ARE CONSIDERED.

THE COMMENTS WE RECEIVED ON THE STAFF DRAFT ARE DISCUSSED BELOW. ALSO INCLUDED IS A DISCUSSION OF THE STAFF NOTES THAT WE BELIEVE THE COMMISSION SHOULD CONSIDER AT THIS TIME. (IN EXHIBIT 9, COMMENCING ON PAGE 34 OF THE EXHIBITS, WE SET OUT REFERENCES TO THE NOTES UNDER THE STATUTE SECTIONS THAT NEED NOT BE CONSIDERED AT THIS TIME. CONSIDERATION OF THESE NOTES CAN BE DEFERRED UNTIL COMMENTS ON THE PREPRINTED BILL ARE CONSIDERED.) ACCORDINGLY, AT THE MEETING, WE PLAN TO CONSIDER FIRST THE SECTIONS NOTED BELOW IN THIS MEMORANDUM AND LATER, IF TIME AT THE MEETING PERMITS, THE COMMISSION CAN CONSIDER THE NOTES LISTED IN EXHIBIT 9.

§ 2. Continuation of existing law (pages 43-45)

The State Bar Section states: "Our committee recognizes that the mandate is to keep the law the same. Changes will be recommended only in the interest of clarity and consistency with present understanding of law and procedure."

The staff has adopted this approach in preparing the staff draft.

§ 4. Construction of amendments, additions, and repeals (pages 45-46)

Section 4 is a new provision that provides general transitional rules applicable to changes in the Family Code. The section is drawn from Section 3 of the Probate Code. The State Bar Section approved the section.

**§ 50. Application of definitions (bold face Note on page 49)**

In some existing statutory provision, only the word "judgment" is used; in others, the phrase "judgment, order, or decree" is used; in others only the word "order" is used. The staff draft generally continues existing language.

The California Land Title Association Forms and Practices Committee (CLTA) comments:

The staff Note after the Comment, questions whether or not there should be a definition of "judgment" and whether it should include "order" and/or "decree". It appears from my personal experience that an order encompasses a variety of actions which the Court may take, which may not have the finality of a "judgment." Therefore, in any definition of "judgment" or "order" it must be noted that even though an "order" may be a "judgment," it does not follow that they are equivalents, and the right of appeal may not flow from an "order."

The State Bar Section comments:

We believe that the terms Judgment, Order and Decree should be defined; the entire code should be scanned in this respect to assure uniformity of meanings. Decree and order may be interchangeable. Judgment should have its own meaning. Would it be possible to print a draft with these terms highlighted to assist analysis?

The staff would deal with these comments by providing the State Bar Section and CLTA with a draft of the preprint bill with the terms highlighted (the draft would include the substance of the additions and revisions made by the 1991 legislature in the existing family law provisions). We would request the views of the State Bar Section and CLTA on whether definitions are needed and what term should be used in place of each highlighted term.

**§ 70. "Domestic violence" (pages 50-51)**

To correct a typo, "degree" should be substituted for "decree" in Section 70.

**§ 85. "Family Law Act" (page 52)**

Part 5 (commencing with Section 4000) of Division 4 of the Civil Code is the existing Family Law Act. The existing Family Law Act contains many reference to "this part," meaning the existing Family Law Act. The question is: What should be substituted for these references to "this part"?

The new code contains the existing Family Law Act, together with many additional provisions taken from other portions of the Civil Code and provisions from the Code of Civil Procedure, Evidence Code, and Probate Code. To a considerable extent, the staff draft substitutes "the Family Law Act" (as defined in Section 85) for the phrase "this part" in sections of the staff draft drawn from the existing Family Law Act.

The staff Note to Section 85 asks: "Should the concept be retained that particular portions of the Family Code are to be designated as the "Family Law Act"?"

The State Bar Section comments:

Section 85 appears necessary in transition; it may not be needed in the final code. After general sections are properly made applicable to the whole code or only to specified sections of it, the term "Act" might better be deleted. It may be more confusing than helpful to have both an Act and a Code.

The staff is now reviewing the entire staff draft with a view to eliminating references to "the Family Law Act" and substituting for those references either a reference to "this code" (meaning the Family Code) or a specific reference to a portion of the Family Code. The staff plans to substitute appropriate references when we prepare the preprint bill. The staff review is consistent with the view of the State Bar Section.

§ 90. "Family or household member" (pages 52-53)

The staff Note to Section 90 asks whether cohabitant and former cohabitant (defined in Section 60) be substituted for "family or household member" in Section 90 to conform to recently enacted legislation? The State Bar Section would make this substitution and the staff recommends that it be made. Accordingly, the staff recommends that Section 90 be revised to read:

90. "Family or household member" means a spouse, former spouse, cohabitant, former cohabitant, parent, child, or any other person related by consanguinity or affinity within the second degree, ~~or any person who regularly resides in the household, or who, within the previous six months, regularly resided in the household.~~

This revision would eliminate the six-month term used in earlier legislation. See also Section 70 ("domestic violence" defined). (It may be possible to eliminate the definition of "family or household

member" in the Family Code and to substitute cohabitant and former cohabitant. In any case, the staff revision, set out above, would make a substitution consistent with the view expressed by the State Bar Section.)

§ 145. "State" (page 55)

The California Land Title Association Forms and Practices Committee (CLTA) states: "The Commonwealth of Northern Marianas would not seem to fit into the categories mentioned."

The staff has drawn the definition in Section 145 from the latest form of the definition of "state" used in Uniform Acts. None of the existing California definitions refer to the Commonwealth of Northern Marianas and ordinarily use the phrase "or any territory or insular possession of the United States." The staff does not recommend any change in the definition provided by Section 145.

§ 200. Jurisdiction of court in proceedings under Family Law Act (page 57)

See the staff Note to this section. The State Bar Section did not comment on the staff Note.

§ 210. Rules of practice and procedure (pages 58-59)

Matthew Bender comments:

It is sometimes unclear under the current Family Law Act whether general civil procedure rules apply in instances in which neither the Family Law Act nor the California Rules of Court address a particular issue. Thus, the Commission may wish to consider including a section comparable to Prob. Code § 1000, which would provide that except to the extent that the Family Code or Judicial Council rules adopted under proposed Fam. Code § 210 provide applicable rules, the rules of practice applicable to civil actions generally apply to proceedings under the Family Code. (Or, in the alternative, clearly specify that such general civil rules do not apply, and that only the rules and procedures specified in the Family Code, or Rules of Court promulgated thereunder, are applicable.

The staff suggests that the Commission request the State Bar Section to provide its views concerning whether a provision along the lines suggested by Matthew Bender should be included in the Family Code and, if so, which of the alternatives outlined by Matthew Bender should be adopted.

§ 212. Responding party's request for affirmative relief alternative to moving party's requested relief (page 59)

See the staff Note to this section.

**§ 221 (new provision to be added). Transfer of proceeding**

Michael C. Schwerin makes the following suggestion:

California Code of Civil Procedure § 397.5 is, in my opinion, a code section that deals exclusively with the Family Law Act and would appropriately be placed in the Family Code. I have reviewed the conversion table at the end of the revised working draft and could not find any cross-reference to this section.

The staff agrees with this suggestion and recommends that the substance of Section 397.5, set out below, be compiled in the Family Code. Existing Section 397.5 reads:

397.5. In any proceeding under the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, when it appears that both petitioner and respondent have moved from the county rendering the decree, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party.

Note that Section 397.5 covers only post-judgment proceedings. Should the scope of the section be expanded to cover the entire Family Code? The staff would make this provision applicable in a marriage dissolution, legal separation, custody, or support proceeding, thereby limiting the provision so that it does not apply to Divisions 15 (minors) and 16 (adoption).

**§ 230. Temporary restraining order in summons in dissolution or nullity proceeding (page 62)**

CLTA strongly supports the addition of the language contained in the staff Note to Section 230. This language was proposed to be added by Assembly Bill 426 (not 436 as stated in the staff draft), but that bill apparently will not be enacted by the 1991 legislative session. Should the substance of the language quoted in the Note nevertheless be added to subdivision (b) of Section 230?

**§ 241. Granting temporary order without notice (pages 65-66)**

See the staff Note to this section. Should the Commission request input from the state Bar Section before taking action on the staff Note?

**§ 242. Order to show cause (pages 66-67)**

In the draft reviewed by the State Bar Section this section was divided into Sections 242, 5551, and 1802. In the revised draft, these three sections have been consolidated in Section 242.

The State Bar Section suggests that the sections be consolidated as they have been in the revised draft: "A study to conform 5551, 242, and 1802, or to replace them with one set of sections, should be undertaken." This has been done.

The State Bar Section also suggests that "Notice times should be made uniform." Different notice times are provided under subdivisions (a) and (b) of Section 242. The staff agrees that the notice times should be uniform. Should notice be uniformly given as provided in subdivision (a) of Section 242 or as provided in subdivision (b) of that section?

Finally, the State Bar Section suggests: "Ex parte changes of notice time should be uniformly available." Would this suggestion be accomplished by revising subdivision (c) of Section 242 to read:

(c) The court may on motion of the party who obtained the temporary restraining order or upon its own motion shorten the time for service on the opposing party of the order to show cause ~~in any of the following cases:~~

~~(1) A case under Article 1 (commencing with section 1800) of Chapter 6 of Part 1 of Division 5.~~

~~(2) A case under Division 12 (commencing with Section 5500).~~

§ 257. Notice to plan of proposed property settlement; response by plan (page 70-71)

See the staff Note to this section.

§ 270. Costs and attorney's fees during pendency of proceeding (page 72-73)

See the staff Note to this section.

§ 290. Methods of enforcement (pages 75-76)

See the staff Note to this section.

§ 291. Effect of lack of diligence in seeking enforcement (page 76)

See the staff Note to this section.

§ 292. Effect of reconciliation of parties (page 76)

See the staff Note to this section.

§ 362. Denial of license (Note on page 80)

The Note to Section 362 asks: "Should the reference to a person who is an 'imbecile' or is 'insane' be changed in Section 362?" The State Bar Section comments: "We agree that insane and imbecile are obsolete terms, but that is the legislation. We would prefer reference to competence to sign an oath."

The staff recommends that Section 362 be revised to read:

No marriage license shall be granted when either of the parties who are applying for the license ~~is--an--imbecile,--is insane,~~ lacks the capacity to enter into a valid marriage or is, at the time of making the application for the license, under the influence of an intoxicating liquor or narcotic drug.

This revision is consistent with Probate Code Section 1901, which provides in part: "The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, at the time the order is made." (The reference in this provision is to the Family Law Act; we will amend Section 1901 to substitute an appropriate reference to the Family Code.)

§ 401. Replacement of lost certificate (page 83)

See the staff Note to this section. The State Bar Section approved the section as drafted.

§ 501. Requirements for confidential marriage generally (page 86)

See the staff Note to this section. The State Bar Section approved the section as drafted.

§ 555. Suspending or revoking approval of notary (pages 90-91)

Consistent with the suggestion of the State Bar Section, we would revise a sentence in subdivision (b) of Section 555, to read: "If the county clerk determines that the notary public has violated a provision of this part, the county clerk may place the notary public on probation or may suspend or revoke his or her registration, and any fees paid by the notary public may be retained by the county clerk."

§ 589. Standard serological test; approved laboratory; checking accuracy of tests (pages 94-95)

In response to the comment from the State Bar Section, the staff would substitute "from any place in the state" for "in any district in the state" in subdivision (c) of Section 589.

§ 721. Contracts with each other and third parties (pages 97-98)

The staff comment raised questions concerning the meaning of this section and related provisions. The issues concern the standards that apply, both during marriage and after separation, for transactions between spouses and between a spouse and a nonspouse.

The staff believes that provisions governing marital agreements between spouses during the marriage should be drafted. This area of law is one that is controversial and merits study. However, any such study should be a separate project, and the Family Code should not be delayed by an attempt to deal with the matter. The State Bar Section notes that this area of law is under legislative consideration. Memoranda prepared by members of the State Bar Section Executive Committee presented differing view of the issues involved. The Section regrets "that the law in this area is unclear. Until the legislature acts, it may be necessary just to use the present language."

§ 751. Interests of spouses in community property (page 99)

The staff would delete the second sentence of Section 751 which the State Bar Section considers "redundant and unnecessary."

§ 752. Separate property (page 99)

The State Bar Section agrees with the staff that this section should be revised to read: "Except as otherwise provided by statute, neither husband nor wife has any interest in the separate property of the other."

§ 753. Excluding one spouse from separate property dwelling of other spouse (pages 99-100)

In accordance with the suggestion of the State Bar Section, the staff will place subdivision (b) of Section 753 in Sections 1900-1908, with adequate cross-referencing.

§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded (pages 100-101)

Section 754 restates existing law without substantive change. The staff Note raises a question concerning the section which provides for the recording of a notice of pendency of a proceeding for dissolution or legal separation or for a judgment of nullity of marriage with respect to real property in which the husband or wife resides that is the separate property of the other spouse. CLTA responds to the question by suggesting that the scope of the existing provision be narrowed or the section eliminated entirely. Adopting the CLTA suggestion would involve a significant change in existing law.

The State Bar Section would add a provision to declare the prohibited transfer void.

The staff recommends no revision be made in the staff draft in response to this comment. The staff draft retains existing language without change, but when staff time permits, the staff will give the suggestion of CLTA and the State Bar Section further study.

Part 2 (commencing with Section 760) Characterization of Marital Property (beginning on page 102)

The State Bar Section comments: "A new chapter identifying quasi-community property is needed, to identify such property when California domiciliaries are dealing with it." The staff is not convinced that such a chapter is needed, and drafting such a chapter would likely involve substantive changes in the law. We would defer this matter until staff time permits a consideration of it. Meanwhile, we believe that quasi-community property (which is separate property) is governed by Sections 770-774 and other statutes that govern the division of quasi-community upon marriage dissolution and upon death.

§§ 770 & 771. Separate property of wife; separate property of husband (page 104)

The State Bar Section comments: "The sections might be combined into one; the word bequest might be omitted; the terms husband and wife might be reduced to spouse."

The staff believes that the sections (which are separate sections in the existing statute) are clearer and easier to understand if they remain as separate sections. We will eliminate the word "bequest" as suggested by the Section.

§ 773. Earnings and accumulations after judgment of legal separation (page 104)

The State Bar Section approved this section as drafted.

§ 774. Recording inventory of separate personal property (page 105)

The staff Note recommends that Section 774 be deleted. The State Bar Section comments:

LRC suggests section is archaic and unused, and reverses a general presumption. We agree that the section promotes deception. But we understand that our present mandate is not to change the law. If changing the law, it might better refer only to separate property remaining from before marriage.

The staff does not believe that the scheme of the section is worth saving. We believe that it is better to rely on the general presumptions. See the discussion in the staff Note to the section.

§ 780. Damages for personal injury to married person as community property (page 105)

The State Bar Section comments:

As drafted, the section changes the law. We propose: Except as provided in section 781 and subject to the rules of allocation set forth in Section 2603, money . . . "

The staff will add the language suggested by the Section.

§ 781 Cases where damages for personal injury are separate property (pages 105-106)

The State Bar Section notes that "Sub-section (d) appears obsolete and might be deleted." The staff agrees and we will delete subdivision (d).

§ 800. Effect of presumptions (page 107)

Section 800 is a new provision, not found in the existing statutes. The State Bar Section states "Sub (a) is a good addition to the Code." The staff recommends that the Commission approve subdivision (a) of Section 800.

The State Bar Section further comments: "Subdivision (b) may not apply uniformly, as see Section 804. It might be deleted. It should be evaluated against the evidence code and case law for possible inconsistency." In light of this comment, the staff recommends that subdivision (b) be deleted, and that the issue presented by this subdivision be given further study as a separate project.

§ 801. Community property presumption (pages 107-108)

This is a new provision which was approved by the State Bar Section.

§ 802. Presumption not applicable where marriage terminated by dissolution more than four years before death (page 108)

The State Bar Section comments concerning this section: "Approved as properly drafted; but section deserves study; 4 year limit appears unreasonable." Does the Commission wish to make a study of this section?

§ 803. Gift presumptions (pages 108-109)

The State Bar Section comments: "New section; the section appears overbroad, in applying to all gifts and might better apply only to gifts from community property." In light of this comment, the staff recommends that the section be deleted and that the issue presented by the section be given further study as a separate project.

§ 914. Liability for necessities (page 115-116)

This section is the same as existing Civil Code Section 5120.140. The State Bar Section comments: "Identical; but leaves us with the ambiguous difference between "common necessities of life" and "necessaries of life." Can we draw from case law for clearer definition? The staff recommends no change or addition to the section. What "necessaries of life" are is a case by case determination. We doubt that the trial court determination will be often appealed, and there will be few reported decisions.

§ 1100. Definitions (page 121)

The State Bar Section approves this section which is a new provision.

§ 1110. Duty of good faith (page 121-122)

This section is the same as the existing statute. The State Bar Section comments:

Restates the law; we question what the proper standard should be here, and note present legislative studies; specific concise language might be preferable to referencing other Civil and Probate Code sections. We like the good faith and business partner concept of responsibility after separation; many would disagree that is the law.

The staff would make no change in the staff draft. However, the matter of what constitutes the duty of a spouse to act in good faith with respect to the other spouse is one that needs further study if the Legislature does not adequately deal with the matter.

§ 1111. Claims for breach of duty (page 122)

The State Bar Section states: "The undivided one-half interest may not match with the present existing and equal interest under [Section 751]." The two sections continue existing language, and the staff recommends against any change in the language except for the possible deletion of the word "present." See the staff Note to section 1111.

§ 1115. Dispensing with the requirement that other spouse consent (page 123)

The State Bar Section does not find any inconsistencies between Section 1115 and 1117. The question is whether Section 1117 provides the exclusive procedure where a married person has a conservator or lacks legal capacity to manage and control community property or

whether the court under Section 1115 can dispense with the requirement that the spouse having a conservator or lacking legal capacity consent to the transaction. The staff would make clear that Section 1117 is the exclusive procedure by adding at the beginning of the section the phrase "Notwithstanding Sections 1115 and 1116,"

§ 1117. Where married person has conservator or lacks capacity (page 124)

See the discussion under Section 1115.

§ 1118. Agency (page 124)

This section generalizes a provision of existing law. The State Bar Section approved the section.

§ 1150. Management and control (pages 124-125)

The introductory clause of Section 1150 reads: "Except as otherwise provided by statute." The State Bar Section would prefer a "specific listing of statutes, then with a reference to 'other statutes.'"

The staff would prefer to make no change in this section. Listing specific statute sections creates problems when sections are repealed or renumbered. In addition, the statutory list becomes obsolete and using the additional phrase "other statutes" means that it is still necessary to determine whether there are other statutes that constitute an exception to the management and control provision of Section 1150. The Comment to Section 1150 contains a list of the sections that provide exceptions to the rule stated in Section 1150.

See also the discussion below concerning Section 1200 with the staff suggestion that the phrase "whether acquired prior to or on or after January 1, 1975" be added to Section 1150 if that language is added to Section 1200.

§ 1151. Gifts of community personal property (page 125)

The State Bar Section notes that this section restates existing law, but comments: "the language of Section 803(b) might be adopted with respect to gifts of substantial value." If this suggestion were adopted, the following provision might be added to Section 1151:

For the purposes of this section, clothing, wearing apparel, jewelry, and other tangible articles of a personal nature, used solely or principally by the person, are presumed to be the person's separate property except to the extent they are substantial in value taking into account the circumstances of the marriage.

§ 1153. Community property business (page 126)

The State Bar Section comments: "Same comment as with respect to Section 1151, above." The staff does not understand this point, and we recommend no change in the section which continues existing law.

§ 1200. Management and control (page 127)

The staff draft omits from Section 1200 the phrase "whether acquired prior to or on or after January 1, 1975," taking the view that this omitted language is unnecessary. The State Bar Section comments: "We agree with the presently chosen wording, and suggest against deleting the "before or after" phrase, since in rare cases the law would be otherwise unclear."

As suggested by the State Bar Section, the staff will add the language "whether acquired prior to, on, or after January 1, 1975" to Section 1200.

Similar language was omitted from what is now Section 1150. If we add the language to Section 1200, we also should add the language to Section 1150.

§ 1500. Effect of premarital or other marital property agreements (page 128)

See the staff Note to this section. See also the discussion under Section 1620, infra.

§ 1612. Subject matter of premarital agreement (page 130)

The State Bar Section comments: "We suggest a resolution of the question of spousal support limitation, and consideration of the attorneys fees issue." The staff agrees that the premarital agreement statute should deal specifically with the issue whether spousal support can be limited by a provision in a premarital agreement, but we believe that that issue is one that should be the subject of a separate study. We do not understand the comment that "consideration [should be given to] the attorneys fees issue."

§ 1620. Restrictions on contract altering spouses' legal relations (page 132)

The State Bar Section comments: "A new chapter on post-marital nuptial agreements, not in contemplation of marriage, should be added." The staff agrees with the need for such provisions, but a project to draft such provisions should be a separate project, not part of the project to draft a Family Code.

The State Bar Section also comments: "Specific reference to Probate Sections 143-147 might be helpful." We would not list those sections in introductory portion of Section 1620 which lists only the exceptions to the rule stated in Section 1620: The Probate Code sections are noted in the Comment to Section 1620 so the reader of the section will be aware of the existence of the Probate Code sections, but we do not consider the Probate Code sections as exceptions to the rule states in Section 1620.

§ 1704. Pendente lite relief of custody or grant of visitation rights (page 134)

The State Bar Section comments: "We assume there is no relationship between the conclusive presumption elsewhere, really a legal ruling, and the presumption here, which is an evidence rule." The staff does not understand this comment.

§ 1720. Jurisdiction and venue (pages 136-137)

See the staff Note to this section. The State Bar Section approved the section as drafted.

§ 1737. Other provision of judgment (pages 139-140)

§ 1737.5. Factors court to consider in determining amount and period of support (pages 140-141)

The staff omitted the sunset provision in the staff draft of Section 1737 and 1737.5. The State Bar Section comments: "We would strike the sunset provision in both. But they are scheduled for review in the next legislative year."

§ 1750. Action to determine mother and child relationship (page 143)

The State Bar Section would substitute "person" for "party" as suggested in the Note to Section 1750.

§§ 1760-1770. Termination of Parental Rights in Adoption Proceeding (pages 143-148)

Matthew Bender suggests that Sections 1760-1770 be relocated in Division 16 (adoption). See the Comment to Division 16 (commencing with Section 7500), infra, this memorandum. The staff recommends that these sections be relocated to Division 16.

§ 1760. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is legitimate child (pages 143-144)

The State Bar Section would substitute "the law" for "prior law" as suggested in the Note to Section 1760.

§ 1761. Relinquishment or consent by father; notice to and rights of mother (page 144)

The State Bar Section would adopt the staff suggested language set out in the staff Note to Section 1761. Consideration should be given to deleting this section entirely. See the staff Note to the section.

§ 1762. Proceeding to terminate parental rights of father (pages 144-145)

The State Bar Section would substitute "the law" for "prior law" as suggested in the Note to Section 1762.

§ 1850. Conclusive presumption concerning child of marriage (page 153)

The State Bar Section would substitute "child" for "issue" as suggested in the Note to Section 1850.

§ 1907. Penalty for violation of restraining order against domestic violence (page 161)

See the staff Note to this section.

§ 2300. Effect of dissolution (page 173)

See the staff Note to this section. The staff recommends that this section be revised to read: "The effect of a judgment of dissolution of marriage when it becomes final is to restore the parties to the state of unmarried persons." In connection with this suggestion, see the discussion below in connection with Section 2338 and the following sections. As to when the judgment becomes final, see Sections 2339-2344.

§ 2313. Duty of support not affected by dissolution on grounds of insanity (page 174)

The staff Note to this section questions whether the section serves any useful purpose and, if the section is retained, the staff suggests the last portion the section be omitted. The staff's position is that a support order granted in a dissolution proceeding grounded on incurable insanity should be enforceable in the same manner as a support order granted in a dissolution proceeding grounded on any other ground. We would omit the section as unnecessary in view of Sections 3600-3604 (spousal support during pendency of proceeding), 4330-4339 (spousal support upon dissolution or legal separation).

The State Bar Section comments: "Deletion on bond provisions here and cross-reference on bond provisions herein should only occur if Sections 6000, 6003 [Sections 290 and 4500] are made clear on

applicability of bond provisions." At the time the State Bar Section made this comment, the provisions relating to enforcement of support had not yet been drafted. These provisions are now drafted and make Section 2313 unnecessary. See, e.g., Section 4339 (security for payment of spousal support). Note also Sections 4600-4641 (deposit of assets to secure payment of child support).

**§ 2330. Petition (page 176)**

The State Bar Section notes a typographical error in paragraph (1) of subdivision (b) of Section 2330, which should read: "The state or country in which the parties were married."

In response to the staff Note, the State Bar Section would make subdivision (b) of Section 2330 applicable in a proceeding for legal separation.

**§ 2330.5. Financial declaration not required in certain default cases (page 176)**

In response to the staff Note, the State Bar Section would substitute "income and expense declarations and property declarations" for "a financial declaration" in Section 2330.5.

Also responding to the staff Note to Section 2330.5 which raised the question whether there should be general provisions relating to income and expense declarations, the State Bar Section comments: "Procedures should be included in the default sections of the code, but use of the form is adequately dealt with at Court Rule 1243."

**§ 2335. Evidence of specific acts of misconduct (page 178)**

Concerning this section, the State Bar Section comments:

Evidence of misconduct can be relevant to property possession issues and domestic violence issues. Language [used in Family Code Section 2335] is identical to [language used in existing Civil Code Section] 4509, but that was drafted with no-fault in mind and does not deal with present violence concerns.

There is merit to this comment. Consideration should be given to revising Section 2335 along the following lines:

2335. In a pleading or proceeding for dissolution of marriage or legal separation, including depositions and discovery proceedings, evidence of specific misconduct is improper and inadmissible, except where in any of the following cases:

(a) Where child custody is in issue and the evidence is relevant to that issue.

(b) A domestic violence prevention order is sought or has been obtained and the evidence is relevant in connection with the order.

(c) An order for the temporary exclusion of either party from the family dwelling or from the dwelling of the other party is sought or has been obtained pursuant to subdivision (b) of Section 753 or subdivision (c) of Section 1900 or Section 1910 and the evidence is relevant in connection with the order.

**§ 2338. Decisions; judgments (page 180)**

In response to the staff Note, the State Bar Section would continue subdivision (a) of Section 2338.

The State Bar Section also comments: "Is the distinction between filing of judgment and its becoming final significant? Should "final" be defined? Is this a hold-over from days of interlocutory judgments?"

The State Bar Section further comments concerning Sections 2338-2344:

We have difficulty with the word "final" since it once meant that an interlocutory decision was now settled in the trial court, but also means that the decision is beyond appeal. We suggest that "no judgment entered. . . shall terminate the marriage relationship of the parties until six months have expired..."

The language suggested by the State Bar Section fails to recognize that the six-month period can be extended in certain cases. See Section 2339(b), Section 2341(b), and Sections 2342 and 2343. In addition, a judgment is a marriage dissolution proceeding may also contain provisions relating to support and to property division. Should the portion of the judgment relating to property division become final before the portion adjudging the dissolution of the marriage becomes final? The staff is generally satisfied with the existing language of Sections 2338-2344, although perhaps we should give further consideration to whether the concept of entry of a judgment which becomes final six months later should be continued.

As a technical matter, the staff suggests that subdivision (a) of Section 2339 be revised to read:

2339. (a) Subject to subdivision (b) and to Sections 2340 to 2344, inclusive, no judgment entered pursuant to Section 2338 is final until six months have expired from the date of service of a copy of summons and petition or the date of appearance by the respondent, whichever occurs first.

§ 2342. Calculating permissible date of entry of judgment where joint petition for summary dissolution is revoked (pages 181-182)

The State Bar Section approves the language of Section 2342 as proposed to be revised in the staff Note to Section 2342.

§ 2344. Effect of death of either party after entry of judgment (page 182)

The State Bar Section comments:

We propose section read: "(a) The death...after termination of marital status does not impair..." (b) The termination of marital status...", eliminating reference to entry of final judgment. It is the termination of marital status which is the relevant legal event.

It would appear that the propose of Section 2344 is to give effect to the property settlement in the marriage dissolution proceeding, even though the judgment has been entered but has not become final when one of the parties to the marriage dissolution proceeding dies. The language suggested by the State Bar Section would confuse, rather than clarify, the law in this situation. The staff much prefers the language suggested in the staff Note to Section 2344.

One question not clearly answered by Section 2344 is this: Is a party to a dissolution proceeding a "surviving spouse" if a judgment dissolving the marriage relationship has been entered before the death of the other spouse but the six-month period has not run at the time of the death? In this connection, for the purposes of the Probate Code, "surviving spouse" is defined in Section 78 of the Probate Code, which provides in part: "'Surviving spouse' does not include . . . [a] person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death." A reasonable construction of this provision would be that the marriage is not dissolved until the judgment becomes final. Accordingly, what is the right of the other spouse to take from the deceased spouse as a "surviving spouse" (and to have a right to a family allowance, probate homestead, and other protective provisions for surviving spouses) after the time runs and the judgment becomes final under Section 2344? A reasonable construction of the Probate Code provisions would be that the right to take as a surviving spouse is fixed at the time of the decedent's death, although a right to a family allowance or a probate homestead

would appear to require that the surviving spouse continue to be a surviving spouse at the time the petition is acted upon by the court. Should a study be made with the goal of providing clear rules concerning the rights of a spouse married to the decedent at the time of the decedent's death when a marriage dissolution judgment becomes final after the death?

§§ 2402-2406. Judgment dissolving marriage (pages 185-187)

The State Bar Section suggests that these sections be revised to eliminate references to "final" judgment. The references would be merely to "judgment." The staff will make the suggested revisions, some of which are described in the discussion of Sections 2403 and 2404 which follows.

§ 2403. Entry of final judgment (pages 185-186)

As suggested by the State Bar Section, the staff will change the section heading to read: "Entry of judgment of dissolution."

§ 2404. Effect of entry of final judgment (page 186)

As suggested by the State Bar Section, the staff will change the section heading to read: "Effect of entry of judgment."

Also, the staff will revise the introductory portion of Section 2404 to read: "Entry of judgment pursuant to Section 2403 constitutes:".

§ 2554. Arbitration where parties do not voluntarily agree to division (page 191)

In response to the staff Note, the State Bar Section suggests that quasi-community property be included.

§ 2610. Division of retirement plan benefits (page 196)

The office of the City Attorney of Los Angeles (Exhibit 6) reports that existing Section 4800.8 (continued without substantive change in Family Code Section 2610) has "engendered tremendous confusion among trial courts and family law practitioners with respect to the division of community interests in pension and retirement benefits. The office points out areas of confusion and suggests language to clarify the law. In view of this concern expressed in this letter, the Commission may wish to have the staff make a careful study of this letter with the view to developing a separate recommendation should legislation in this area be needed.

§ 2640. Separate property contributions to acquisition of property (pages 198-199)

The State Bar Section approves the revisions made to existing law by this section. See the Comment to the section.

§ 2641. Community contributions for education or training (page 199-201)

In response to the staff Note to Section 2641, the State Bar Section comments: "We approve the expansion of this section to apply to contributions in other states that would have been reimbursable if in this state." Accordingly, the staff suggests that subdivision (a) of section 2641 be revised to read:

2641. (a) As used in this section "community contributions to education or training" means payments made with community or quasi-community property for education or training or for the repayment of a loan incurred for education or training, whether the payments are made while the parties are resident in this state or resident in another state.

For a discussion of the need for this revision, see the Note to Section 2641 (bottom of page 201).

§ 3005 [formerly Section 3006]. When parental authority ceases (page 206)

In response to a staff Note, the State Bar Section recommends that the following new subdivision be added to Section 3005:

(d) A declaration of freedom from parental custody and control under Part 3 (commencing with section 3200).

See the staff Note to Section 3005.

§ 3008 [formerly Section 3007]. Remedy for abuse of parental authority (page 207)

The staff is of the view that this section is obsolete and unnecessary. The State Bar Section states: "This section does not appear to be surplus; it deals with abuse, while the other referenced sections do not." The State Bar Section was misled because the Note contained in the draft reviewed by the State Bar Section did not refer to the detailed provisions relating to dependent children and obtaining support for a dependent child.

Under Section 300 of the Welfare and Institutions Code, a child may be a dependent child of the court, for example, if:

(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parents.

(2) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure of his or her parent to adequately supervise or protect the child, or the willful or neglect failure of the child's parent to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent to provide regular care for the child due to the parent's mental illness, development disability, or substance abuse.

(3) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage as a result of conduct by the parent.

(4) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, by the parent or a member of the parent's household.

(5) The child has been subject to an act or acts of cruelty by the parent.

The Welfare and Institutions Code provisions provide detailed provisions for having a child declared a dependent child. Welfare and Institutions Code Section 900 et seq. governs the liability of the parent for support of the child taken from the parent.

Accordingly, the staff strongly urges that Section 3008 be deleted from the Family Code.

§ 3024. Notice to other parent of change of residence of child (page 209)

The State Bar Section approves this section.

§ 3025. Parental access to records (page 210)

The State Bar Section approves this section.

§ 3027. Monetary sanction for false accusation of child abuse or neglect (pages 210-211)

In response to the staff Note, the State Bar Section would make this section applicable to any custody proceeding "under this code."

§ 3110. Custody investigation and report (page 219)

In response to the staff Note, the State Bar Section would revise the introductory portion of Section 3110 to read: In a proceeding under this code,"

§ 3151. Rights and duties of appointed counsel (page 224-225)

In response to the staff Note, the State Bar Section would make no change in this section.

§ 3161. Uniform standards of practice for mediation (page 227-228)

In response to the staff Note, the State Bar Section would make no change in this section.

§ 3177. Separate mediation where domestic violence prevention order (pages 230-231)

In response to the staff Note, a majority of the State Bar Section believes that the language of the section is proper but that legislative intervention may be necessary to clarify the section. The staff believes that Section 3177 should be conformed with Section 3111.5. See the staff Note to Section 3177.

§§ 3200-3295. Freedom From Parental Custody and Control (pages 233-250)

Matthew Bender suggests that Sections 3200-3295 be relocated in Division 16 (adoption). See the Comment to Division 16 (commencing with Section 7500), *infra*, this memorandum. The staff is uncertain whether these provisions should be moved into the adoption law. However, since these provisions have not been a part of the adoption law under the existing statutory scheme, the staff recommends that these sections not be made a part of the adoption law. We would not have any problem with moving the provisions into the adoption law if the State Bar Section is of the view that they should be so relocated.

Matthew Bender further comments:

One of our staff attorneys further suggests that, in addition to moving the above provisions, a finding of adoptability should be made a condition precedent to the termination of parental rights in all cases. This would conform to current juvenile court law, as set forth in Welf. & Inst. Code § 366.26(c), and avoid creating legal orphans (i.e., children whose relationship to their natural parents has been severed but who have not been, and are not likely to be, adopted). In one appellate decision (subsequently decertified) a few months ago, the father and mother colluded to terminate the father's rights under Civ. Code § 232 in order to avoid an action by the District Attorney to collect past-due child support. No adoption was proposed. A 2-1 majority permitted

the father's parental relationship to be terminated because nothing in Civ. Code § 232 et seq. makes adoption or adoptability a condition precedent to termination of parental rights. Our staff attorney feels this is a bad result because, regardless of how poor a parent an individual may be, there still should be two people with a legal duty to support the child. He would suggest making the granting of a decree of adoption a condition precedent to termination of parental rights in all cases. He would allow proceedings to be commenced to terminate parental rights, but once an adoption petition is filed, the proceedings should be consolidated, and parental rights terminated by operation of law via the granting of a decree of adoption, rather than by separate order or judgment in a Uniform Parentage Act or Civ. Code § 232 proceeding. If the court finds that the standards of the UPA or 232 have been met prior to an adoptive placement or petition, it could make findings and a conditional order terminating parental rights on the granting of a decree of adoption.

This is a matter of substance (and perhaps controversy) and should be the matter of a separate study, rather than including any change in the Family Code. When staff and Commission time and resources permit, the Commission may wish to commence a study of this problem. The staff recommends that consideration of the problem be deferred for the time being.

§ 3205. Persons entitled to inspect petitions, reports, and records (page 235)

The State Bar Section would substitute "if the court determines" for "if it is believed" in subdivision (c) of Section 3205 as suggested by the staff Note. The Commission should give careful consideration whether it desires a court order in this situation.

§ 3230. Petition by private or public adoption agency or state or county agency (page 241)

See the staff Note to this section.

§ 3282. Service on parent who cannot be found or whose residence is unknown (pages 246-247)

In response to the staff Note to Section 3282, the State Bar Section comments:

[Sections 3281-3282] should be left as worded, unless the legislature acts on them. The rationale may be that the parties known to be served may be assumed to have waived appearance.

The staff believes that Section 3282 (service by publication) should be conformed to Section 3281 (personal service) should be conformed and that the citation should, in both cases, advise the parent that the parent may attend the hearing. The difference between the two sections is an obvious drafting error and should be corrected. See the Note to Section 3282.

§ 3654. Statement of decision (page 284)

See the staff Note to this section.

§ 4300. Duty to support spouse (page 319)

See the staff Note to this section.

§ 4412. Citation and notice of hearing (pages 331-332)

See the staff Note to this section.

§ 4502 [formerly Section 6002]. Renewal of judgment for support (page 334)

The State Bar Section comments:

Does section apply only to a determined arrearage, or to any obligation over ten years? We note a need to legislation what happens if a judgment is not renewed. Language is permissive only.

The staff is uncertain as to the meaning of the first sentence of the State Bar Section comment. We can add a discussion in the Comment to Section 4502 that indicates that court approval is required to enforce a support judgment more than ten years old (or more than 10 years old since it was last renewed). See Sections 5100, 5101. The court has discretion to deny enforcement. See Section 291 (effect of lack of diligence in seeking enforcement).

See also the staff Note to Section 4502.

§ 5104 [formerly Section 6104]. Application for writ (page 362.1)

The State Bar Section comments: "Opportunity exists to clarify present ambiguity in favor of simple, not compound, interest, and in favor of application first to principal, then to interest."

Does the Commission wish to deal with these matters? The general law relating to money judgments has rules governing these matters. The general rule is that payments on a money judgment are applied first to costs and interest and then to principal. See Code Civ. Proc. § 695.220. If the judgment is renewed, the accrued interest becomes part of the judgment and draws interest; otherwise, only simple interest is

recoverable on a money judgment. See Code Civ. Proc. §§ 685.010-685.050.

See also the staff Note to this section.

**§ 5206 [formerly Section 6206]. "Earnings" (pages 362.2-362.3)**

A typographical error appears in subdivision (c): The first three words should be "Payments or credits." This error is found in the existing statute and was carried over into the Family Code section.

Concerning subdivision (b), the State Bar Section comments: "We prefer 'receipts' or 'revenue' to 'payments due.'" The staff draft continues existing language, which is consistent with the language used in the remainder of the section. We are not persuaded that the suggested change in language should be made.

**§ 5218 [formerly Section 6218]. "Support" (page 362.4)**

The State Bar Section comments: Possibly the section should define these terms only as to a separated or divorced family, from one member to another." Section 5218 continues existing language and the existing language is proper.

**Enforcement of Support Provisions Found in Welfare and Institutions Code**

Josanna Berkow, Deputy Attorney General (Exhibit 7) makes the following comment:

Provisions implementing the state family support program are currently set forth in various sections of the Welfare and Institutions Code, the Civil Code, and the Code of Civil Procedure. The Draft appears to incorporate program provisions in the Civil Code and the Code of Civil Procedure but does not include critical provisions set forth in the welfare and Institutions Code relating to the state support enforcement program. These provisions include, but may not be limited to, the following sections of the Welfare and Institutions Code: 11350-11350.5, 11475-11476.1, 11478-11479.6. and 11488-11491.

I strongly recommend that the laws governing the state's family support enforcement program be incorporated into the Family Code.

The staff was aware of the provisions listed above. However, because the provisions are tied into the provisions relating to recovery of welfare payments and enforcement of support liability to avoid welfare payments, we decided not to sever out these provisions and to include them in the Family Code. It would be a substantial undertaking to move the provisions into the Family Code and to make the

necessary adjustments in the Welfare and Institutions Code. It will require one or two months of a full time of a staff member to accomplish this; but, in view of the comment received, the staff recommends that this project be undertaken. We must recognize that the ultimate staff conclusion may be that it would not be desirable to move the provisions into the Family Code.

§ 5505 [formerly Section 5500]. "Protective order" (page 363)

In response to the staff Note, the State Bar Section approved this section as drafted.

§ 5512. Fees (page 364)

In response to the staff Note, the State Bar Section would:

(1) Substitute "in a proceeding under this division" for "in an action brought pursuant to this division" in subdivision (a) of Section 5512.

(2) Substitute "order obtained under this division" for "order obtained under this section" in subdivisions (b) and (d) of Section 5512.

§ 5518. Support person for victim of domestic violence (pages 366-367)

The State Bar Section would limit this provision to domestic violence actions. See the staff Note to Section 5518.

§ 5700. Issuance of ex parte order where child in danger of abuse (pages 374-375)

The State Bar Section comments: "Refer to note on Section 90."

§ 5701. Finding required to issue order (page 375)

The staff Note notes that the word "household" used in Section 5701 is not defined. The State Bar Section comments:

We suggest a definition of household near Section 90. We note a dictionary definition "the resident family and its servants." We believe it means the same as the phrase defined in Section 90.

Having given the matter further thought, the staff recommends that no attempt be made to define the word "household" as used in Section 5701. Considering the context in which the word is used, we do not believe a definition would be useful.

§ 5804. Notice to Department of Justice (pages 380-381)

See the staff Note to this section.

§ 6401. Purposes of part (page 385)

The State Bar Section comments:

We note that the applied function of the legislation no longer includes conciliation to repair the marriage. That purpose of the legislation has become entirely consumed by the function of providing mediation, and in some counties advice to the court, on settlement of custody issues.

It may be true that in the real world the conciliation court is no longer used for conciliation to repair the marriage. However, the staff fears that to revise this division of the Family Code to eliminate this as a stated purpose of the conciliation court would create controversy. Accordingly, we recommend against revising the statutory language along the lines suggested by the State Bar Section.

§§ 6450-6452. Statewide Coordination of Family Mediation and Conciliation Services (pages 395-397)

The State Bar Section comments: "This subject then properly belongs under Division 10." Division 10 relates to custody of children. The staff recommends against relocating Sections 6450-6452 in Division 10. Section 6450, which lists duties of the Judicial Council, includes not only custody but also child support, and permits grants for family law projects.

See also staff Note to Section 6450.

§ 7050. Emancipated minor considered over age of majority (pages 399.17-399.18)

See the staff Note to this section.

§§ 7500-8340. Adoption (pages 401-468)

Matthew Bender comments:

In a more substantive vein, we would suggest that all of the termination of parental rights provisions be moved to Division 16 on adoptions, since the primary purpose of terminating parental rights is to free a child for adoption. Specifically Chapter 5 of Part 1 of Division 5 (proposed Fam. Code § 1760 et seq.; currently part of the Uniform Parentage Act) and Part 3 of Division 10 (proposed Fam. Code § 3200 et seq.; formerly Civ. Code § 232 proceedings) should each be moved to Division 16 (proposed Fam. Code § 7500 et seq.). This would improve a serious organizational deficiency in current law.

The staff has earlier in this memorandum recommended that Sections 1760-1770 (termination of parental rights in adoption proceeding) be moved into Division 16 (adoption). The staff has earlier in this memorandum recommended that Sections 3200-3295 (freedom from parental custody and control) not be moved into Division 16 (adoption).

Matthew Bender further comments:

4. On a separate issue, the same staff attorney suggests legislatively resolving the constitutional dispute over the rights of an alleged natural father who immediately moves to block an adoption by seeking to establish paternity and custody under the Uniform Parentage Act. He would amend the UPA to give such a father statutory preference over the adoptive couple with whom the child has been placed. He believes that the California Supreme Court will most likely find this to be constitutionally required under Lehr v. Robertson (1983) 463 U.S. 248, in the pending case of Adoption of Kelsey S. (1990) 228 Cal. App. 3d 277 (review granted May 3, 1990), and that the U.S. Supreme Court will ultimately so hold, if the California court does not.

This is a matter of substance (and perhaps controversy) and should be the matter of a separate study, rather than including any change in the Family Code. When staff and Commission time and resources permit, the Commission may wish to commence a study of this problem. The National Conference of Commissioners on Uniform State Laws has this problem under study. The staff recommends that consideration of the problem be deferred for the time being.

See also the staff Notes under various sections of Division 16 (commencing with Section 7500).

#### Delayed operative date

Matthew Bender comments:

Even if no major changes are made in the law, a delayed operative date will be essential. This will allow attorneys to become familiar with the structure of the new code, as well as allowing publishers to revise secondary source materials (e.g., treatises, practice guides, form books) to reflect the new Code. We would suggest that the new Code should not become operative until at least one year after it is passed (i.e., if the Code were introduced and passed in 1992, it should not become operative until at least January 1, 1994, preferably later).

Also to be considered will be the task of the Judicial Council in preparing a revision of all of the Family Law forms. The staff recommends that the Commission adopt the policy that the operative date of the new Family Code be deferred for one year after the time it otherwise would become operative.

## MATTERS THAT MIGHT BE GIVEN SPECIAL STUDY

### Provisions of Juvenile Court Law relating to dependent children

The Juvenile Court Law, found in the Welfare and Institutions Code (§ 200 et seq.) is a comprehensive statute covering both dependent and delinquent children. Greatly simplified, the distinction between a dependent child and a delinquent child is this: A "ward" or delinquent child is one who has violated a criminal law or persistently refuses to obey the orders of his parents or is beyond the control of the parent; a dependent child is one who is in need of parental care or control and has no parent able and willing to provide the care or control or who is mentally ill or whose home is an unfit place.

The Juvenile Court Law covers both the dependent and the delinquent children. Some provisions apply both to dependents and delinquents; others apply only to one or the other. It would require substantial duplication of much of the Juvenile Court Law in the Family Code if a statute covering dependents were to be included in the Family Code and the provisions relating to delinquents were continued in the Juvenile Court Law in the Welfare and Institutions Code. The staff concluded that it is best to retain the Juvenile Court Law in the Welfare and Institutions Code and not to move the law or the part of the law relating to dependent children into the Family Code.

We have received an activity report from the State Bar on the Family Code project. See Exhibit 8 (page 33 of Exhibits). We note that the report states that the "juvenile dependency law, in the welfare and Institutions Code" will be compiled in the Family Code. Nevertheless, the staff does not plan to include the juvenile dependency law in the Family Code. We estimate it would take one lawyer working full time about one year to split out the portion of the Juvenile Court Law relating to dependent children for compilation in the Family Code. The staff has concluded that it would not be desirable to divide the Juvenile Court Law in this manner, and, even if it were, we would strongly recommend against delaying the proposal of a Family Code until the provisions relating to dependent children could be included in the Family Code. Sometime in the distant future this decision can be reviewed if the Commission so desires.

### Enforcement of Support Provisions

The State Bar Section comments:

It might be appropriate for specialists in civil enforcement (outside of family law) to review Division [11] [support] together with family law specialists, to avoid duplication of statutes with the Civil Code and Code of Civil Procedure, and to provide statutes in Family Law only where special procedures are needed.

Family law discovery procedure

The State Bar Section comments:

A review of Family Law discovery ought to be undertaken, to develop discovery statutes that are more applicable to family law, such as requirements for compulsory concurrent exchanges of information.

Respectfully submitted,

John H. DeMouilly  
Consultant

# ASSEMBLY CALIFORNIA LEGISLATURE

AUG 06 1991

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**K. Jacqueline Speier**

Representing  
San Francisco & San Mateo Counties  
**ASSEMBLY MAJORITY WHIP**

August 2, 1991

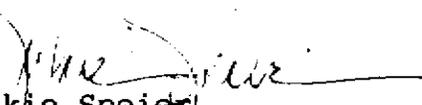
John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly,

Thank you for your letter informing me of your progress on the new Family Code. It is interesting to note the overwhelming response to your questionnaire regarding the need for a new code.

I am very interested in introducing the new Family Code in 1992. Please keep me informed on the status of the project.

All the best,

  
Jackie Speier  
State Assemblywoman

KJS:kv

CA LAW REV. COMMITTEE  
Study P-1000  
SEP 03 1991

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From: Executive Committee, Family Law Section, State Bar;  
Reporter: Lawrence M. Gassner; *Lg*  
Re: Family Law Code, Initial Staff Working Draft.  
Draft 2; August 30, 1991.

The executive committee of the Family Law Section, State Bar of California, after receiving commentary from its Standing Committees and itself considering the first draft of the proposed Family Law Code, responds with the comments and suggestions set forth below.

General Comments:

It is the understanding of our committee that there will be further opportunity to comment after later drafts of the original material are prepared, and after first drafts of sections on support are prepared and distributed.

We have not had opportunity to review the revised draft issued in August. These comments relate to the first draft received.

One of our number suggests LRC might consider enhancing the new code comments with reference to the federal and state tax laws in its comments. We recognize the staff expense which that effort would create.

We observe that there is no cross-reference in Division 6 on nullity and dissolution to similar provisions for the subject matter of legal separation judgments.

It might be appropriate for specialists in civil enforcement (outside of family law) to review Division 13 together with family law specialists, to avoid duplication of statutes with the Civil Code and Code of Civil Procedure, and to provide statutes in Family Law only where special procedures are needed.

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A review of Family Law discovery ought to be undertaken, to develop discovery statutes that are more applicable to family law, such as requirements for compulsory concurrent exchanges of information.

The lack of a specific comment in this response may only signal that we lacked time to study the section, having first prioritized sections that we thought needed most attention. If we have failed to concentrate on areas that LRC believes needs our attention, please advise us with later drafts.

Specific Comments:

1

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Our committee recognizes that the mandate is to keep the law the same. Changes will be recommended only in the interest of clarity and consistency with present understanding of law and procedure.

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Approved.

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We believe that the terms Judgment, Order and Decree should be defined; the entire code should be scanned in this respect to assure uniformity of meanings. Decree and order may be interchangeable. Judgment should have its own meaning. Would it be possible to print a draft with those terms highlighted to assist analysis?

80

85

Section 85 appears necessary in transition; it may not be needed in the final code. After general sections are properly made applicable to the whole code or only to specified sections of it, the term "Act" might better be deleted. It may be more confusing than helpful to have both an Act and a Code.

90

We prefer the terms cohabitant and former cohabitant, and would exclude any reference to the six month term used in earlier legislation.

100

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360

362 We agree that insane and imbecile are obsolete terms,  
but that is the legislation. We would prefer reference to  
competence to sign an oath.

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401 Approved.

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465 Approved.

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501 Approved. The words "pursuant to this chapter" are  
properly added.

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555 Yes, the retaining of fees should be applicable to both  
paragraphs.

570

589 The phrase "any district" means any place in the State;  
it should be left in.

590

700

721 Ref. Sections 1110, 1150, 1151. 1153. We note that  
classification of relationship of spouses, both during  
marriage and after separation, with respect to each other  
and to others, is a subject of present legislative study.  
[AB 1437 on Spousal Duties; AB 1396 on set asides of spousal  
settlements or judgments]. Legislation may occur this year,

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next year, or not at all. Memoranda prepared by our committee members present differing views on these questions, and will be submitted separately to LRC for study, on request. We are more unanimous in recommending that legislation set forth standards of conduct directly, rather than by reference to conduct defined in other divisions or other Codes. Clearly, standards of conduct during marriage and after separation should be separately defined. Clearly, standards applicable to transfers between spouses and with transfers to third parties should be separately defined. A list of obligations may be more useful in the legislation than a generic label such as "confidential relationship" or "fiduciary duty." We would like to avoid "except as otherwise provided," in favor of references to specific sections. We regret that the law in this area is unclear. Until the legislature acts, it may be necessary just to use present language.

We understand Sec. 721 to be a pre-separation statute; Section 1110 applies both to pre-and post-separation relationship.

722

751           Approved; identical; but second sentence appears redundant and unnecessary.

752           We agree with the Note. Add the exception.

753           With adequate cross-referencing, sub (b) would be better placed in 1900-1908.

754           We believe the statute should declare the prohibited transfer void.

760-783      A new chapter identifying quasi-community property is needed, to identify such property when California domiciliaries are dealing with it.

770-771      The sections might be combined into one; the word bequest might be omitted; the terms husband and wife might be reduced to spouse.

773           LRC suggests entry of judgment, rather than rendition; we agree.

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- 774 LRC suggests section is archaic and unused, and reverses a general presumption. We agree that the section promotes deception. But we understand that our present mandate is not to change the law. If changing the law, it might better refer only to separate property remaining from before marriage.
- 780 As drafted, the section changes the law. We propose: Except as provided in section 781 and subject to the rules of allocation set forth in Section 2603, money...
- 781 Sub-section (d) appears obsolete and might be deleted.
- 782-783 These sections re-state current law.
- 800 Sub (a) is a good addition to the Code. Sub (b) may not apply uniformly, as see Section 804. It might be deleted. It should be evaluated against the evidence code and case law for possible inconsistency.
- 801 Approved
- 802 Approved as properly drafted; but section deserves study; 4 year limit appears unreasonable.
- 803 New section; the section appears overboard, in applying to all gifts and might better apply only to gifts from community property.
- 804 Identical
- 850-853 Approved; restate current law
- 900-913 Approved; restate current law
- 914 Identical; but leaves us with the ambiguous difference between "common necessities of life" and "necessaries of life." Can we draw from case law for clearer definition?
- 915-31 Approved; restate current law
- 1000 Approved; restates current law
- 1100 New section; we approve its inclusion

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- 1110 Restates the law; we question what the proper standard should be here, and note present legislative studies; specific concise language might be preferable to referencing other Civil and Probate Code sections. We like the good faith and business partner concept of responsibility after separation; many would disagree that is the law.
- 1111 The undivided one-half interest may not match with the present existing and equal interest under CC 5105 (new Sec. 751).
- 1115-1117 approved; restate current law; we do not find inconsistencies here.
- 1118 The language chosen is approved.
- 1150 We prefer specific listing of statutes, then with reference to "other statutes."
- 1151 Restates the law; the language of Section 803(b) might be adopted with respect to gifts of substantial value.
- 1152 Approved; restates the law. Written approval should be required to avoid the hasty unilateral garage sale.
- 1153 Same comment as with respect to Section 1151, above.
- 1200 We agree with presently chosen wording, and suggest against deleting the "before or after" phrase, since in rare cases the law would be otherwise unclear.
- 1500-1621 Restate current law. Chapter 2 should be made retroactive only to January 1, 1986. A new chapter on post-nuptial agreements, not in contemplation of dissolution of marriage, should be added. We suggest a resolution of the question of spousal support limitation, and consideration of the Attorneys Fees issue.
- 1620 Specific reference to Probate Sections 143-147 might be helpful.
- 1704 We assume there is no relationship between the conclusive presumption elsewhere, really a legal ruling, and the presumption here, which is an evidence rule.

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1710

1714

1720 We approve the proposed text. It is more specific in application than CCP 395, and perhaps that should change. Filing in probate county makes sense.

1730

1735

1737-1737.5

We would strike the sunset provisions in both. But they are scheduled for review in the next legislative year.

1740

1750 We concur that the word "person" should be substituted for "party."

1760 We concur that the phrase "the law" should be substituted for "prior law."

1761 The section serves to equalize the rights of both mother and father in adoption law. But the language might be made to conform to that used in sections 1760 and 1762.

1762 We concur again that the phrase "the law" provides the correct meaning.

1770

1840

1850 We concur that the word "child" should be used. It is better understood and parallels the word "child" in the last part of the sentence.

1880

1900

2310

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- 2313 Deletion on bond provisions here and cross-reference on bond provisions herein should only occur if Sections 6000, 6003 are made clear on applicability of bond provisions.
- 2320
- 2330 There should be two blanks provided, for entry of both parties' names. In (b)(1): state or country, not of county. We would require the same statistical data for a legal separation as for dissolution.
- 2330.5 Reference to Income/Expense form would clarify the section. Procedures should be included in the default sections of the code, but use of the form is adequately dealt with at Court Rule 1243.
- 2335 Evidence of misconduct can be relevant to property possession issues and domestic violence issues. Language is identical to 4509, but that was drafted with no-fault in mind and does not deal with present violence concerns.
- 2338 We believe the requirement for filing of judgment and statement of decision should remain, to assure rights to new trial and to appeal. Is the distinction between filing of judgment and its becoming final significant? Should "final" be defined? Is this a hold-over from days of interlocutory judgments?
- 2338-2344 We have difficulty with the word "final" since it once meant that an interlocutory decision was now settled in the trial court, but also means that the decision is beyond appeal. We suggest that "no judgment entered... shall terminate the marriage relationship of the parties until six months have expired..."
- 2342 The section can be written to deduct the time of the earlier petition, with reference to entry of judgment: "date ... shall be calculated by deducting the period of time which has elapsed from the date of filing the joint petition to the date of the filing of the revocation."

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2344 We propose section read: "(a) The death...after termination of marital status does not impair..." (b) The termination of marital status...", eliminating reference to entry of final judgment. It is the termination of marital status which is the relevant legal event.

2403 Heading should refer to Entry of Judgment of Dissolution, and not to final judgment.

2404 Heading and first phrase should refer to Entry of Judgment of Dissolution, not to final judgment.

2406 Last phrase should refer to Judgment dissolving the marriage, not to the final judgment.

2403-04-05-06

Similar changes should be made to eliminate references to final judgment.

2450

2500-2660

We suggest that a reference to quasi-community property be included.

2550

2610

2620-2628 Approved; restate current law

2640 Re-states current law, except: applies to quasi community property as well as community property; and limits reimbursements to acquisitions after January 1, 1984; we approve the language.

2641 We approve the expansion of this section to apply to contributions in other states that would have been reimbursable if in this state.

2650 Approved; restates current law

2660 Approved; restates current law

3000

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3006 Yes, a subsection (d) should recognize that a judicial declaration of freedom from custody terminates parental authority.

3007 This section does not appear to be surplus; it deals with abuse, while the other referenced sections do not. [leaving it will requiring re-numbering the next section].

3020

3024 We agree that this section applies to any custody order.

3025 We agree that this section applies to any custody order.

3027 "Under this Code" is proper here, and should be used wherever appropriate.

3040

3100

3110 "Under this Code" is appropriate here, also.

3120

3130

3140

3150

3151 We believe the language of the statute is proper and should not be changed. The court is to determine powers of counsel, and they should not be implied or uniform.

3161 We would not alter this section. Grandparent and step parent visitation are covered in Section 3180. The section is not obsolete.

3177 After some debate, this committee believes the section language is proper, with the conjunction "and" so that both the violence and the order must exist to bring the section into play. Some thought the intent was that either factor would require separate interviews. Legislative intervention

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may be required to clarify. In any event sections 3177 and 3111.5 are not the same and both should remain.

3205 "If the court determines" is preferable.

3281-3282

The sections should be left as worded, unless the legislature acts on them. The rationale may be that the parties known to be served may be assumed to have waived appearance.

5500 We believe that the reference to Section 70 is the better approach.

5512 The word proceeding seems to better describe this procedure. And the word division appears to be proper, rather than referencing specific sections.

5518 So far the use of support persons only applies to violence actions, not to the whole code. We would not expand it.

5519 Generally legislative approach has been that the Judicial Council must provide forms and documents, but may provide rules and regulations. We do not challenge that approach.

5551 A study to conform 5551, 242 and 1802, or to replace them with one set of sections, should be undertaken. Notice times should be made uniform. Ex parte changes of notice time should be uniformly available.

5700 Refer to note on Section 90.

5701 We suggest a definition of household near Section 90. We note a dictionary definition "the resident family and its servants." We believe it means the same as the phrase defined in Section 90.

6000-6295

We note that the Division lacks lien procedures from the civil code.

6001 This section seems in conflict with section 6010. Court approval should be needed for collection after ten years. We already have collection after majority.

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6002 Does section apply only to a determined arrearage, or to any obligation over ten years? We note a need to legislate what happens if a judgment is not renewed. Language is permissive only.

6103 Family support is a separate concept and should be separately itemized. It is "child and" not "child or" spousal support. Suggest we include all three terms in series, disjunctive.

6104 Opportunity exists to clarify present ambiguity in favor of simple, not compound, interest, and in favor of application first to principal, then to interest.

6206(b) We prefer "receipts" or "revenue" to "payments due."

6218 Possibly the section should define these terms only as to a separated or divorced family, from one member to another.

6400-6442  
Part 1. We note that the applied function of the legislation no longer includes conciliation to repair the marriage. That purpose of the legislation has become entirely consumed by the function of providing mediation, and in some counties advise to the court, on settlement of custody issues.

6450-6452  
Part 2. This subject matter then properly belongs under Division 10.



# Fidelity National Title

INSURANCE COMPANY

Larry M. Kaminsky  
Vice President  
Assistant General Counsel

August 16, 1991

CA LAW REV. COMMISSION

AUG 19 1991

RECEIVED

Nathaniel Sterling, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

RE: Comments Regarding the Staff Working Draft of  
the Family Code (First Portion)

Dear Mr. Sterling,

The California Land Title Association Forms and Practices Committee comments on the Staff Working Draft of the proposed Family Code (First Portion) as follows:

Section 50: The staff Note after the Comment, questions whether or not there should be a definition of "judgment" and whether it should include "order" and/or "decree". It appears from my personal experience that an "order" encompasses a variety of actions which the Court may take, which may not have the finality of a "judgment." Therefore, in any definition of "judgment" or "order" it must be noted that even though an "order" may be a "judgment," it does not follow that they are equivalents, and the right of appeal may not flow from an "order."

Section 145: The Commonwealth of Northern Marianas would not seem to fit into the categories mentioned.

Section 236: CLTA strongly supports the addition of the language contained in the Note to this section, regarding bona fide purchaser without actual knowledge protection.

Section 754: This section is inconsistent with Section 236, in that, (1) Section 754 contains only a three month restriction on disposition of real property, whereas Section 236 contains no time limit; (2) The proposed language in the Note for Section 236 establishes bona fide purchaser protection for those who have no actual knowledge of the restraining order. The purpose of recording a Notice of Pendency of Action is to impart constructive notice in the Official Records to potential purchasers and encumbrancers. Since this is inconsistent with the requirement of actual knowledge in Section 236, and since it is redundant with the restraining order imposed by Section 236, it appears that section 754 should be eliminated. In any event, should the Commission decide to provide for the recording of a Notice of Pendency of Action so as to impart constructive notice of the action between spouses, it should only impart notice as to property held or record as community property, and only as to property held of record in the name appearing on the Notice. Any transaction in violation of such a notice should be voidable, not void.

Nathaniel Sterling  
August 16, 1991  
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Thank you for the opportunity to comment on the above matters, and if you have any questions or comments for us, please don't hesitate to contact us.

Sincerely,

Larry M. Kaminsky  
Chairman, Special Subcommittee on  
California Law Revision Commission  
Legislation of the California Land  
Title Association Forms & Practices  
Committee

SEP 05 1991

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September 4, 1991

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Comments Regarding Proposed Family Code

Dear Commission Members and Staff:

I am an Executive Editor in our company's California Practice Publications department. Among the publications that our department is responsible for updating and editing are California Family Law Practice and Procedure (C. Markey, Editorial Consultant) and California Community Property With Tax Analysis. We also are editorially responsible for family law coverage in various other Matthew Bender publications, most notably California Forms of Pleading and Practice. In addition, our group publishes the California Family Law Monthly. I have asked each of the attorneys on our family law staff to review the Commission's Staff Working Draft of the proposed Family Code. This letter represents a compendium of their individual comments concerning the proposed Code.

We note, at the outset, that the adoption of a new Family Code will require the family law bench and bar to purchase revised primary and secondary source material at considerable cost. Increased overhead costs will, of course, be passed along to the client. Furthermore, since the passage of the Family Law Act, a substantial body of law has developed around particular code sections, so that a complete renumbering of the statutes relating to family law will require substantial time and effort by the bench and bar to become familiar with the organization of the new law and will probably increase research costs at least initially, even if little or no substantive change is made in the law.

Thus, if the Family Code is to be undertaken, we hope that the Commission will attempt to ensure that the end product really does something to clarify the law and improve the operation of the family law courts, rather than merely renumbering code sections. Mr. DeMouilly's cover letter to the Staff Working Draft indicates that the Commission does not plan to propose any major changes in existing family law in California, but merely to "reorganize and collect into one code the various scattered provisions of existing family law." However, the Staff Draft, in its current form, does not seem to accomplish much in the area of reorganization. It seems to contemplate only renumbering the provisions of Civ. Code § 196 et seq. (the

existing Civil Code provisions on "Parent and Child") and Civ. Code § 4000 et seq. (the existing Family Law Act and Uniform Parentage Act) and a handful of provisions of the Code of Civil Procedure and place them in a new code, without really integrating the related provisions of the different parts of the Civil Code. The same result could be accomplished in a much less disruptive manner within the framework of the existing Family Law Act by merely moving existing Civ. Code § 196 et seq. into the existing Family Law Act portion of the Civil Code.

However, assuming that the Commission is determined to propose the new Family Code, we offer the following suggestions:

1. Even if no major changes are made in the law, a delayed operative date will be essential. This will allow attorneys to become familiar with the structure of the new Code, as well as allowing publishers to revise secondary source materials (e.g., treatises, practice guides, form books) to reflect the new Code. We would suggest that the new Code should not become operative until at least one year after it is passed (i.e., if the Code were introduced and passed in 1992, it should not become operative until at least January 1, 1994, preferably later).

2. It is sometimes unclear under the current Family Law Act whether general civil procedure rules apply in instances in which neither the Family Law Act nor the California Rules of Court address a particular issue. Thus, the Commission may wish to consider including a section comparable to Prob. Code § 1000, which would provide that except to extent that the Family Code or Judicial Council rules promulgated under proposed Fam. Code § 210 provide applicable rules, the rules of practice applicable to civil actions generally apply to proceedings under the Family Code. (Or, in the alternative, clearly specify that such general civil rules do not apply, and that only the rules and procedures specified in the Family Code, or Rules of Court promulgated thereunder, are applicable.)

3. In a more substantive vein, we would suggest that all of the termination of parental rights provisions be moved to Division 16 on adoptions, since the primary purpose of terminating parental rights is to free a child for adoption. Specifically, Chapter 5 of Part I of Division 5 (proposed Fam. Code § 1760 et seq.; currently part of the Uniform Parentage Act) and Part 3 of Division 10 (proposed Fam. Code § 3200 et seq.; formerly Civ. Code § 232 proceedings) should each be moved to Division 16 (proposed Fam. Code § 7500 et seq.). This would improve a serious organizational deficiency in current law.

One of our staff attorneys further suggests that, in addition to moving the above provisions, a finding of adoptability should be made a condition precedent to the termination of parental rights in all cases. This would conform to current

juvenile court law, as set forth in Welf. & Inst. Code § 366.26(c), and avoid creating legal orphans (i.e., children whose relationship to their natural parents has been severed, but who have not been, and are not likely to be, adopted). In one appellate decision (subsequently decertified) a few months ago, the father and mother colluded to terminate the father's rights under Civ. Code § 232 in order to avoid an action by the District Attorney to collect past-due child support. No adoption was proposed. A 2-1 majority permitted the father's parental relationship to be terminated because nothing in Civ. Code § 232 et seq. makes adoption or adoptability a condition precedent to termination of parental rights. Our staff attorney feels this is a bad result because, regardless of how poor a parent an individual may be, there still should be two people with a legal duty to support the child. He would suggest making the granting of a decree of adoption a condition precedent to termination of parental rights in all cases. He would allow proceedings to be commenced to terminate parental rights, but once an adoption petition is filed, the proceedings should be consolidated, and parental rights terminated by operation of law via the granting of a decree of adoption, rather than by separate order or judgment in a Uniform Parentage Act or Civ. Code § 232 proceeding. If the court finds that the standards of the UPA or 232 have been met prior to an adoptive placement or petition, it could make findings and a conditional order terminating parental rights on the granting of a decree of adoption.

4. On a separate issue, the same staff attorney suggests legislatively resolving the constitutional dispute over the rights of an alleged natural father who immediately moves to block an adoption by seeking to establish paternity and custody under the Uniform Parentage Act. He would amend the UPA to give such a father statutory preference over the adoptive couple with whom the child has been placed. He believes that the California Supreme Court will most likely find this to be constitutionally required under Lehr v. Robertson (1983) 463 U.S. 248, in the pending case of Adoption of Kelsey S. (1990) 228 Cal. App. 3d 277 (review granted May 3, 1990), and that the U.S. Supreme Court will ultimately so hold, if the California court does not.

I hope that the above comments will be helpful to the Commission. Our staff attorneys and I would be happy to discuss them if any member of the Commission or its staff is interested in doing so. My phone number is (510) 446-7321.

Sincerely yours,

  
Steven J. Rebell  
Executive Editor

SJR/rsf

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Study P-1000  
Law Revision Commission  
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SEP 09 1991

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Fax No. (408) 295-4771

September 6, 1991

California Law Revision Commission  
4000 Middlefield Road Ste D-2  
Palo Alto CA 94303-4739

Re: Proposed Family Code Comment

Dear Law Revision Commission:

I have one suggestion for a Code Section to be moved from the Code of Civil Procedure to the proposed Family Code.

California Code of Civil Procedure § 397.5 is, in my opinion, a code section that deals exclusively with the Family Law Act and would appropriately be placed in the Family Code. I reviewed the conversion table at the end of the revised working draft and could not find any cross-reference to this section.

Thank you for your time in considering this matter.

Very Truly Yours,



Michael C. Schwerin  
Attorney at Law

MCS/ds

OFFICE OF  
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CALIF. LAW REV. COMMISSION

AUG 29 1991

RECEIVED

August 26, 1991

John H. DeMouilly,  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

RE: COMMENT ON SECTION 2610 OF THE STAFF  
WORKING DRAFT, FAMILY CODE (FIRST PORTION)

Dear Mr. DeMouilly:

Thank you for the opportunity to comment upon the staff working draft of the new Family Code.

The following observations pertain to existing Section 4800.8 of the California Civil Code as contained in Division 9, Part 5, Section 2610 of the staff working draft of April 1991.

Civil Code Section 4800.8 has engendered tremendous confusion among trial courts and family law practitioners with respect to the division of community interests in pension and retirement benefits. That section, unfortunately, has led many to believe that under its provisions a trial court literally can make whatever orders are "necessary or appropriate to assure that each party receives his or her full community property share in any retirement plan, ..." (C.C. 4800.8).

This misinterpretation of Section 4800.8 has diverted courts from the obligation to divide community [pension] benefits equally, rather, to one of endeavoring to treat all beneficiaries evenly under a pension plan. The following is a particular case in point.

The XYZ pension plan by its provisions provides survivor benefits only to a qualified surviving spouse [married to the member at time of death], minor and dependent children and dependent parents under specified conditions. In this case, assuming that the member becomes deceased and no benefits are John

H. DeMouilly  
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payable after death to any of these enumerated parties, Section 4800.8 is not authority to compel the plan administrator to pay survivor benefits to a divorced former spouse simply because community funds were used in part to pay pension contributions during marriage.

Of course, in this example, if any benefits are payable after death to any individual or entity, then Section 4800.8 is authority to award the divorced former spouse a pro tanto share of such benefit.

A second example of the unlawful orders issued by trial courts in the wake of Civil Code Section 4800.8 is that of requiring a pension plan administrator to pay benefits to a divorced former spouse prior to the member's actual retirement. This requirement was specifically rejected by the California Supreme Court in In Re Marriage of Gillmore (1981) 29 Cal.3d 418; 174 Cal.Rptr. 493, and, more recently, in Nice vs. Nice (1991) 230 Cal.App.3d 444.

Under Gillmore, supra, and its progeny, a pension or retirement plan cannot be forced to pay benefits to anyone prior to the member employee's actual retirement unless it is contractually obligated to do so. In the case of a vested and mature pension benefit, only the employee [who chooses to delay retirement] can be compelled to pay "early" benefits to a divorced former spouse.

Errant decisions by trial courts in these regards have led to at least two published Court of Appeal decisions curtailing attempts to divide pension benefits in a manner inconsistent with the contractual obligations of the concerned pension benefit plans (See: In Re Marriage of Carnall (1989) 216 Cal.App.3d 1010 and In re Marriage of Nice (1991) 230 Cal.App.3d 444).

An additional concern of pension plan administrators and plan members who have retired with the expectation of a particular pension income level is the possibility, under Section 4800.8, that former spouses and others can come forward at any time and make claim to a community share of a pension benefit involved in a marriage dissolution proceeding finalized prior to the effective date of Section 4800.8 [January 1, 1987].

The public policy concern in the finality of judgments, laches and overall fairness to the parties under family law judgments demand that courts not be permitted to revisit pension decisions made prior to the advent of Section 4800.8.

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As most practitioners in the family law field are aware, private pension systems under federal law (1) cannot be required to provide any type or form of benefit, or any option, not otherwise provided under the plan and (2) cannot be required to provide increased benefits (determined on the basis of actuarial value) (Retirement Equity Act of 1984, 29 U.S.C. 1001, et seq.).

California's largest public retirement system, the Public Employees' Retirement System (PERS), similarly will not accept a trial court order which requires it to provide a benefit not provided for or which is contrary to the statutory provisions of the Public Employees' Retirement Law (See attached copy of PERS Community Property General Information pamphlet, Page 3). Moreover, the pamphlet cautions that the law [Section 4800.8] is not intended to give a nonmember spouse the same rights given a member of the system (Page 5).

The right of pension plan drafters to provide different benefits among various beneficiaries long has been acknowledged in California cases. In Myers v. Fire and Police Pension System (1973) 32 Cal.App.3d 725; 108 Cal.Rptr. 429, the widow of a Los Angeles Police Officer killed in the line of duty opposed the City's offset, by virtue of a Charter provision, of a prior Workers' Compensation death benefit from her City widow's pension. Upholding the trial court decision permitting the offset, the Court of Appeal commented as follows upon the City's right to treat a former employee, for pension purposes, different from a widow of such employee:

"Petitioner argues that the purpose of section 190.15 is to preclude double recovery for the same accident, and petitioner would not be receiving an award for the same accident. Although this may be one of the purposes of section 190.15, it is also possible that the legislative body intended to provide greater benefits for former employees than for the widows of such employees. Such a procedure is not uncommon in the business world, and we cannot say that the only purpose of section 190.15 is to prevent double recovery from the same accident." (Myers, supra, pp. 730-731)

John H. DeMouilly  
August 26, 1991  
Page 4

Civil Code Section 4800.8, sub-paragraph (b) empowers a court to order a party to elect a survivor benefit annuity or other election only in a case where the retirement plan provides for such an election. It does not compel all pension systems to provide a joint survivor option if one does not exist under the plan.

The thrust of this commentary on Section 4800.8 can be summarized in the following passage from the Court of Appeal decision in In Re Marriage of Powers (1990) 218 Cal.App.3d 626; 267 Cal.Rptr. 350:

"Section 4800.8 only requires the equal division of such community property interest as exists in "any retirement plan, whether public or private, including all survivor and death benefits, ..." (§4800.8.) The statute does not require such plans to adopt new benefits or increase existing ones." (Powers, supra, pp. 644-645)

The new Family Code should provide clarification of Section 4800.8 in accordance with the above points and authorities by seeking to amend that section in the following particulars:

1. Add language to the effect that ...[C.C. Section 4800.8] shall not require a pension or retirement plan to provide any type or form of benefit, or any option, not otherwise provided under the plan.
2. The provisions of [C.C. Section 4800.8 shall be operative prospectively as of January 1, 1987 [operative date of C.C. 4800.8], and shall not apply to persons retired or deceased prior to that date.

John H. DeMouilly  
August 20, 1991  
Page 5

If you have questions concerning these comments or desire clarification of any issues raised, please contact the undersigned at: (213) 485-4917.

Very truly yours,

JAMES K. HAHN, City Attorney

By Eudon Ferrell *by Eudon Ferrell*  
EUDON FERRELL  
Deputy City Attorney

EF:cb  
(213) 485-4917  
Enclosure

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BENEFIT APPLICATION SERVICES DIVISION  
P.O. BOX 942711, SACRAMENTO, CA 94229-2711  
Telecommunication Device for the Deaf: (916) 326-3240  
(916) 326-3232**

**COMMUNITY PROPERTY GENERAL INFORMATION**

The following information along with the attached member booklet is intended to answer general questions regarding community property as it relates to the Public Employees' Retirement System (PERS) and provide guidance when negotiating a settlement in a dissolution of marriage or legal separation. We recommend you contact your attorney for advice regarding how this information affects your case. If you need specific information regarding a member's account, you may contact PERS directly. The term "member" will be used when referring to the spouse whose pension plan is being divided, and the term "nonmember" will refer to the other spouse.

The Public Employees' Retirement Law is found in Government Code Sections 20000 et. seq., and is administered by the Board of Administration. The Retirement Law is complex and we have attempted to simplify this information as much as possible, but in the event of a conflict any decisions will be based on the applicable section(s) of the Government Code.

**THE SYSTEM**

PERS administers a defined benefit plan to which most members contribute a percent of their salary to the system. The employer also contributes a percent of each employees' salary to the system; however, the employer contributions are not separated into individual member accounts and are not subject to withdrawal upon termination of System covered employment. The employer contributions are used to fund the pension portion of the member's monthly retirement allowance and are available only when the member retires and begins receiving a monthly retirement allowance.

**CIVIL CODE**

Recent changes to Section 4800.8 of the Civil Code may affect the division of community property in a member's pension plan with the Public Employees' Retirement System. Section 4800.8 was amended to provide that the court make whatever orders are necessary to assure that each party receive his or her full community property share in any retirement plan, whether public or private, including all survivor and death benefits. The order may include, but is not limited to, any of the following:

- (a) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 4800.
- (b) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election.
- (c) Order the division of accumulated community property contributions and service credit as provided by Section 21215 through 21215.8 of the Government Code.

The recent change to the Civil Code did not change previous community property law affecting PERS, but provided an additional alternative to parties involved in a dissolution of marriage or legal separation. That alternative, as provided by Subdivision (c) of Civil Code 4800.8 and specified in Government Code Sections 21215 thru 21215.8, provides for the actual division of a member's retirement contributions and service credit attributable to periods of service during the marriage into two separate and distinct accounts in the name of the member and nonmember.

Because of this change, there are now two methods by which the community property interest in PERS may be divided, both methods are explained in this booklet. It is the responsibility of the parties and their respective attorneys to determine which method would be the most advantageous based upon the parties' circumstances, needs, and desires.

The first method would provide for the nonmember spouse to receive his or her community property interest in the member's PERS benefits at the time the benefits become payable to the member. Benefits become payable to a PERS member only upon the member's retirement or termination of membership. Pursuant to subdivision (a) and/or (b) of 4800.8 of the Civil Code, the court may also order the division of any benefits payable upon the death of the member and order the member to elect a survivor benefit annuity or other similar election for the benefit of the other party. Please refer to the section titled, "DIVISION OF COMMUNITY INTEREST IN PERS AT THE TIME BENEFITS BECOME PAYABLE & ORDER PURSUANT TO SUBDIVISION (a) or (b) of CIVIL CODE SECTION 4800.8", for specific information.

The second method, an order pursuant to subdivision (c) of Civil Code 4800.8, would allow, upon order of the court, for the member's account to be divided into two separate and distinct accounts in the name of the member and nonmember and upon order of the court give the nonmember specific rights under this System, regardless of the action taken by the member. Please refer to the section titled, "SEPARATION OF SERVICE CREDIT AND CONTRIBUTIONS PURSUANT TO SUBDIVISION (c) of CIVIL CODE SECTION 4800.8", for specific information.

In all cases, the System must be provided with a complete endorsed/filed copy of the judgment which divided the community interest in the member's pension plan with PERS. The System has no standard language for dividing the community interest in retirement benefits in either situation. Judgements will be processed without the System being joined, but only insofar as permitted under the Public Employees' Retirement Law. Please read the following sections carefully before preparing your judgment.

**DIVISION OF COMMUNITY INTEREST IN PERS AT THE TIME BENEFITS BECOME PAYABLE & ORDER PURSUANT TO SUBDIVISION (a) or (b) of CIVIL CODE SECTION 4800.8:**

**The Court Order:**

The usual language encountered in these cases provide for the nonmember spouse to receive one-half of the member's retirement benefits in the ratio that the service credit of the member's employment during the marriage bears to the total service credited at the time benefits become payable. For this purpose, the judgment should contain the dates of marriage and separation of the parties. The following formula illustrates this type of division:

$$\frac{1/2 \times \text{years of marriage while employed}}{\text{total years of service credit}} \times \text{benefit} = \text{nonmember spouse's community property interest}$$

Section 4800.8 (b) provides that the court may order the member to elect a survivor benefit annuity or other similar election for the benefit of the other party. PERS does not use the language "survivor benefit annuity;" PERS does, however, have "other similar elections," known as "optional settlements." Please refer to the appropriate member booklet for a description of the optional settlements available to the member. If the member is required to elect an optional settlement for the nonmember spouse upon retirement, the order must specifically state the option and benefit to be elected by the member.

In obtaining orders using this method, you should bear in mind that PERS will only apply the community property interest to the benefits specifically stated in the judgment. If the benefits are quantified with "any" or "all" retirement benefits payable, the order would be interpreted to mean all benefits, including any lump sum death benefits payable. If the order provides only for a portion of the member's monthly allowance to be divided, then the order would not be applied to any other benefits payable. PERS will comply with the provisions of any judgment to the extent provided by the Government Code. The court cannot order PERS to pay a benefit not provided for, or which is contrary to the statutory provisions of the Public Employees' Retirement Law.

#### Payment of Benefits:

As stated previously, the nonmember spouse has the right to file the community property claim on a member's retirement benefits at any time; however, payment cannot be made to the nonmember spouse until the member separates from employment and elects to receive a refund of contributions or retires and begins receiving a monthly retirement allowance.

If the member elects to receive a refund of his/her accumulated contributions and interest, then the nonmember spouse would receive a refund of his/her interest in those contributions, based on the formula or percent provided in the judgment. If the member elects to retire and receive a monthly retirement allowance, the nonmember spouse would receive a portion of the monthly allowance, based on the formula or percent provided in the judgment, until the death of the member. Upon either retirement or refund, payment may be made directly to the nonmember spouse if so directed by the court order or upon the member's request.

Upon the death of the member the nonmember spouse would no longer be entitled to a monthly allowance, unless the member had elected an optional settlement which provided for the nonmember spouse to continue to receive a monthly allowance after the member's death. Thus, using this method, to guarantee the nonmember spouse a lifetime monthly allowance would require a court order which specifically provided for the member to elect such an optional settlement, naming the nonmember spouse as beneficiary. Please bear in mind the law provides certain benefits to a "surviving spouse" which the court cannot order paid to a nonmember spouse. PERS will accept a court order which requires the nonmember spouse to receive a proportionate share of any monthly allowance payable after the death of the member, if that contingency is explicitly provided in the judgment. If the nonmember spouse predeceases the member, his/her community property share would cease and revert back to the member, unless otherwise ordered by the court.

#### Disability Retirement:

The System does not apportion between service and disability retirement. A member retired for a disability is considered totally disabled for as long as he/she receives a disability allowance from PERS. The nonmember spouse may receive a portion of the member's disability allowance, unless otherwise ordered by the court.

#### SEPARATION OF SERVICE CREDIT AND CONTRIBUTIONS PURSUANT TO SUBDIVISION (c) of CIVIL CODE SECTION 4800.8:

##### Background:

In 1985, the Legislature ordered PERS to study the issues raised in the case of In RE Marriage of Gillmore (1981) 29 Cal.3d 418 [174 Cal.Rptr. 493]. The result of the study was legislation which added subdivision (c) of Section 4800.8 to the Civil Code and added Sections 21215 through Section 21215.8 to the Government Code, and provided for the community interest in a member's service credit and contributions with PERS be divided into two separate accounts which become, and remain independent of the other.

This law offers to the parties an alternative to existing methods of dividing the retirement benefits, but is not mandatory. The establish of a separate account for the nonmember can have some distinct advantages, as well as some disadvantages.

The primary advantage is the nonmember no longer has to rely upon the member for either the type of benefit or when the benefit becomes payable. For example, a nonmember can receive a refund of his/her share of the accumulated contributions while the member continues to work. Or, if the member was vested with the System at the time of the dissolution, the nonmember may retire and receive a service retirement allowance when eligible, regardless of whether the member retired, continues to work, or receives a refund.

The disadvantage to the nonmember in separating the account is the nonmember does not share in any increased value of the member's account because the salary and benefit structure, upon which the member's account is based, is "frozen" at the time of dissolution of marriage.

#### The Court Order:

As with the previous method, PERS has no standard language requirements for dividing the account pursuant to this section. However, the court must specifically order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and nonmember. The order must contain the date of marriage and the date on which the parties separated and the court must address the specific rights to be given to the nonmember as provided by Section 21215(c) of the Government Code. In conjunction with the member file, PERS will determine the amount of contributions and service credit which accrued during that period. The division of the community interest will be computed by PERS based upon the information provided in the judgment.

PERS will not accept a court order which orders a specific dollar amount be used to establish the nonmember's account. Additionally, the separation of accounts is applicable only to PERS' members who are not yet retired. Once a member is retired the service credit and contributions cannot be divided into two separate accounts.

#### Rights of the Nonmember:

1. The nonmember has the right to a retirement allowance, and the right to take a reduced allowance and name a beneficiary to receive a monthly allowance after the death of the nonmember or to guarantee return of the nonmember contributions. The nonmember may be eligible for a retirement allowance only if on the date of dissolution or legal separation, the member had sufficient credited service to retire. If at the time of dissolution or legal separation, the member does not have the necessary minimum credited service to retire, the nonmember shall receive a refund of the accumulated contributions placed in his/her account. The nonmember may retire only when both the member and the nonmember have reached the minimum retirement age.
2. The nonmember has the right to a refund of accumulated contributions. This includes interest which has accrued on the account through date of payment at the annual rate of interest established by the Board. If the nonmember refunds, neither the member nor the nonmember may redeposit those contributions in order to receive credit for the service which was refunded to the nonmember.

3. ~~The nonmember has the right to redeposit contributions or purchase service credit which are eligible for redeposit or purchase by the member, but only if the court has determined that those contributions and service credit were community property and specifically gave the nonmember the right to redeposit those contributions or to purchase the service credit. The member does not regain the right to redeposit or purchase the service credit even if the nonmember does not exercise his/her right to do so.~~
- \* 4. The nonmember has the right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement or refund.
- \* 5. The nonmember has the right to designate a beneficiary for any unpaid allowance payable at the time of his/her death.
6. The nonmember has the right to elect coverage in the second tier. Second tier coverage is applicable only to PERS state miscellaneous members and state industrial members.

#### Exclusions:

\* The law specifically excludes the nonmember from receiving any disability retirement benefits or death benefits, and nothing in this law was intended to give the nonmember spouse the same rights given a member of this System.

#### QUALIFIED DOMESTIC RELATIONS ORDER (QDRO):

The Retirement Equity Act of 1984, governs the distributions of community property assets of private, not-public pension plans. Qualified Domestic Relations Orders (QDRO) contain provisions which are contrary to the Public Employees' Retirement Law and thus, are not administrable by PERS. Please refer to one of the two methods for dividing the community property interest in the PERS plan.

#### REQUEST FOR INFORMATION/CONFIDENTIALITY

The contents of a member's file are confidential pursuant to Government Code Section 20134 and Civil Code Section 1798, et. seq. However, the member, the member's spouse, and their respective attorneys or other authorized representatives have the right to obtain information contained in a member's file when determining the community property interests of the parties. In order to obtain the information, the System must receive either:

1. A Subpoena Duces Tecum. Upon receipt of a subpoena, the contents of the member's file will be photocopied and the requested calculations completed. Pursuant to Evidence Code Section 1563, the System charges \$10.00 an hour clerical costs plus, \$.10 per page copying costs. This amount represents actual costs incurred in locating and making the records available. The System will accept service of subpoena by mail.
2. A written request outlining the specific data needed. All correspondence with PERS must include the member's name and social security number. Upon receipt of a written request, PERS will provide the following information:
  - A statement as to the member's accumulated contributions and interest for a specified period. If specific dates are not requested, a current statement will be provided. Due to agencies' reporting requirements, a current statement will reflect contributions two to four months in arrears.
  - A statement as to the member's years of service credit. Again, if a specific period is not requested, a current statement will be provided.
  - A statement as to the member's current employment status, i.e., safety or miscellaneous member, state or local member, and the applicable benefit formula.

**PERS WILL NOT PROVIDE:**

- Actuarial valuation of retirement benefits. A private actuary will be able to provide you with this information.
- Employment data, salary, payroll, and earnings or personnel records. You must contact the employer directly for this information.

**HEALTH BENEFITS:**

The nonmember spouse loses eligibility for health and dental benefits coverage under the member's insurance at midnight the last day of the month in which the marriage terminated. The nonmember spouse may, however, request a conversion policy. A conversion policy is an individual policy underwritten by the member's current health benefits plan or insurance carrier. The nonmember spouse should contact the carrier within 30 days of the termination date of group coverage for information on the coverage and cost of the policy.

**TAX LIABILITY:**

Both the member and nonmember are responsible for any tax liability as a result of their community property payments received by PERS. The System must, therefore, have the nonmember's Social Security number before any community property payment can be made.

**COST-OF-LIVING ADJUSTMENTS:**

A special provision has been built into the member's retirement plan to allow for a cost-of-living increase. The first adjustment will be made in the second calendar year following the member's retirement and annually thereafter. The nonmember spouse receives the same cost-of-living adjustment on his/her community property interest, unless otherwise directed by the court. In a separation of accounts, the nonmember will receive a cost-of-living adjustment based on the percent provided by the member's employer at the time of marriage dissolution.

**MISCELLANEOUS INFORMATION:**

The community property interest in the retirement benefits does not terminate upon remarriage of either party, unless otherwise directed by the court.

The nonmember spouse should keep the System informed of his/her current mailing address at all times.

Pursuant to Government Code Section 21201, the money in the retirement fund is not subject to execution, garnishment, attachment, or any process whatsoever, and is unassignable, except for court ordered child or spousal support. The System must be served with a Writ of Execution, pursuant to the Code of Civil Procedure section 704.110, or Order Assigning Salary or Wages pursuant to Civil Code section 4701/4801.6 to implement direct payment for support.



**DANIEL E. LUNGREN**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

455 GOLDEN GATE AVENUE, SUITE 6200  
SAN FRANCISCO, CA 94102-3658  
(415) 703-2086

(415) 703-2340

September 25, 1991

Law Revision Commission  
**RECEIVED**

SEP 26 1991

File: \_\_\_\_\_  
Key: \_\_\_\_\_

John H. De Moully  
Family Code Consultant  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Dear Mr. De Moully:

I have just finished reviewing the Commission's Revised Working Draft of the Family Code. I believe the Commission and staff have made an excellent start in compiling family law statutes. I am writing to point out that the Draft does not include the laws governing the state's family support enforcement program.

There are currently over one million family law cases filed with California district attorneys. (Child Support Information System, Quarterly Report, State of California Department of Social Services (January - March, 1991).) California district attorneys constitute the largest single group of family law practitioners in the state. Laws establishing and implementing the state support enforcement program ought to be included in the Family Law Code.

Provisions implementing the state family support program are currently set forth in various sections of the Welfare and Institutions Code, the Civil Code, and the Code of Civil Procedure. The Draft appears to incorporate program provisions in the Civil Code and the Code of Civil Procedure but does not include critical provisions set forth in the Welfare and Institutions Code relating to the state support enforcement program. These provisions include, but may not be limited to, the following sections of the Welfare and Institutions Code: 11350-11350.5, 11475-11476.1, 11478-11479.6, and 11488-11491.

John H. De Mouilly  
September 25, 1991  
Page 2

I strongly recommend that the laws governing the state's family support enforcement program be incorporated into the Family Code. Thank you for this opportunity to comment.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

  
JOSANNA BERKOW  
Deputy Attorney General

JB:pl

cc: George Williamson, Chief AAG  
John H. Sugiyama, Sr. AAG  
Leslie Frye, Chief, Child Support Mngmt. Br., SDSS  
Wayne Doss, President, Calif. Family Support Council

SEP 30 1991

File: F-1000

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September 24, 1991

VIA FACSMILIE TRANSMISSION

CEB  
2300 Shattuck Avenue  
Berkeley, California 94704

Attention: Sherry Smith, Program Attorney

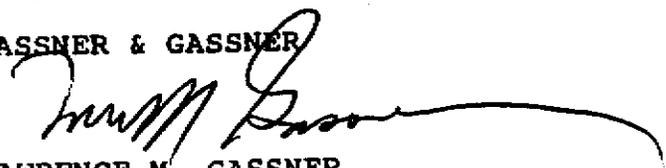
Re: Activity Report on the Family Law Code

Dear Ms. Smith:

Here is my final draft of an activity report on the Family Law Code, for inclusion in a CEB Publication.

Very truly yours,

GASSNER & GASSNER

  
LAWRENCE M. GASSNER

LMG/kv

Enclosure

cc: John Rothchild  
Nathaniel Sterling

## THE FAMILY LAW CODE

### SUMMARY REPORT BY LAWRENCE M. GASSNER

In 1989, the California Legislature authorized the Law Revision Commission to investigate the question of compiling a Family Law Code.

In 1990, the Law Revision Commission completed a survey which found most Judges and attorneys in favor of the preparation of such a Code, which would replace the Family Law Act and the many other bits of family law legislation that appear in other codes.

The Law Revision Commission's initial approach is to bring together within the new proposed Family Law Code: the basic law of family relationships, now in the Civil Code; the Family Law Act, in the Civil Code since 1970 and with its many additions and modifications since then; domestic violence legislation, now in the Code of Civil Procedure; adoptions legislation, recently revised, in the Civil Code; juvenile dependency law, in the Welfare and Institutions Code; conciliation proceedings, in the Code of Civil Procedure; reciprocal support provisions, in the Code of Civil Procedure; and the presumptive evidence of paternity law, now in the Evidence Code.

The first draft of the code was released for limited distribution and review in April, 1991. A second, expanded draft is now available from the Law Revision Commission.

The goal of the Code project is to codify the law, not to modify the law. And yet in the analysis necessary to restructure and restate the law, questions arise about possible conflicts in the Codes that might be settled, ambiguities that can be clarified one way or another, obsolete sections that might well be deleted, and case law interpretations that suggest changes in the way the law is stated. There are many opportunities for debate as to the best resolution of these questions.

The Family Law Section of the State Bar has reviewed the early drafts, and through its standing committees and Executive Committee has replied to the Law Revision Commission, presenting its views.

The Law Revision effort on the Code may continue over the next two or more years. The Family Law Section will be reviewing each draft and offering its commentary.

LIST OF MATTERS ON WHICH COMMISSION CONSIDERATION MAY BE DEFERRED

§ 213. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance (pages 59-60)

See the staff Note to this section.

§ 214. Joinder of interested person and employee pension benefit plan as parties (page 60)

See the staff Note to this section.

§ 215. Private trial (page 60)

See the staff Note to this section.

§ 216. Evidence collected by eavesdropping (pages 60-61)

See the staff Note to this section.

§ 217. Payment of obligation directly to creditor (page 61)

See the staff Note to this section.

§ 219. Appeal of bifurcated issue (page 61)

See the staff Note to this section.

§ 220. Service of notice prerequisite to validity of modification of judgment or subsequent order (pages 61-62)

See the staff Note to this section.

§ 243. Readiness for hearing; continuance; counter-affidavits (page 67)

See the staff Note to this section.

§ 244. Precedence for hearing and trial (page 67)

See the staff Note to this section.

§ 250. Application and order for joinder of plan (page 68)

See the staff Note to this section.

§ 722. Methods of dissolution (page 98)

See the staff Note to this section.

§ 723. Tribal marriages and divorces (page 98)

See the staff Note to this section.

§ 1821. Notice to defendant in temporary restraining order (pages 150-151)

See the staff Note to this section. See also the staff Note to Section 1832.

§ 1881. Order for blood tests in civil actions involving paternity (page 154)

See the staff Note to this section.

§ 1900. Ex parte protective orders during pendency of proceeding; purposes of order (pages 157-158)

See the staff Note to this section.

§ 1902. Required statements in order (pages 158-159)

See the staff Note to this section.

§ 1903. Transmittal to local law enforcement agency (page 159)

See the staff Note to this section.

§ 1904. Law enforcement agency to make information concerning order available to law enforcement officers (page 160)

See the staff Note to this section.

§ 1905. Enforcement of order (page 160)

See the staff Note to this section.

§ 1910. Protective orders included in judgment (pages 161-162)

See the staff Note to this section.

§ 2002. Common law right to change name not limited (page 165)

See the staff Note to this section.

§ 2201. Bigamous and polygamous marriages (page 167)

See the staff Note to this section.

§ 2555. Revision of property disposition on appeal (page 191)

See the staff Note to this section.

§ 2556. Continuing jurisdiction to award community property or adjudicate debts (page 192)

See the staff Note to this section.

§ 3021. Authority of court to make custody order (page 208)

See the staff Note to this section.

§ 3022. Factors considered in determining best interest of child (pages 208-209)

See the staff Note to this section.

§ 3026. Family reunification services (page 210)

See the staff Note to this section.

§ 3120. Independent action for exclusive custody (page 221)

See the staff Note to this section.

§ 3175. Agreements reached by parties as result of mediation (page 230)

See the staff Note to this section.

§ 3190. Order requiring counseling (pages 232-233)

See the staff Note to this section.

§ 3192. Separate counseling where protective order against domestic violence (page 233)

See the staff Note to this section.

§ 3206. No filing fee (page 235)

See the staff Note to this section.

§ 3250. Investigation of circumstances of child (page 242)

See the staff Note to this section.

§ 3270. Time for hearing; precedence over other matters; continuance (page 244)

See the staff Note to this section.

§ 3293. Appointment of guardian or referral for adoption (page 249)

See the staff Note to this section.

§ 3550. Jurisdiction of actions (page 270)

See the staff Note to this section.

§ 3551. Presence or residence of obligor in state (pages 270-271)

See the staff Note to this section.

§ 3581. Law applicable to agreement made before January 1, 1970 (page 273)

See the staff Note to this section.

§ 3600. Order for support during pendency of proceeding (pages 275-276)

See the staff Note to this section.

§ 3621. Court order, made without hearing, requiring child support during pendency of action; amount of support (page 278)

See the staff Note to this section.

§ 3622. Application for order (page 278)

See the staff Note to this section.

§ 3623. Jurisdiction of court on application (pages 278-279)

See the staff Note to this section.

§ 3629. Production of tax returns at hearing; effect of failure to produce required documents (pages 280-281)

See the staff Note to this section.

§ 3651. Authority to modify or terminate (pages 282-284)

See the staff Note to this section.

§ 3653. Retroactivity of modification or termination (page 284)

See the staff Note to this section.

§ 3655. Continuation of child support award made before March 4, 1972, beyond age 18 (pages 284-285)

See the staff Note to this section.

§ 3660. Purpose of article (page 285)

See the staff Note to this section.

§ 3661. "Support order" defined (page 285)

See the staff Note to this section.

§ 3663. Limitation on use of discovery under this article (page 286)

See the staff Note to this section.

§ 3684. Objection and request for hearing (page 289)

See the staff Note to this section.

§ 3689. Tax returns and other documents (page 291)

See the staff Note to this section.

§ 3691. Notice to district attorney (page 292)

See the staff Note to this section.

§ 3771. Employer providing information to district attorney (page 300)

See the staff Note to this section.

§ 3781. Assignment of rights to reimbursement under health plan (page 301)

See the staff Note to this section.

§ 3901. Duration of duty (page 306)

See the staff Note to this section.

§ 4000. Civil action to enforce parent's duty to support (page 309)

See the staff Note to this section.

§ 4006. Medical insurance coverage as factor (page 312)

See the staff Note to this section.

§ 4008. Property available for child support (page 313)

See the staff Note to this section.

§ 4009. Retroactivity of order (page 313)

See the staff Note to this section.

§ 4011. Priority of child support payments (page 314)

See the staff Note to this section.

§ 4012. Security for payment (page 314)

See the staff Note to this section.

§ 4100. Article applies only to child born after December 31, 1988 (page 315)

See the staff Note to this section.

§ 4201. Child support payable to person having custody of minor child (page 318)

See the staff Note to this section.

§ 4303. Civil action to enforce spouse's right to support (page 320)

See the staff Note to this section.

§ 4322. No support order where there are no children and other party has sufficient separate estate (page 322)

See the staff Note to this section.

§ 4323. Effect of cohabitation on support (page 322)

See the staff Note to this section.

§ 4331. Examination by vocational training consultant (page 323)

See the staff Note to this section.

§ 4332. Court findings concerning circumstances (page 324)

See the staff Note to this section.

§ 4333. Retroactivity of order (page 324)

See the staff Note to this section.

§ 4338. Order of resort to property for payment of spousal support (pages 325-326)

See the staff Note to this section.

§ 4339. Security for payment (page 326)

See the staff Note to this section.

§ 4351. Referral of enforcement to district attorney (pages 326-327)

See the staff Note to this section.

§ 4352. County responsible for expenses and fees (page 327)

See the staff Note to this section.

§ 4400. Duty to support parent in need (page 329)

See the staff Note to this section.

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# California Law Revision Commission

Revised Staff Working Draft

of a major portion of the

## Family Code

August 1991

*Note: This is a Revised Staff Working Draft (Revised Draft) of the major portion of the Family Code. The Revised Draft has not been reviewed by the Commission. Accordingly, the Revised Draft does not represent or reflect the opinions, conclusions, or recommendations of the Law Revision Commission.*

*The Revised Draft supersedes the original Staff Working Draft (April 1991) which was made available to interested persons and organizations for review and comment.*

*Comments on this Revised Draft should be received by the Commission not later than October 1, 1991. Any comments you send to the Commission will become a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in a preprinted bill the Commission plans to submit to the 1992 legislative session.*

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

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## CALIFORNIA LAW REVISION COMMISSION

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July 31, 1991

To: Persons interested in Family Code project

Pursuant to a legislative directive, the Law Revision Commission is preparing a new Family Code. The Commission tentatively plans to submit a major portion of the new code to the Legislature in 1992 in the form of a preprint bill.

This Revised Staff Working Draft has been prepared by the Commission's staff. It supersedes the earlier distributed Staff Working Draft (April 1991). The Revised Draft covers the major portion of the new Family Code. The Revised Draft makes revisions and corrections in the original Staff Working Draft. In addition, the Revised Draft includes substantial additional material. The new material consists of the portion of the new Family Code relating to support (approximately 100 pages) and adoption (approximately 60 pages). Work on another portion of the new code (relating to Minors) is in progress.

Some material in the original Staff Working Draft has been relocated in the Revised Draft. For example, the provisions relating to an earnings assignment order for support (which appeared under the Enforcement of Judgments Division of the original Staff Working Draft) have been relocated in the Revised Draft in the Division relating to Support.

If a provision of the Staff Working Draft has been relocated in the Revised Draft, you can determine where the provision is found in the Revised Draft by referring to the Disposition Table at the end of this volume. Determine from the Comment in the original draft, the source in existing law for the particular provision. Then determine from the Disposition Table where that provision of existing law is continued in the Revised Draft.

The Commission does not plan to propose any major changes in existing law in the new Family Code. The Commission is preparing the new code in order to reorganize and collect into one code the various scattered provisions of existing family law. Existing provisions dealing with the same subject will be collected together in one part of the new code. The new code will break up into manageable sections the long sections found in existing law. Nevertheless, with a few exceptions noted in the Comments to the sections of the draft, the Revised Draft continues existing statutory language with no substantive change.

The Commission will be indebted to those who are willing to review and comment on this draft. Your comments should be in the hands of the Commission not later than October 1, 1991, if they are to be considered when the Commission reviews the

Revised Draft. It would help the Commission if you would review any comments you prepared based on the original Staff Working Draft and direct all your comments to this Revised Draft. In some cases, you may discover that a defect in the original draft has been corrected in the Revised Draft.

Sincerely,

John H. DeMouly  
Family Code Consultant

## Outline of Family Code

### GENERAL OUTLINE

- Division 1. Preliminary Provisions and Definitions (§§ 1-140)
- Division 2. General Provisions (§§ 200-275)
- Division 3. Solemnization of Marriage (§§ 300-594)
- Division 4. Husband and Wife (§§ 700-1621)
- Division 5. Parent and Child Relationship (§§ 1700-1887)
- Division 6. Provisions Common to Nullity and Dissolution Proceedings (§§ 1900-2003)
- Division 7. Judicial Determination of Void or Voidable Marriage (§§ 2220-2255)
- Division 8. Dissolution of Marriage (§§ 2300-2453)
- Division 9. Division of Community Estate (§§ 2500-2660)
- Division 10. Custody of Children (§§ 3000-3424)
- Division 11. Support (§§ 3500-5499)
- Division 12. Prevention of Domestic Violence (§§ 5500-5807)
- Division 13. *[Reserved for Expansion]* (§§ 6000-6399)
- Division 14. Conciliation Proceedings (§§ 6400-6452)
- Division 15. Minors (§§ 6500-7143)
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- § 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
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- § 55. "Abuse"
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- § 65. "Community property"
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- § 70. "Domestic violence"
- § 75. "Domestic violence prevention order"
- § 80. "Employee pension benefit plan"
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- § 100. "Joint custody"
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- § 130. "Separate property"
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**§ 1. Title of code**

- 1. This code shall be known as the Family Code.

**Comment.** Section 1 is comparable to portions of Sections 1 and 21 of the Civil Code.

**§ 2. Continuation of existing law**

- 2. A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.

**Comment.** Section 2 is the same as Section 2(a) of the Probate Code and is comparable to Section 5 of the Civil Code. See also Gov't Code §§ 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments), 9605 (construction of amended statutory provision).

A number of terms and phrases are used in the Comments to the sections of the Family Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that the Family Code provision "continues" or is "the same as" a former provision, or is "the same as" a provision of a uniform act.

(2) *Continues without substantive change.* A new provision "continues" a former provision "without substantive change" if the substantive law remains the same but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable,” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

### § 3. Construction of provision drawn from uniform act

3. A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision.

**Comment.** Section 3 is the same as Section 2(b) of the Probate Code. Some of the provisions of this code are the same as or similar to provisions of uniform acts. Section 3 provides a rule for interpretation of these provisions. Provisions of the Family Code drawn from uniform acts include:

Uniform Premarital Agreement Act (§§ 1600-1617).

Uniform Parentage Act (§§ 1700-1840).

Uniform Act on Blood Tests to Determine Paternity (§§ 1880-1887).

Uniform Divorce Recognition Act (§§ 2450-2453).

Uniform Child Custody Jurisdiction Act (§§ 3400-3425).

Uniform Reciprocal Enforcement of Support Act (§§ 4800-4854).

See also Sections 3300-3310 (Interstate Compact on Placement of Children) and Section 3401(a)(9), (b) (construction of Uniform Child Custody Jurisdiction Act).

Section 3 supersedes former Civil Code Sections 253, 5003, and 5301, Code of Civil Procedure Section 1651, and Evidence Code Section 891.

#### **§ 4. Construction of amendments, additions, and repeals**

4. (a) As used in this section:

(1) "New law" means either of the following, as the case may be:

(A) The act that enacted this code.

(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of any provision of this code.

(b) "Old law" means the applicable law in effect before the operative date of the new law.

(c) "Operative date" means the operative date of the new law.

(b) This section governs the application of the new law except to the extent otherwise expressly provided in the new law.

(c) Subject to the limitations provided in this section, the new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, commencement of a proceeding, making of an order, or taking of an action.

(d) If a document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but any subsequent proceedings taken after the operative date concerning the document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

(e) If an order is made before the operative date, or any action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided in the new law.

(f) No person is liable for any action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and the person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its repeal or amendment by the new law.

(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference.

**Comment.** Section 4 provides general transitional rules applicable to changes in the Family Code. The section is drawn from Section 3 of the Probate Code. The section applies both to the act which enacted the Family Code and to any subsequent act which changes the code, whether the change is effectuated by amendment, addition, or repeal of a provision of the code.

The rules stated in Section 4 are general provisions that apply absent a special rule stated in the new law. Special rules may defer or accelerate application of the new law despite the general rules stated in Section 4. See subdivision (b).

The general rule prescribed in subdivision (c) is that a new law applies immediately on its operative date to all matters, including pending proceedings. The general rule is qualified by the exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are governed by the law applicable when the paper or document was filed), subdivision (e) (orders are governed by the law applicable when the order was made, subject to any applicable modification procedures), and subdivision (f) (acts are governed by the law applicable when the act was done).

Where a new law fails to address a matter that occurred before its operative date, subdivision (g) makes clear that old law continues to govern the matter.

Because it is impractical to attempt to deal with all the possible transitional problems that may arise in the application of the new law to various circumstances, subdivision (h) provides a safety-valve that permits the court to vary the application of the new law where there would otherwise be a substantial impairment of procedure or justice. This provision is intended to apply only in the extreme and unusual case, and is not intended to excuse compliance with the basic transitional provisions simply because of minor inconveniences or minor impacts on expectations or other interests.

In addition to governing other substantive provisions, Section 4 also governs itself. It therefore becomes operative on the date the Family Code becomes operative and applies to provisions enacted and operative before, on, or after that date.

## § 5. Effect of headings in code

5. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

**Comment.** Section 5 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 4.

**§ 6. Certified mail sufficient compliance with requirement of use of registered mail**

6. If a notice or other communication is required by this code to be mailed by registered mail, the mailing of the notice or other communication by certified mail is deemed to be sufficient compliance with the requirements of law.

**Comment.** Section 6 is the same in substance as Section 17 of the Civil Code.

**§ 7. Construction of code**

7. Unless the provision or context otherwise requires, these general provisions and rules of construction govern the construction of this code.

**Comment.** Section 7 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 6. See also the Comment to Section 2.

**§ 8. Reference to statute includes amendments and additions**

8. Whenever a reference is made to any portion of this code or to any other law, the reference applies to all amendments and additions heretofore or hereafter made.

**Comment.** Section 8 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 7. The rule stated in Section 8 applies unless the provision or context otherwise requires. See Section 7. See also Gov't Code § 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments).

**§ 9. Reference to division, part, chapter, article, section, or part of section**

9. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

**Comment.** Section 9 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 8. For a comparable provision, see Civil Code § 14(6).

**§ 10. Construction of tenses**

10. The present tense includes the past and future tenses, and the future, the present.

**Comment.** Section 10 is comparable to a portion of Section 14 of the Civil Code and is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 9. The rule stated in Section 10 applies unless the provision or context otherwise requires. See Section 7.

**§ 11. Construction of singular and plural**

11. The singular number includes the plural, and the plural, the singular.

**Comment.** Section 11 is comparable to a portion of Civil Code Section 14 and is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 10. The rule stated in Section 11 applies unless the provision or context otherwise requires. See Section 7.

**§ 12. Construction of terms "husband" and "wife"**

12. As used in the Family Law Act, other than in Division 3 (commencing with Section 300), the terms "husband" and "wife" refer to persons who are lawfully married to each other and to persons who were previously lawfully married to each other.

**Comment.** Section 12 continues former Civil Code Section 4350.5 without substantive change. "Family Law Act" is defined in Section 85. The rule stated in Section 12 applies unless the provision or context otherwise requires. See Section 7.

**Note:** Should the phrase "As used in this code, other than in Divisions 3 (commencing with Section 300), 15 (commencing with Section 6500), and 16 (commencing with Section 7500)," be substituted for the phrase "As used in the Family Law Act, other than Division 3 (commencing with Section 300)" which is now used in Section 12?

Should Section 12 be moved into Part 2 (commencing with Section 50) so that it would be with the definitions?

**§ 13. Meaning of "shall" and "may"**

13. "Shall" is mandatory and "may" is permissive.

**Comment.** Section 13 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 12. The inclusion of Section 13 in the Family Code makes it unnecessary to continue the special provision to the same effect that formerly was found in Code of Civil Procedure Section 1732 (Family Conciliation Court Law), now Part 1 (commencing with Section 6400) of Division 14 of the Family Code.

**§ 14. Severability of provisions**

14. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

**Comment.** Section 14 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 11.

**PART 2. DEFINITIONS**

- § 50. Application of definitions
- § 55. "Abuse"
- § 57. "Affinity"
- § 60. "Cohabitant"; "former cohabitant"
- § 65. "Community property"
- § 67. "County"

- § 70. "Domestic violence"
- § 75. "Domestic violence prevention order"
- § 80. "Employee pension benefit plan"
- § 85. "Family Law Act"
- § 90. "Family or household member"
- § 92. "Family support"
- § 95. "Income and expense declaration"
- § 100. "Joint custody"
- § 105. "Joint legal custody"
- § 110. "Joint physical custody"
- § 115. "Property declaration"
- § 125. "Quasi-community property"
- § 130. "Separate property"
- § 135. "Sole legal custody"
- § 140. "Sole physical custody"
- § 142. "Spousal support"
- § 145. "State"
- § 150. "Support"
- § 155. "Support order"

#### § 50. Application of definitions

50. Unless the provision or context otherwise requires, the definitions and rules of construction in this part govern the construction of this code.

**Comment.** Section 50 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 50 recognizes that the context of a particular section may require that a word or phrase used in that section be given a meaning different from the definition provided in this part. See also Sections 12 (construction of terms "husband" and "wife"), 13 (meaning of "shall" and "may").

**Note:** Should there be a general definition of "judgment" to include a court order or decree or of "order" to include a judgment or decree? In some sections, only the word "judgment" is used; in others, the phrase judgment, order, or decree is used; in others, only the word "order" is used. There appears to be no reason for the different phrases used. Should "judgment" be used uniformly in place of "decree" and "order"?

#### § 55. "Abuse"

55. "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or sexual assault, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

**Comment.** Section 55 continues subdivision (a) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 55 to cover the entire Family Code. The former provision applied to former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code.

Former Civil Code Section 4608 (determining best interest of child in custody proceeding) adopted the definition by a reference to former Code of Civil Procedure section 542.

**§ 57. "Affinity"**

57. "Affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage, between each of the married persons and the blood relatives of the other.

**Comment.** Section 57 duplicates subdivision 9 of Section 17 of the Code of Civil Procedure.

**§ 60. "Cohabitant"; "former cohabitant"**

60. "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household.

**Comment.** Section 60 continues subdivision (c) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 60 to cover the entire Family Code. The former provision was limited to former Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code.

**§ 65. "Community property"**

65. Community property is property that is community property under Part 2 (commencing with Section 760) of Division 4.

**Comment.** Section 65 is included for drafting convenience. See also Sections 751 (respective interests of spouses in community property during marriage), 901 ("community property" defined for purposes of provisions relating to liability of marital property).

**§ 67. "County"**

"County" includes city and county.

**Comment.** Section 67 duplicates a portion of Civil Code Section 14.

**§ 70. "Domestic violence"**

70. "Domestic violence" is abuse perpetrated against any of the following:

(a) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.

(b) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female parent pursuant to the Uniform Parentage Act (Part 1 (commencing with Section 1700) of Division 5).

**Comment.** Section 70 continues subdivision (b) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change except that the scope of the former provision has been expanded by Section 70 to cover the entire Family Code. The former provision was limited to former Chapter 4 (commencing with

Section 540) of Title 7 of Part 2 of the Code of Civil Procedure (the former Domestic Violence Prevention Act), now Division 12 (commencing with Section 5500) of the Family Code. However, other provisions formerly found in the Civil Code adopted the definition of domestic violence in former Section 542 by reference. See, e.g., former Civil Code Sections 4600.1, 4607, 4607.2, and 4608.1. The definition also appeared to apply to the term "domestic violence" used in former Civil Code Section 4351.6. See also Sections 55 (defining "abuse"), 60 (defining "cohabitant" and "former cohabitant"), 75 (defining "domestic violence prevention order").

**§ 75. "Domestic violence prevention order"**

75. "Domestic violence prevention order" means any of the following:

(a) An order made pursuant to subdivision (a), (b), or (c) of Section 1800 (ex parte order under Uniform Parentage Act).

(b) An order described in subdivision (a), (b), or (c) of Section 1800 made pursuant to Section 1810 (order after notice and hearing under Uniform Parentage Act).

(c) An order included in the judgment pursuant to Section 1840 (Uniform Parentage Act).

(d) An order made pursuant to subdivision (b), (c), or (d) of Section 1900 (order in pending nullity or dissolution proceeding).

(e) An order made pursuant to Section 1910 (order in judgment in nullity or dissolution proceeding).

(f) An order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 made pursuant to subdivision (a) or (b) of Section 5550 (ex parte order under Domestic Violence Prevention Law).

(g) An order issued under Part 5 (commencing with Section 5600) of Division 12 (ex parte emergency protective order under Domestic Violence Prevention Law).

(h) An order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 made pursuant to subdivision (a) or (b) of Section 5750 (order after notice and hearing made under Domestic Violence Prevention Law).

**Comment.** Section 75 is a new provision included for drafting convenience. The term "domestic violence prevention order" is used in Sections 3101, 3110.5, 3177, 3192, and 5518.

**§ 80. "Employee pension benefit plan"**

80. "Employee pension benefit plan" includes public and private retirement, pension, profit sharing, stock bonus, thrift, and similar plans of deferred compensation, whether of the defined contribution or defined benefit type.

**Comment.** Section 80 continues former Civil Code Section 4363.3 without substantive change except that the term "employee pension benefit plan" is defined for the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act). For a special definition of "employee benefit plan" as used in Section 755, see that section.

**§ 85. "Family Law Act"**

85. "Family Law Act" means the following provisions of this code:

- (a) Division 1 (commencing with Section 1).
- (b) Division 2 (commencing with Section 200).
- (c) Division 3 (commencing with Section 300).
- (d) Division 4 (commencing with Section 700).
- (e) Division 5 (commencing with Section 1700).
- (f) Division 6 (commencing with Section 1900).
- (g) Division 7 (commencing with Section 2200).
- (h) Division 8 (commencing with Section 2300).
- (i) Division 9 (commencing with Section 2500).
- (j) Division 10 (commencing with Section 3000).
- (k) Division 11 (commencing with Section 3500).
- (l) Division 12 (commencing with Section 5500).
- (m) Division 13 (commencing with Section 6000).
- (n) Division 14 (commencing with Section 6400).

**Comment.** Section 85 is a new provision that is included for convenience. The provision supersedes former Civil Code Section 4000, which provided that former Part 5 (commencing with former Section 4000) of the Civil Code "shall be known and may be cited as 'The Family Law Act'." Many of the provisions listed in Section 85 formerly were found in former Part 5 (commencing with former Section 4000) of the Civil Code, but other provisions not formerly found in former Part 5 are also included within "the Family Law Act" as defined in Section 85. Not included as part of the Family Law Act are Divisions 15 (Minors) and 16 (Adoption).

**Note:** Should the concept be retained that particular portions of the Family Code are to be designated as the "Family Law Act"? Some provisions of the Family Code formerly were limited in their application to Part 5 of the Civil Code (The Family Law Act). Should these provisions be made applicable to the entire Family Code or, where appropriate, should these provisions be restricted to particular portions of the Family Code, thus avoiding the use of the designation "Family Law Act"?

**§ 90. "Family or household member"**

90. "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any person who regularly resides in the household, or who, within the previous six months, regularly resided in the household.

**Comment.** Section 90, which is a new definition that covers the entire Family Code, is the same as subdivision (a)(3) of Penal Code Section 12028.5. The section also is the same as subdivision (c) of former Code of Civil Procedure Section 542 (as that section existed prior to its amendment by 1990 Cal. Stat. ch. 752 § 2).

**Note:** Should "family or household member" be defined to adopt language used in subdivision (b)(1) of former Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2), now Section 70(a)? The 1990 amendment made revisions to substitute "cohabitant" and

**“former cohabitant” for the language “any other person who regularly resides in the household, or who within the last six months regularly resided in the household,” which was used in former Section 542 prior to the 1990 amendment of the section. Should cohabitant and former cohabitant be substituted for “family or household member” as used in the Family Code?**

**§ 92. “Family support”**

92. “Family support” means an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support.

**Comment.** Section 92 is drawn from the first and second sentences of subdivision (d) of former Civil Code Section 4811.

**§ 95. “Income and expense declaration”**

95. “Income and expense declaration” means the form for an income and expense declaration in family law matters adopted by the Judicial Council.

**Comment.** Section 95 generalizes the third sentence of subdivision (a) of former Civil Code Section 4357.5. Former Section 4357.5 applied only to expedited support orders, whereas Section 95 applies to the entire Family Code.

**§ 100. “Joint custody”**

100. “Joint custody” means joint physical custody and joint legal custody.

**Comment.** Section 100 continues subdivision (d)(1) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 100 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act). See also Sections 105 (“joint legal custody” defined), 110 (“joint physical custody” defined).

**§ 105. “Joint legal custody”**

105. “Joint legal custody” means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

**Comment.** Section 105 continues subdivision (d)(5) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 105 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

**§ 110. “Joint physical custody”**

110. “Joint physical custody” means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

**Comment.** Section 110 continues subdivision (d)(3) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded

by Section 110 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

### § 115. "Property declaration"

115. "Property declaration" means the form for a property declaration in family law matters adopted by the Judicial Council.

**Comment.** Section 115 is a new provision designed to permit easy reference to the property declaration form adopted by the Judicial Council. See also Section 95 (income and expense declaration).

### § 125. "Quasi-community property"

125. "Quasi-community property" means all real or personal property, wherever situated, heretofore or hereafter acquired in any of the following ways:

(a) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(b) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

**Comment.** Section 125 continues former Civil Code Section 4803 without substantive change except that the scope of the former provision has been expanded by Section 125 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

By defining "quasi-community property" to include all property, wherever situated, which would have been treated as community property had the acquiring spouse been domiciled in California at the time of acquisition, Section 125 insures that the division of marital property upon judgment of nullity or upon dissolution of the marriage or legal separation will not be controlled by the fortuity of when or where the property was initially acquired. Section 125 makes clear that property of the type described in Sections 772, 773, and 781 is not quasi-community property. For background on former Civil Code Section 4803, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. 1. Revision Comm'n Reports 113 (1969).

### § 130. "Separate property"

130. Separate property is property that is separate property under Part 2 (commencing with Section 760) of Division 4.

**Comment.** Section 130 is included for drafting convenience. See also Section 3515 (defining "separate property" for purposes of support).

### § 135. "Sole legal custody"

135. "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

**Comment.** Section 135 continues subdivision (d)(4) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 135 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

**§ 140. "Sole physical custody"**

140. "Sole physical custody" means that a child shall reside with and under the supervision of one parent, subject to the power of the court to order visitation.

**Comment.** Section 140 continues subdivision (d)(2) of former Civil Code Section 4600.5 without substantive change except that the scope of the former provision has been expanded by Section 140 to cover the entire Family Code. The former provision was limited to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

**§ 142. "Spousal support"**

142. "Spousal support" means support of the husband or wife of the obligor. As used in this section, "husband" and "wife" refer to persons who are lawfully married to each other and to persons who were previously lawfully married to each other.

**Comment.** Section 142 is intended for drafting convenience. The second sentence continues former Civil Code Section 4350.5 (continued as Section 12 of the Family Code) insofar as the former section applied to support. As used in a particular provision, this definition does not apply if the provision or context otherwise requires. See Section 50.

**§ 145. "State"**

145. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

**Comment.** Section 145 is a new provision drawn from subdivision (a) of former Civil Code Section 241 but the definition is expanded by Section 145 to cover the entire Family Code. Former Section 241 did not apply to former Part 5 (commencing with Section 4000) of the Civil Code (the former Family Law Act).

**§ 150. "Support"**

150. "Support" refers to a support obligation owing on behalf of a child, spouse, or family, and where appropriate also refers to past due support or arrearages. "Support," when used with reference to a minor child, includes maintenance and education.

**Comment.** Section 150 is intended for drafting convenience. The first sentence is drawn from subdivision (h) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1), now Family Code Section 5218. As used in a particular provision, this all inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

**§ 155. "Support order"**

155. "Support order" means a judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered.

**Comment.** Section 155 provides a general definition of "support order" that is the same in substance as the definition of "support order" provided in the Uniform Reciprocal Enforcement of Support Act which is continued in Family Code Section 4802(k). As used in a particular provision, this all inclusive definition does not apply if the provision or context otherwise requires. See Section 50.

## DIVISION 2. GENERAL PROVISIONS

- Part 1. Jurisdiction of Courts
- Part 2. General Procedural Provisions
- Part 3. Temporary Restraining Order in Summons
- Part 4. Temporary Restraining Orders and Support Orders Made Without Notice
- Part 5. Employee Pension Benefit Plan as Party
- Part 6. Provisions for Attorney's Fees and Costs
- Part 7. Enforcement of Judgments, Orders, and Decrees

### PART 1. JURISDICTION OF COURTS

- § 200. Jurisdiction of court in proceedings under Family Law Act
- § 201. Order or judgment not enforceable against employee pension benefit plan unless plan joined as party to proceeding
- § 202. Jurisdiction over property of spouse where service by publication

#### § 200. Jurisdiction of court in proceedings under Family Law Act

200. In proceedings under the Family Law Act, the superior court has jurisdiction to inquire into and render any judgment and make such orders as are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody and support of minor children of the marriage and children for whom support is authorized under Part 2 (commencing with Section 3900) of Division 11.
- (c) The support of either party.
- (d) The settlement of the property rights of the parties.
- (e) The award of attorney's fees and costs.

**Comment.** Section 200 continues the first portion of former Civil Code Section 4351 without substantive change. The substance of the remainder of former Section 4351 is continued in Section 201. See Section 85 ("Family Law Act" defined). See also Section 2556 (continuing jurisdiction to award community property or adjudicate debts).

**Note:** Should Section 200 be expanded to apply to the entire Family Code? See also Section 3550 (jurisdiction of court in civil support actions and the Note to Section 3550).

#### § 201. Order or judgment not enforceable against employee pension benefit plan unless plan joined as party to proceeding

201. An order or judgment under Section 200 is not enforceable against an employee pension benefit plan unless the plan has been joined as a party to the proceeding.

**Comment.** Section 201 continues the last portion of former Civil Code Section 4351 without substantive change. The substance of the remainder of former Section 4351 is continued in Section 200. See also Sections 80 ("employee pension benefit plan" defined), 250-260 (employee pension benefit plan as party). A judgment for support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party. See Section 5103.

**§ 202. Jurisdiction over property of spouse where service by publication**

202. When service of summons is made pursuant to Section 415.50 of the Code of Civil Procedure upon a spouse in a proceeding under the Family Law Act, the court, without the aid of attachment thereof or the appointment of a receiver, shall have and may exercise the same jurisdiction over all of the following:

(a) The community real property of the spouse so served situated in this state as it has or may exercise over the community real property of a spouse in a proceeding under the Family Law Act who is personally served with process within this state.

(b) The quasi-community real property of the spouse so served situated in this state as it has or may exercise over the quasi-community real property of a spouse in a proceeding under the Family Law Act who is personally served with process within this state.

**Comment.** Section 202 continues former Civil Code Section 4813 without substantive change. See also Sections 65 ("community property" defined), 85 ("Family Law Act" defined), 125 ("quasi-community property" defined).

**PART 2. GENERAL PROCEDURAL PROVISIONS**

§ 210. Rules of practice and procedure

§ 211. Responsive pleading

§ 212. Responding party's request for affirmative relief alternative to moving party's requested relief

§ 213. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance

§ 214. Joinder of interested person and employee pension benefit plan as parties

§ 215. Private trial

§ 216. Evidence collected by eavesdropping

§ 217. Payment of obligation directly to creditor

§ 218. Assignment of rights to reimbursement under health plan

§ 219. Appeal of bifurcated issue

§ 220. Service of notice prerequisite to validity of modification of judgment or subsequent order

**§ 210. Rules of practice and procedure**

210. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under the Family Law Act.

**Comment.** Section 210 continues former Civil Code Section 4001 without substantive change. See also Section 85 ("Family Law Act" defined). For other provisions relating to Judicial Council rules, see, e.g., Sections 214, 219, 256, 1908, 2321, 2331. For provisions relating to Judicial Council forms, see, e.g., 95, 115, 252, 2250, 2401, 2402, 3417, 3634, 3668, 3694, 3772, 5512, 5519, 5295. See also Sections 2400 (adjusting maximum amounts of allowable debts and accounts for purposes of summary dissolution to reflect change in value of dollar), 1406 (summary dissolution brochure), 3153 (guidelines for determining eligibility for county payment of counsel), 3161 (uniform standards of practice for mediation), 6416 (training program), 6450-6452 (duties in connection with statewide coordination of family mediation and conciliation services). See also Welfare and Institutions Code §§

11475.3 (report concerning computer compatible family law forms), 11475.5 (publication describing procedures for collection and payment of child and spousal support).

**Note: Should this provision be expanded to apply to the entire Family Code? Should the specific provisions for rules and forms (listed in Comment to Section 210) be superseded by Section 210?**

### **§ 211. Responsive pleading**

211. In proceedings under the Family Law Act, a responsive pleading, if any, shall be filed and served upon the other party within 30 days of the date of the service upon the respondent of a copy of the petition and summons.

**Comment.** Section 211 continues former Civil Code Section 4355 without substantive change. See also Section 85 ("Family Law Act" defined).

### **§ 212. Responding party's request for affirmative relief alternative to moving party's requested relief**

212. In a proceeding under the Family Law Act, in a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court.

**Comment.** Section 212 continues former Civil Code Section 4355.6 without substantive change. The introductory phrase limiting the scope of Section 212 to a proceeding under the Family Law Act has been added to make clear the provision only applies to proceedings under that act. See also Section 85 ("Family Law Act" defined).

**Note: What is the meaning of the phrase "or on a modification thereof" which is used in Section 212?**

The scope of application of existing Civil Code Section 4355.6 is unclear. Should Section 212 be limited to proceedings under the Family Law Act (as provided in the section) or should it apply to the entire Family Code? For example, should Section 212 apply to a hearing on an order to show cause under the Domestic Violence Prevention Law (now compiled in the Code of Civil Procedure, but proposed to be compiled in the Family Code) or should the Family Law Act be defined to include the Domestic Violence Prevention Law?

### **§ 213. Appearance in opposition to order made during pendency of objection to jurisdiction not a general appearance**

213. (a) During the time a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending, the respondent may appear in opposition to an order made during the pendency of proceedings under the Family Law Act and the appearance shall not be deemed a general appearance by the respondent.

(b) As used in this section, a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending from the time notice of motion is served and filed until the time within which to petition for a writ of mandate has expired or, if a petition is made, until the time final judgment in the mandate proceeding is entered.

**Comment.** Section 213 continues former Civil Code Section 4356 without substantive change. The section enables the respondent to contest pendente lite orders in family law proceedings without prejudicing the respondent's right to litigate the in personam jurisdiction of the court by special appearance pursuant to Code of Civil Procedure Section 418.10. For background on former Civil Code Section 4356, see *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm'n Reports 243 (1984). See also Section 85 ("Family Law Act" defined).

**Note:** Should Section 213 apply to the entire Family Code?

#### § 214. Joinder of interested person and employee pension benefit plan as parties

214. (a) Subject to subdivision (b), the court may order that a person who claims an interest in a proceeding under the Family Law Act be joined as a party to the proceeding in accordance with rules adopted by the Judicial Council pursuant to Section 210.

(b) An employee pension benefit plan may be joined as a party to a proceeding under the Family Law Act only in accordance with Part 5 (commencing with Section 250).

**Comment.** Section 214 continues former Civil Code Section 4363 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 85 ("Family Law Act" defined).

**Note:** Should Section 214 apply to the entire Family Code?

#### § 215. Private trial

215. The court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in the proceeding under the Family Law Act to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

**Comment.** Section 215 continues former Civil Code Section 4360 without substantive change. See also Section 85 ("Family Law Act" defined), 3284 (admission of public to proceeding to declare child free from parental custody and control).

**Note:** Should Section 215 be expanded apply to any proceeding under the Family Code? If so, the substance of the special provision for hearings in adoption proceedings (Civil Code Section 226m which REQUIRES hearings to be held in private) should be retained in expanded Section 215. See also Section 1743 (Uniform Parentage Act), 3284 (proceeding to declare child free from parental custody and control). There may be other provisions dealing with private trials in the provisions to be compiled in the Family Code.

#### § 216. Evidence collected by eavesdropping

216. (a) Evidence collected by eavesdropping in violation of Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code is inadmissible in a proceeding for dissolution of the marriage or legal separation or for a declaration of void or voidable marriage.

(b) If it appears that a violation described in subdivision (a) exists, the court may refer the matter to the proper authority for investigation and prosecution.

**Comment.** Section 216 continues former Civil Code Section 4361 without substantive change.

**Note:** Should Section 216 have broader scope, as for example in a child custody or adoption proceeding?

#### **§ 217. Payment of obligation directly to creditor**

217. (a) In any proceeding under the Family Law Act, upon a determination that payment of an obligation of a party would benefit either party or a minor child, the court may order one of the parties to pay the obligation, or a portion thereof, directly to the creditor.

(b) The creditor has no right to enforce the order made under this section, nor are the creditor's rights affected by the determination made under this section.

**Comment.** Section 217 continues former Civil Code Section 4358 without substantive change. See also Section 85 ("Family Law Act" defined).

**Note:** Should Section 217 apply to the entire Family Code?

#### **§ 219. Appeal of bifurcated issue**

219. Notwithstanding any other provision of law, in any proceeding brought under the Family Law Act in which the superior court has ordered an issue or issues bifurcated for separate trial or hearing in advance of the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the superior court which heard the issue or issues certifies that the appeal is appropriate. Certification by the superior court shall be in accordance with rules promulgated by the Judicial Council.

**Comment.** Section 219 continues former Civil Code Section 4365 without substantive change. See also Section 85 ("Family Law Act" defined). The provision of former Section 4365 that required the Judicial Council to establish rules for certification by July 1, 1989, has been omitted as obsolete. See also Section 210 (rules of the Judicial Council).

**Note:** Should Section 219 be broadened in scope to apply to the entire Family Code?

#### **§ 220. Service of notice prerequisite to validity of modification of judgment or subsequent order**

220. After the entry of a judgment decreeing the dissolution of the marriage or the legal separation of the parties, or after a declaration of void or voidable marriage, or after a permanent order in any other proceeding in which there was at issue the custody, support, maintenance, or education of a minor child, no modification of the judgment, order, or decree, and no subsequent order in the proceedings is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the manner as the notice is otherwise permitted by law to be served, upon the party himself or herself. For the purposes of this section, service upon the attorney of record is not sufficient.

**Comment.** Section 220 continues former Civil Code Section 4809 without change.

**Note: Does Section 220 apply only to proceedings under the Family Law Act or to other proceedings as well, whether or not under the Family Code?**

### **PART 3. TEMPORARY RESTRAINING ORDER IN SUMMONS**

- § 230. Temporary restraining order in summons in dissolution or nullity proceeding
- § 231. Temporary restraining order in summons in Uniform Parentage Act proceeding
- § 232. Statement in summons concerning enforcement of order
- § 233. Enforcement of order
- § 234. Order not evidence of proscribed conduct
- § 235. Modification or revocation of order; other orders

#### **§ 230. Temporary restraining order in summons in dissolution or nullity proceeding**

230. In addition to the contents required by Section 412.20 of the Code of Civil Procedure, in a proceeding for dissolution of marriage or for legal separation or for a judgment of nullity of the marriage, the summons shall contain a temporary restraining order:

(a) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(b) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days prior to incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the proceeding.

(c) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children.

**Comment.** Section 230 continues the first sentence and paragraphs (1), (2), and (3) of subdivision (a) of former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

**Note:** Should the following (which would be added by Assembly Bill 436 of the 1991-92 Regular Session, be added to subdivision (b) of Section 230:

Nothing in this paragraph shall adversely affect the rights, title, and interest of a purchaser for value, encumbrancer for value, or lessee for value, who is without actual knowledge of the restraining order.

**§ 231. Temporary restraining order in summons in Uniform Parentage Act proceeding**

231. In addition to the contents required by Section 412.20 of the Code of Civil Procedure, in a proceeding under Part 1 (commencing with Section 1700) of Division 5, the summons shall contain a temporary restraining order restraining all parties from removing from the state any minor child or children for whom the proceeding seeks to establish a parent and child relationship, without the prior written consent of the other party or an order of the court.

**Comment.** Section 231 continues the first sentence and the last portion of the second sentence of subdivision (b) of former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

**§ 232. Statement in summons concerning enforcement of order**

232. The summons shall state on its face that the order required by Section 230 or 231 is enforceable in any place in this state by any of the following:

- (a) Any law enforcement agency that has received mailed notice of the order.
- (b) Any other law enforcement agency that has received the order.
- (c) Any officer who has been shown the order.

**Comment.** Section 232 continues portion of subdivision (a) and the fourth sentence of subdivision (b) of former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

**§ 233. Enforcement of order**

233. (a) Upon the filing of the petition in the proceeding described in Section 230 or 231 and issuance of the summons and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, the temporary restraining order under this part shall be in effect against the parties until the final judgment is entered or the petition is dismissed, or until further order of the court.

(b) The temporary restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received mailed notice of the order or has otherwise received a copy of the order or the officer enforcing the order has been shown a copy of the order.

(c) A willful and knowing violation of the order included in the summons pursuant to subdivision (a) of Section 230 or pursuant to Section 231 by removing a child from the state without the written consent of the other party or an order of the court is punishable as provided in Section 278.5 of the Penal Code. A willful and knowing violation of any of the other orders included in the summons pursuant to Section 230 is punishable as provided in Section 273.6 of the Penal Code.

**Comment.** Subdivision (a) of Section 233 continues the first portion of the second sentence of subdivision (a) and the first portion of the second sentence of subdivision (b) of

former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change. Subdivision (b) continues a portion of subdivision (a) and the third sentence of subdivision (b) of former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change. Subdivision (c) continues a portion of subdivision (a) and the fifth sentence of subdivision (b) of former Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

#### **§ 234. Order not evidence of proscribed conduct**

234. The automatic granting of the ex parte temporary restraining order under this part is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

**Comment.** Section 234 continues the last sentence of subdivision (a) and the last sentence of subdivision (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

#### **§ 235. Modification or revocation of order; other orders**

235. Nothing in this part precludes either party from applying to the court for modification or revocation of the temporary restraining order provided for in this part or for further temporary orders or an expanded temporary ex parte order.

**Comment.** Section 235 continues the second to last paragraph of subdivision (a) and the second to last paragraph of subdivision (b) of Code of Civil Procedure Section 412.21 (as amended by 1990 Cal. Stat. ch. 935 § 3) without substantive change.

### **PART 4. TEMPORARY RESTRAINING ORDERS AND SUPPORT ORDERS MADE WITHOUT NOTICE**

§ 240. Application of provisions of this part

§ 241. Granting temporary order without notice

§ 242. Order to show cause

§ 243. Readiness for hearing; continuance; counter-affidavits

§ 244. Precedence for hearing and trial

§ 245. Reissuance of domestic violence prevention restraining order

#### **§ 240. Application of provisions of this part**

240. Except as otherwise provided, the provisions of this part apply to orders under:

(a) Chapter 6 (commencing with Section 1800) of Part 1 of Division 5 (Uniform Parentage Act).

(b) Chapter 1 (commencing with Section 1900) of Part 1 of Division 6 (ex parte protective orders in proceedings for dissolution or for judgment of nullity of marriage).

(c) Chapter 4 (commencing with Section 3600) of Part 1 of Division 11 (spousal and child support during pendency of proceeding).

(d) Part 3 (commencing with Section 5530) of Division 12 (Domestic Violence Prevention Law).

**Comment.** Section 240 is a new provision drawn from (1) a portion of the fourth sentence of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1) and (2) the fourth sentence of former Code of Civil Procedure Section 545 (as amended by Cal. Stat. 1990 ch. 752 § 3), which provided that the order may be granted in the manner provided in Section 527 of the Code of Civil Procedure. The provisions of this part supersede the provisions of Code of Civil Procedure Section 527 insofar as that section formerly applied to orders under Sections 545 and 546 of the Code of Civil Procedure or under Section 4357, 4359, or 7020 of the Civil Code. Compare Chapter 5 (commencing with Section 3620) of Part 1 of Division 11 (expedited support order).

**Note:** The relevant provisions of Code of Civil Procedure Section 527 are moved into or duplicated in this part. See also Note under Section 241.

### § 241. Granting temporary order without notice

241. Except as provided in Section 5530, no order described in Section 240 shall be granted without notice to the opposite party unless it appears from facts shown by the affidavit in support of the application for the order, or in the verified application for the order, that great or irreparable injury would result to the applicant before the matter can be heard on notice.

**Comment.** Section 241 duplicates the substance of the portion of the fourth sentence of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1) that applied to a temporary restraining order described in Section 240. As to the application of Section 241, see Section 240. The introductory clause has been added to Section 241 to recognize that Section 5530 provides for the issuance of an order under Division 12 (Prevention of Domestic Violence) an affidavit showing reasonable proof of a past act or acts of abuse.

**Note:** Section 241 as set out above continues a requirement of Code of Civil Procedure Section 527 which literally applies to a temporary restraining order described in Section 240. Should this requirement be continued or should Section 241 be revised to state: "An order described in Section 240 may be granted without notice to the opposite party." It is unclear the extent to which a showing that great or irreparable injury would result is actually required under existing law in order to obtain an order described in Section 240 without notice. 2 California Marital Dissolution Practice § 15.18 (Supplement June 1991) states in part: "Some courts interpret CCP §527 to require that the applicant for an ex parte order under CC §4359 give notice to the other party unless any affidavit or verified complaint shows that great or irreparable injury would result. Counsel should determine what the particular court rules are before preparing the request for an ex parte order and should use form declarations provided under local rules, if any, for that purpose. See, e.g., Santa Clara Super Ct R 17(A)(6)(b)." What is the effect of the temporary restraining orders contained in the summons on the requirement of notice to the opposite party of the temporary restraining orders described in Section 240? See Sections 230-235 of Staff Draft. Should Sections 240-244 (or the provisions referred to in Section 240) be revised in view of the new provisions requiring temporary restraining orders in the summons? The revision could omit from Sections 240-244 (or the provisions referred to in Section 240)

**the temporary restraining orders that are now required to be included in the summons. See also the Note to Section 3600.**

**§ 242. Order to show cause**

242. (a) Except as provided in subdivision (b), if a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date of the order.

(b) The matter shall be made returnable not later than 20 days or, if good cause appears to the court, 25 days from the date of the order, in the following cases:

(1) A case under Article 1 (commencing with Section 1800) of Chapter 6 of Part 1 of Division 5.

(2) A case under Chapter 1 (commencing with Section 1900) of Part 1 of Division 6.

(3) A case under Division 12 (commencing with Section 5500).

(c) The court may on motion of the party who obtained the temporary restraining order or upon its own motion shorten the time for service on the opposing party of the order to show cause in any of the following cases:

(1) A case under Article 1 (commencing with Section 1800) of Chapter 6 of Part 1 of Division 5.

(2) A case under Division 12 (commencing with Section 5500).

**Comment.** Subdivision (a) of Section 242 duplicates the fifth sentence of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1) and continues the first portion of the second sentence of subdivision (a) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) and the first portion of the second sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. Subdivision (b) continues the sixth sentence of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1) and the last portion of the second sentence of subdivision (a) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) and the last portion of the second sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. Subdivision (c) continues the third sentence of subdivision (a) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) and the third sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. As to the application of Section 242, see Section 240.

**Note:** Section 242 is limited to temporary restraining orders: Should Section 242 apply to orders under Chapter 4 (commencing with Section 3600) of Part 1 of Division 11 (spousal and child support during pendency of proceeding) or should special provisions be drafted to deal with those orders? Does the omission from Section 242 of a reference to orders under Chapter 4 imply that those orders may not be issued without notice? See the Note to Section 241. Is there a reason why the period of notice

is different under subdivision (a) and under subdivision (b)? Why is the application of subdivision (c) limited to only certain temporary restraining orders?

Can a more descriptive phrase describing the order granted after hearing be inserted in the phrase "why the order should not be granted" which appears in Section 5551? Could the phrase "which the order should not be granted after hearing" be used?

#### **§ 243. Readiness for hearing; continuance; counter-affidavits**

243. (a) When the matter first comes up for hearing, the party who obtained the temporary restraining order must be ready to proceed and must have served on the opposite party, at least two days prior to the hearing, a copy of the application and of any affidavits to be used in the application and a copy of the points and authorities in support of the application. If the party who obtained the temporary restraining order fails to comply with this subdivision, the court shall dissolve the temporary restraining order.

(b) The opposing party is entitled, as of course, to one continuance for a reasonable period, if he or she desires it, to enable him or her to meet the application for the restraining order. The defendant may, in response to the order to show cause, present affidavits relating to the granting of the order, and if the affidavits are served on the applicant at least two days prior to the hearing, the applicant is not entitled to a continuance on account of the affidavits.

**Comment.** Section 243 duplicates the seventh, eighth, and ninth sentences of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1). As to the application of Section 243, see Section 240.

**Note:** Should Section 243 apply to all orders described in Section 240, not merely "temporary restraining orders?"

#### **§ 244. Precedence for hearing and trial**

244. (a) On the day upon which the order is made returnable, the hearing shall take precedence of all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law.

(b) When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

**Comment.** Section 244 duplicates the tenth and eleventh sentences of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1). As to the application of Section 244, see Section 240.

**Note:** Should this preference be retained? Does it need revision?

Subdivision (j) of Code of Civil Procedure Section 527.6 and subdivision (b) of Section 529 require revision to reflect the renumbering of the provisions referred to in those sections.

**§ 245. Reissuance of domestic violence prevention restraining order**

245. (a) The court may, upon the filing of an affidavit by the applicant that the opposing party could not be served on time, reissue a temporary restraining order previously issued pursuant to Division 12 (commencing with Section 5500) and dissolved by the court for failure to serve the defendant.

(b) An order issued under this section shall state on its face the date of expiration of the order.

(c) No fee shall be charged for the issuance of an order under this section, unless the order had been dissolved three times previously.

**Comment.** Section 245 continues subdivision (b) of Code of Civil Procedure Section 527 (as amended by Cal. Stat. 1982 ch. 812 § 1) but the scope of the former provision is expanded by Section 245. Subdivision (b) of former Section 527 applied only to a temporary restraining order previously issued pursuant to Section 546; Section 245 expands the scope of coverage to include all of Division 12 (commencing with Section 5500). Division 12 not only supersedes former Section 546, but also supersedes former Code of Civil Procedure Sections 540, 541, 542, 543, 545, 545.5, 546.5, 547, 547.5, 548, 550, 551, 552, and 553 and former Civil Code Section 4351.6. Nevertheless, including these additional provisions does not make any significant change in the substance of the law continued in Section 245. As to the application of Section 245, see Section 240.

**PART 5. EMPLOYEE PENSION BENEFIT PLAN AS PARTY**

§ 250. Application and order for joinder of plan

§ 251. Pleading of party requesting joinder

§ 252. Service upon trustee, administrator, or agent of plan

§ 253. Notice of appearance and responsive pleading by plan

§ 254. Plan need not pay filing fees

§ 255. Entry of default of plan

§ 256. Provisions governing proceeding in which plan has been joined

§ 257. Notice to plan of proposed property settlement; response by plan

§ 258. Appearance by plan at hearing

§ 259. Order affecting plan made at hearing not attended by plan

§ 260. Motion to set aside or modify order

**§ 250. Application and order for joinder of plan**

250. Upon written application by a party to a proceeding under the Family Law Act, the clerk shall enter an order joining as a party to the proceeding any employee pension benefit plan in which either party to the proceeding claims an interest which is or may be subject to disposition by the court.

**Comment.** Section 250 continues the first sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 85 ("Family Law Act" defined).

**Note:** Should the words "under the Family Law Act" be omitted? These words appear to be unnecessary.

**§ 251. Pleading of party requesting joinder**

251. Upon entry of the order under Section 250, the party requesting joinder shall file an appropriate pleading setting forth the party's claim against the plan and the nature of the relief sought.

**Comment.** Section 251 continues the second sentence of subdivision (a) of former Civil Code Section 4363.1 without substantive change.

**§ 252. Service upon trustee, administrator, or agent of plan**

252. (a) The party requesting joinder shall serve all of the following upon the employee pension benefit plan:

- (1) A copy of the pleading of the party requesting joinder.
- (2) A copy of the joinder request.
- (3) A copy of the summons.

(4) A blank copy of a Notice of Appearance in form and content approved by the Judicial Council.

(b) Service shall be made in the same manner as service of papers generally. Service of the summons upon a trustee or administrator of the plan in his or her capacity as trustee or administrator, or upon an agent designated by the plan for service of process in his or her capacity as agent, constitutes service upon the plan.

(c) To facilitate service, the employee spouse shall furnish to the nonemployee spouse within 30 days after written request the name, title, and address of the plan's trustee, administrator, or agent for service of process. If necessary, the employee shall obtain the information from the plan.

**Comment.** Section 252 continues the third, fourth, fifth, and sixth sentences of subdivision (a) of former Civil Code Section 4363.1 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 253. Notice of appearance and responsive pleading by plan**

253. (a) The employee pension benefit plan shall file and serve a notice of appearance upon the party requesting joinder within 30 days of the date of the service upon the plan of a copy of the joinder request and summons.

(b) The employee pension benefit plan may, but need not, file an appropriate responsive pleading with its notice of appearance. If the plan does not file a responsive pleading, all statements of fact and requests for relief contained in any pleading served on the plan are deemed to be controverted by the plan's notice of appearance.

**Comment.** Subdivision (a) of Section 253 continues the first sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4363.2 without substantive change. See also Section 80 ("employee pension benefit plan" defined).

**§ 254. Plan need not pay filing fees**

254. Notwithstanding any contrary provision of law, the employee pension benefit plan is not required to pay any fee to the clerk of the court as a condition to filing the notice of appearance or any subsequent paper in the proceeding.

**Comment.** Section 254 continues the second sentence of subdivision (b) of former Civil Code Section 4363.1 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**§ 255. Entry of default of plan**

255. If the employee pension benefit plan has been served and no notice of appearance, notice of motion to quash service of summons pursuant to Section 418.10 of the Code of Civil Procedure, or notice of the filing of a petition for writ of mandate as provided in that section, has been filed with the clerk of the court within the time specified in the summons or such further time as may be allowed, the clerk, upon written application of the party requesting joinder, shall enter the default of the employee pension benefit plan in accordance with Chapter 2 (commencing with Section 585) of Title 8 of Part 2 of the Code of Civil Procedure.

**Comment.** Section 255 continues subdivision (c) of former Civil Code Section 4363.1 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**§ 256. Provisions governing proceeding in which plan has been joined**

256. (a) This part governs a proceeding in which an employee pension benefit plan has been joined as a party.

(b) To the extent not in conflict with this part and except as otherwise provided by rules adopted by the Judicial Council pursuant to Section 210, all provisions of law applicable to civil actions generally apply, regardless of nomenclature, to the portion of the proceeding as to which an employee pension benefit plan has been joined as a party if those provisions would otherwise apply to the proceeding without reference to this part.

**Comment.** Section 256 continues subdivision (a) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**§ 257. Notice to plan of proposed property settlement; response by plan**

257. Either party or their representatives may notify the employee pension benefit plan of any proposed property settlement as it concerns the plan prior to the interlocutory hearing. If so notified, the plan may stipulate to the proposed settlement or advise the representative that it will contest the proposed settlement.

**Comment.** Section 257 continues subdivision (c) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**Note:** What is the meaning of “interlocutory hearing” in the first sentence of Section 257? Should the following be substituted for the first sentence of Section 257: “Either party or their representatives may notify the employee pension benefit plan of any

**proposed property settlement as it concerns the plan prior to any hearing at which the proposed property settlement will be a matter before the court.”?**

**§ 258. Appearance by plan at hearing**

258. The employee pension benefit plan is not required to, but may, appear at any hearing in the proceeding. For purposes of the Code of Civil Procedure, the plan shall be considered a party appearing at the trial with respect to any hearing at which the interest of the parties in the plan is an issue before the court.

**Comment.** Section 258 continues the first two sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**§ 259. Order affecting plan made at hearing not attended by plan**

259. (a) Subject to subdivisions (b) and (c), the provisions of an order entered at or as a result of a hearing not attended by the employee pension benefit plan (whether or not the plan received notice of the hearing) which affect the plan or which affect any interest either the petitioner or respondent may have or claim under the plan, do not become effective until 30 days after the order has been served upon the plan.

(b) The plan may waive all or any portion of the 30-day period under subdivision (a).

(c) If within the 30-day period, the plan files in the proceeding a motion to set aside or modify those provisions of the order affecting it, those provisions do not become effective until the court has resolved the motion.

**Comment.** Section 259 continues the third and fourth sentences of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Section 80 (“employee pension benefit plan” defined).

**§ 260. Motion to set aside or modify order**

260. (a) At any hearing on a motion to set aside or modify an order pursuant to Section 259, any party may present further evidence on any issue relating to the rights of the parties under the employee pension benefit plan or the extent of the parties’ community or quasi-community property interest in the plan.

(b) Any statement of decision issued by the court with respect to the order which is the subject of the motion shall take account of the evidence referred to in subdivision (a).

(c) If the provisions of the order affecting the employee pension benefit plan are modified or set aside, the court, on motion by either party, may set aside or modify other provisions of the order related to or affected by the provisions affecting the plan.

**Comment.** Subdivisions (a) and (b) of Section 260 continue subdivision (e) of former Civil Code Section 4363.2 without substantive change. Subdivision (c) continues the last sentence of subdivision (d) of former Civil Code Section 4363.2 without substantive change. See also Sections 65 (“community property” defined), 80 (“employee pension benefit plan” defined), 125 (“quasi-community property” defined).

**PART 6. PROVISIONS FOR ATTORNEY'S FEES AND COSTS**

- § 270. Costs and attorney's fees during pendency of proceeding  
§ 271. Notice of application for order  
§ 272. Award of attorney's fees and costs to be just and reasonable under relative circumstances of parties  
§ 273. Attorney's fees for enforcement of support order  
§ 274. Award of attorney's fees and costs based on conduct of party or attorney  
§ 275. Order for direct payment to attorney

**§ 270. Costs and attorney's fees during pendency of proceeding**

270. (a) During the pendency of any proceeding under the Family Law Act, the court may order any party, except a governmental entity, to pay the amount reasonably necessary for the cost of maintaining or defending the proceeding and for attorney's fees. From time to time and before entry of judgment, the court may augment or modify the original award for costs and attorney's fees as may be reasonably necessary for the prosecution or defense of the proceeding or any proceeding related thereto, including after any appeal has been concluded.

(b) For services rendered or costs incurred after the entry of judgment, the court may award the costs and attorney's fees reasonably necessary to maintain or defend any subsequent proceeding, and may augment or modify an award so made, including after an appeal has been concluded.

(c) Attorney's fees and costs within the provisions of this section may be awarded for legal services rendered or costs incurred prior, as well as subsequent, to the commencement of the proceeding.

(d) Any order for a party who is not the husband or wife of another party to the proceedings to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

**Comment.** Section 270 continues subdivision (a) of former Civil Code Section 4370 without substantive change. Section 272 requires that the award of attorney's fees and costs under Section 270 be just and reasonable under relevant circumstances of the parties. See also Sections 85 ("Family Law Act" defined), 916 (attorney's fees in enforcing right to reimbursement after division of community property), 1740 (counsel fees and costs under Uniform Parentage Act), 2255 (attorney's fees and costs in proceeding for judgment of nullity of marriage), 2334 (order for attorney's fees during period of continuance for reconciliation), 3027 (attorney's fees in proceeding to recover monetary sanction for false accusation of child abuse or neglect), 3028 (attorney's fees in proceeding to recover compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights), 3112, 3150-3153, 3174 (appointment of counsel to represent child in custody or visitation proceeding), 3227, 3260-3264, 3295 (appointment of counsel in proceeding to declare child free from parental custody and control), 3407 (attorney's fees where custody or visitation proceeding commenced in clearly inappropriate forum), 3408 (attorney's fees where jurisdiction declined by reason of conduct), 3416 (attorney's fees for enforcement of sister state custody order), 3652 (attorney's fees in proceeding to modify or terminate child support order), 4002 (attorney's fees for county enforcement of child support), 4303 (attorney's fees

for county enforcement of spousal support), 4403 (attorney's fees for county enforcement of parent's right to support), 4803 (limitation on recovery of attorney's fees in proceeding under Uniform Reciprocal Enforcement of Support Act), 5755 and 5805 (attorney's fees in proceeding under Domestic Violence Prevention Law).

**Note:** Can the reference in Section 270 to the "Family Law Act" be replaced by general language or by substitution of a reference to "this code" or to specific types of proceedings under the Family Code?

### **§ 271. Notice of application for order**

271. (a) Except as provided in subdivision (b), during the pendency of a proceeding under the Family Law Act, an application for a temporary order making, augmenting, or modifying an award of attorney's fees or costs or both shall be made by motion on notice or by an order to show cause.

(b) An order described in subdivision (a) may be made without notice by an oral motion in open court at any of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time prior to entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure.

**Comment.** Section 271 continues subdivision (b) of former Civil Code Section 4370 without substantive change. See also Section 85 ("Family Law Act" defined).

### **§ 272. Award of attorney's fees and costs to be just and reasonable under relative circumstances of parties**

272. (a) The court may make an award of attorney's fees and costs under Section 270 or 271 where the making of the award, and the amount of the award, is just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which he or she could pay his or her own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award from any type of property, whether community or separate, principal or income.

**Comment.** Section 272 continues former Civil Code Section 4370.5 (as amended by 1990 Cal. Stat. ch. 893 § 1) without substantive change. Language has been added to subdivision (a) to make clear that Section 272 governs the award of attorney's fees and costs under Section 270 or 271. See *In re Marriage of Hublou*, 91 Daily Journal D.A.R. 7750 (Filed June 26,

1991). See also Sections 65 ("community property" defined), 85 ("Family Law Act" defined), 125 ("quasi-community property" defined), 130 ("separate property" defined).

Subdivision (a) of Section 272 states the general standard for an award of costs and attorney's fees in family law proceedings. Subdivision (b) lists two important factors the court should consider in making such an award. The factors listed in subdivision (b) are not exclusive, and the court may consider any other proper factors, including the likelihood of collection, tax considerations, and other factors announced in the cases. See, e.g., *In re Marriage of Lopez*, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974).

Subdivision (c) expressly authorizes the court to order payment from any source that appears proper, including the community and separate estates of the parties. This authorization overruled language in the cases holding, for example, that the court may not require a wife to impair the capital of her separate estate in order to defray her litigation expenses. See, e.g., *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (1977).

For background on former Civil Code Section 4370.5, see *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm'n Reports 351 (1986).

### **§ 273. Attorney's fees for enforcement of support order**

273. Notwithstanding any other provision of law, absent good cause to the contrary, the court, upon determining an ability to pay, shall award reasonable attorney's fees to:

- (a) A custodial parent in an action to enforce an existing order for child support.
- (b) A supported spouse in an action to enforce an existing order for spousal support.

**Comment.** Section 273 continues subdivisions (c) and (d) of former Civil Code Section 4370 without substantive change. See also Section 3652 (attorney's fees in order modifying or terminating child support order).

### **§ 274. Award of attorney's fees and costs based on conduct of party or attorney**

274. (a) Notwithstanding Sections 270 to 273, inclusive, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and abilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden upon the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

(b) An award of fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of fees and costs as a sanction pursuant to this section shall be payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

**Comment.** Section 274 continues Civil Code Section 4370.6 (as enacted by 1990 Cal. Stat. ch. 893 § 2) without substantive change. See also Section 65 ("community property" defined).

### § 275. Order for direct payment to attorney

275. (a) When the court orders one of the parties to pay costs and attorney's fees for the benefit of the other party, those costs and fees may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto.

(b) Subject to subdivision (c), the order providing for payment of the costs and attorney's fees may be enforced directly by the attorney in his or her own name or by the party in whose behalf the order was made.

(c) If the attorney has ceased to be the attorney for the party on whose behalf the order was made, the attorney may enforce the order only if it appears of record that the attorney has given to the former client or successor counsel 10 days' written notice of the application for enforcement by the former attorney of the order. During the 10-day period, the client may file in the proceeding a motion directed to the former attorney for partial or total reallocation of fees and costs to cover the services and cost of successor counsel. Upon the filing of the motion, the enforcement of the order by the former attorney shall be stayed until the court has acted upon the motion.

**Comment.** Section 275 continues former Civil Code Section 4371 without substantive change.

## PART 7. ENFORCEMENT OF JUDGMENTS, ORDERS, AND DECREES

§ 290. Methods of enforcement

§ 291. Effect of lack of diligence in seeking enforcement

§ 292. Effect of reconciliation of parties

**Note:** Numerous provisions refer to a judgment, order, or decree. Should there be a general definition of "judgment" to include a court order or decree or of "order" to include a judgment or decree? In some sections, only the word "judgment" is used; in others, the phrase judgment, order, or decree is used. There appears to be no reason for the different phrases used.

### § 290. Methods of enforcement

290. A judgment, order, or decree of the court made or entered pursuant to the Family Law Act may be enforced by the court by execution, the appointment of a

receiver, or contempt, or by such other order as the court in its discretion determines from time to time to be necessary.

**Comment.** Section 290 continues former Civil Code Section 4380 without substantive change. For provisions permitting enforcement of support orders, see Part 5 (commencing with Section 4500) of Division 11. For provisions permitting enforcement by writ of execution without prior court approval, see Sections 5100, 5101. Section 290 is limited to a judgment, order, or decree made or entered pursuant to the "Family Law Act." See Section 85 (listing sections of the Family Code that constitute the Family Law Act). See also Code Civ. Proc. §§ 1209 to 1222 (contempt of court). For background on former Civil Code Section 4380, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 747 (1973).

**Note:** Should Section 290 apply to any order made under the Family Code? Are the phrases "of the court" and "by the court" necessary or should they be omitted?

### § 291. Effect of lack of diligence in seeking enforcement

291. The lack of diligence for more than the period specified in Chapter 4 (commencing with Section 5100) of Part 5 of Division 11 in seeking enforcement of a judgment, order, or decree of the court made, entered, or enforceable pursuant to the Family Law Act that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order, or decree under Section 290.

**Comment.** Section 291 continues the first sentence of former Civil Code Section 4384 without substantive change. Section 291 is limited to a judgment, order, or decree made, entered, or enforceable pursuant to the "Family Law Act." See Section 85 (listing sections of the Family Code that constitute the Family Law Act).

Nothing in Section 291 precludes the court from permitting enforcement after 10 years (see Sections 5100-5102) even though diligence is not shown if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case. For background on former Civil Code Section 4384, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2617 (1980).

**Note:** Should Section 291 apply to any order made under the Family Code? Is the phrase "of the court" necessary or should it be omitted?

### § 292. Effect of reconciliation of parties

292. The reconciliation of the parties, whether conditional or unconditional, is an ameliorating factor to be considered by the court in considering a contempt of an existing court order under the Family Law Act.

**Comment.** Section 292 continues former Civil Code Section 4381 without substantive change. Section 292 applies only to a court order under the "Family Law Act." See Section 85 (listing sections of the Family Code that constitute the Family Law Act).

**Note:** Should Section 292 apply to any order made under the Family Code?

**DIVISION 3. SOLEMNIZATION OF MARRIAGE**

- Part 1. Validity of Marriage
- Part 2. Authentication of Marriage
- Part 3. Premarital Examination

**PART 1. VALIDITY OF MARRIAGE**

- § 300. Marriage relation; consent, license, and solemnization
- § 301. Capacity of adult to consent to and consummate marriage
- § 302. Capacity of minor to consent to and consummate marriage
- § 303. Consent of superior court
- § 304. Proof of consent and solemnization
- § 305. Validity of foreign marriages
- § 306. Action to have validity of marriage determined

**§ 300. Marriage relation; consent, license, and solemnization**

300. Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Chapter 4 (commencing with Section 500) of Part 2.

Comment. Section 300 continues former Civil Code Section 4100 without substantive change.

**§ 301. Capacity of adult to consent to and consummate marriage**

301. An unmarried male of the age of 18 years or upwards, and an unmarried female of the age of 18 years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Comment. Section 301 continues subdivision (a) of former Civil Code Section 4101 without substantive change.

**§ 302. Capacity of minor to consent to and consummate marriage**

302. (a) An unmarried male or female under the age of 18 years is capable of consenting to and consummating marriage if each of the following documents is filed with the clerk issuing the marriage license as provided in Article 1 (commencing with Section 360) of Chapter 2 of Part 2:

(1) The consent in writing of the parents of each person who is underage, or of one of the parents or the guardian of each such person.

(2) After such showing as the superior court may require, an order of the court granting permission to the underage person to marry.

(b) As part of the order under subdivision (a), the court shall require the parties to the prospective marriage of a person under the age of 18 years to participate in premarital counseling concerning social, economic, and personal responsibilities incident to marriage, if the court considers the counseling to be necessary. The parties shall not be required, without their consent, to confer with counselors provided by

religious organizations of any denomination. In determining whether to order the parties to participate in the premarital counseling, the court shall consider, among other factors, the ability of the parties to pay for the counseling. The court may impose a reasonable fee to cover the cost of any such counseling provided by the county. The fees shall be used exclusively to cover the cost of the counseling services authorized by this section.

**Comment.** Section 302 continues subdivisions (b) and (c) of former Civil Code Section 4101 without substantive change. See also Section 303 (order of superior court granting permission to minor to marry).

### **§ 303. Consent of superior court**

303. If it appears to the satisfaction of the superior court by verified application of a minor that the minor requires a written consent to marry and that the minor has no parent or has no parent capable of consenting, the superior court may make an order consenting to the issuance of a marriage license and granting permission to the minor to marry. The order shall be filed with the county clerk at the time the license is issued.

**Comment.** Section 303 continues former Civil Code Section 4102 without substantive change.

### **§ 304. Proof of consent and solemnization**

304. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

**Comment.** Section 304 is the same as former Civil Code Section 4103.

### **§ 305. Validity of foreign marriages**

305. A marriage contracted without this state, which would be valid by the laws of the jurisdiction in which the marriage was contracted, is valid in this state.

**Comment.** Section 305 continues former Civil Code Section 4104 without substantive change.

### **§ 306. Action to have validity of marriage determined**

306. If either party to a marriage denies the marriage, or refuses to join in a declaration of the marriage, the other party may proceed, by action in the superior court, to have the validity of the marriage determined and declared.

**Comment.** Section 306 continues former Civil Code Section 4212 without substantive change.

## **PART 2. AUTHENTICATION OF MARRIAGE**

Chapter 1. Procedural Requirements Generally

Chapter 2. Marriage License, Informational Brochure, and Certificate of Registry

Chapter 3. Solemnization of Marriage

Chapter 4. Confidential Marriage

**CHAPTER 1. PROCEDURAL REQUIREMENTS GENERALLY**

§ 350. Procedural requirements; effect of noncompliance

§ 351. Requirements for marriage of members of religious society or denomination

**§ 350. Procedural requirements; effect of noncompliance**

350. Marriage must be licensed, solemnized, authenticated, and the certificate of registry of marriage filed as provided in this part; but noncompliance with the provisions of this part by others than a party to a marriage does not invalidate the marriage.

**Comment.** Section 350 continues former Civil Code Section 4200 without substantive change.

**§ 351. Requirements for marriage of members of religious society or denomination**

351. This part, so far as it relates to the solemnizing of marriages, is not applicable to members of a particular religious society or denomination not having clergy for the purpose of solemnizing marriage, or entering the marriage relation, if all of the following requirements are met:

(a) The parties entering the marriage make, sign, and endorse upon, or attach to, the license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

(1) The fact, time, and place of entering into the marriage.

(2) The signature and place of residence of two witnesses to the ceremony.

(3) The religious society or denomination of the parties married, and that the marriage was entered into in accordance with the rules and customs of that religious society or denomination. The statement of the parties entering the marriage that the marriage was entered into in accordance with the rules and customs of the religious society or denomination is conclusively presumed to be true.

(b) The License and Certificate of Declaration of Marriage, endorsed pursuant to subdivision (a), is filed with the local registrar of marriages of the county in which the license was issued within four days after the ceremony.

**Comment.** Section 351 continues former Civil Code Section 4216 without substantive change.

**CHAPTER 2. MARRIAGE LICENSE, INFORMATIONAL BROCHURE,  
AND CERTIFICATE OF REGISTRY**

Article 1. Marriage License

Article 2. Informational Brochure

Article 3. Certificate of Registry

**Article 1. Marriage License**

§ 360. Marriage license required

§ 361. Contents of license

§ 362. Denial of license

§ 363. Underage applicant

§ 364. Requiring proof of facts

§ 365. Forms

§ 366. Expiration of license

§ 367. Duties of county clerk and county recorder

### § 360. Marriage license required

360. All persons about to be joined in marriage, or about to declare a marriage pursuant to Section 465, shall first obtain a marriage license from a county clerk.

**Comment.** Section 360 continues the first portion of subdivision (a) of former Civil Code Section 4201 without substantive change.

### § 361. Contents of license

361. The marriage license shall show all of the following:

(a) The identity of the parties.

(b) The parties' real and full names, and places of residence.

(c) The parties' ages.

**Comment.** Section 361 continues last portion of subdivision (a) of former Civil Code Section 4201 without substantive change.

### § 362. Denial of license

362. No marriage license shall be granted when either of the parties who are applying for the license is an imbecile, is insane, or is, at the time of making the application for the license, under the influence of an intoxicating liquor or narcotic drug.

**Comment.** Section 362 continues the first sentence of subdivision (b) of former Civil Code Section 4201 without substantive change.

**Note:** Should the reference to a person who is an "imbecile" or is "insane" be changed in Section 362?

### § 363. Underage applicant

363. If a person applying for the marriage license is under the age of 18 years, the license may be granted only if both parties are capable of consenting to and consummating marriage as provided for in Section 302 and the consent or consents or court orders, provided for in Section 303, are filed by the clerk.

**Comment.** Section 363 continues the second sentence of subdivision (b) of former Civil Code Section 4201 without substantive change.

### § 364. Requiring proof of facts

364. (a) Each applicant for a marriage license may be required to present authentic identification as to name.

(b) For the purpose of ascertaining all the facts mentioned or required in this article, the clerk may, if he or she deems it necessary in order to satisfy himself or herself as to matters enumerated in this article, examine the applicants for a license on oath at

the time the license is applied for. The examination shall be reduced to writing by the clerk and be subscribed by the applicants. If necessary, the clerk may request additional documentary proof as to the accuracy of the facts stated.

(c) Applicants for a license pursuant to this article shall not be required to state, for any purpose, their race or color.

**Comment.** Section 364 continues the third, fourth, and fifth sentences of subdivision (b) of former Civil Code Section 4201 without substantive change.

**§ 365. Forms**

365. (a) The forms for the application for license to marry and the marriage license shall be prescribed by the State Department of Health Services, and shall be adapted to set forth the facts required in this article.

(b) The application for license to marry form shall include an affidavit on the back which the bride and groom shall sign, affirming that they have received the brochure provided for in Section 370.

(c) The affidavit required by subdivision (b) shall state:

**AFFIDAVIT**

I acknowledge that I have received the brochure titled \_\_\_\_\_.

_____	_____
(Signature of Bride)	(Date)
_____	_____
(Signature of Groom)	(Date)

**Comment.** Section 365 continues subdivisions (c) and (d) of former Civil Code Section 4201 without substantive change.

**§ 366. Expiration of license**

366. A license issued pursuant to this article expires 90 days after its issuance and the calendar date of expiration shall be clearly noted on the face of the license.

**Comment.** Section 366 continues the first sentence of former Civil Code Section 4204 without substantive change.

**§ 367. Duties of county clerk and county recorder**

367. (a) The county clerk shall number each license issued and shall transmit at periodic intervals to the county recorder a list of the licenses issued.

(b) Not later than 60 days after the date of issuance, the county recorder shall notify those parties whose certificates have not been filed of that fact and that the license will automatically expire on the date shown on the face of the license. The county recorder shall also notify the license holders of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within four days after the ceremony.

**Comment.** Section 367 continues the second paragraph of former Civil Code Section 4204 without substantive change.

**Article 2. Informational Brochure**

## § 370. Informational brochure

**§ 370. Informational brochure**

370. (a) The State Department of Health Services shall prepare and publish a brochure which shall:

(1) Indicate the possibilities of genetic defects and diseases and contain a listing of centers available for the testing and treatment of genetic defects and diseases.

(2) Provide information to applicants concerning acquired immune deficiency syndrome (AIDS) and informing them of the availability of testing for antibodies to the probable causative agent of AIDS.

(b) The State Department of Health Services shall make the brochures available to county clerks who shall distribute a copy of the brochure to all applicants for a marriage license, including applicants for a confidential marriage license and notary publics receiving a confidential marriage license pursuant to Section 504.

(c) Each notary public authorizing a confidential marriage under Section 504 shall distribute a copy of the brochure to the applicants for a confidential marriage license.

(d) To the extent possible, the State Department of Health Services shall seek to combine in a single brochure all statutorily required information for marriage license applicants.

**Comment.** Section 370 continues former Civil Code Section 4201.5 without substantive change.

**Article 3. Certificate of Registry**

## § 400. Certificate of registry; preparation and filing

## § 401. Replacement of lost certificate

**§ 400. Certificate of registry; preparation and filing**

400. (a) All persons about to be joined in marriage must obtain from the county clerk of the county in which the license is issued, in addition to the marriage license therefor provided for in Article 1 (commencing with Section 360), a certificate of registry of marriage as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code containing the items listed in that division.

(b) The certificate of registry of marriage shall be filled out by the applicants, in the presence of the county clerk issuing the marriage license, and shall then be presented to the person performing the ceremony.

(c) The person performing the ceremony shall complete the certificate and shall cause to be entered on the certificate the signature and address of one witness to the marriage ceremony.

(d) The certificate of registry of marriage shall be filed by the person performing the ceremony with the county recorder of the county in which the license was issued within four days after the ceremony.

**Comment.** Section 400 continues former Civil Code Section 4202 without substantive change.

### § 401. Replacement of lost certificate

401. (a) If a certificate of registry of marriage is lost or destroyed subsequent to the marriage ceremony but before filing with the county recorder, the person solemnizing the marriage, in order to comply with Section 400, shall obtain a duplicate certificate of registry of marriage by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued.

(b) The fee for issuing the duplicate license and certificate is five dollars (\$5).

**Comment.** Section 401 continues former Civil Code Section 4203 without substantive change.

**Note:** Subdivision (a) of Section 401 applies only to a duplicate certificate of registry but subdivision (b) provides a fee for issuing the duplicate license and certificate of registry.

## CHAPTER 3. SOLEMNIZATION OF MARRIAGE

Article 1. Persons Authorized to Solemnize

Article 2. Solemnization

### Article 1. Persons Authorized to Solemnize

§ 450. Persons authorized to solemnize

§ 451. Commissioner of civil marriages; deputies

§ 452. Officials of nonprofit religious institutions

### § 450. Persons authorized to solemnize

450. (a) Marriage may be solemnized by any of the following who is of the age of 18 years or over:

(1) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record or justice court in this state.

(2) A judge or magistrate of the United States.

(3) A priest, minister, or rabbi of any religious denomination.

(4) A judge or magistrate who has resigned from office.

(b) As used in this section, "judge or magistrate of the United States" means any of the following:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

**Comment.** Section 450 continues former Civil Code Section 4205 without substantive change. See also Section 452 (official of nonprofit religious institution licensed by county to solemnize marriages).

### **§ 451. Commissioner of civil marriages; deputies**

451. (a) For each county, the county clerk is designated as a commissioner of civil marriages.

(b) The commissioner of civil marriages may appoint deputy commissioners of civil marriages who may solemnize marriages under the direction of the commissioner of civil marriages and shall perform such other duties as the commissioner may direct.

**Comment.** Section 451 continues former Civil Code Section 4205.1 without substantive change.

### **§ 452. Officials of nonprofit religious institutions**

452. In addition to the persons permitted to solemnize marriages under Section 450, a county may license officials of a nonprofit religious institution, whose articles of incorporation are registered with the Secretary of State, to solemnize the marriages of persons who are affiliated with or are members of the religious institution. The licensee shall possess the degree of doctor of philosophy and must perform religious services or rites for the institution on a regular basis. The marriages shall be performed without fee to the parties.

**Comment.** Section 452 continues former Civil Code Section 4205.5 without substantive change.

## **Article 2. Solemnization**

§ 460. Essential element of solemnization

§ 461. Determining correctness of facts stated in license

§ 462. Certificate of registry required

§ 463. Return of license and statement to local registrar

§ 464. Issuance of marriage certificate

§ 465. Unrecorded marriage; filing license and certificate of declaration of marriage

### **§ 460. Essential element of solemnization**

460. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

(b) No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

**Comment.** Subdivision (a) of Section 460 continues former Civil Code Section 4206 without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

**§ 461. Determining correctness of facts stated in license**

461. Before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of the marriage license. If the person solemnizing the marriage has reason to doubt the correctness of the statement of facts in the marriage license, the person must be satisfied as to the correctness of the statement of facts before solemnizing the marriage. For that purpose, the person may administer oaths and examine the parties and witnesses in the same manner as the county clerk does before issuing the license.

**Comment.** Section 461 continues former Civil Code Section 4207 without substantive change.

**§ 462. Certificate of registry required**

462. The person solemnizing a marriage shall make, sign, and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

- (a) The fact, time and, place of solemnization.
- (b) The names and places of residence of one or more witnesses to the ceremony.
- (c) A statement of the official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, or member of the clergy thereof. The person solemnizing the marriage shall also type or print his or her name and address.

**Comment.** Section 462 continues subdivision (a) former Civil Code Section 4208 without substantive change.

**§ 463. Return of license and statement to local registrar**

463. The person solemnizing the marriage shall return the marriage license, endorsed as required in Section 462, to the local registrar of marriages of the county in which the license was issued within four days after the ceremony.

**Comment.** Section 463 continues subdivision (b) former Civil Code Section 4208 without substantive change.

**§ 464. Issuance of marriage certificate**

464. The person solemnizing a marriage must, at the request of, and for either party, issue a marriage certificate showing the facts specified in Section 462.

**Comment.** Section 464 continues former Civil Code Section 4209 without substantive change.

**§ 465. Unrecorded marriage; filing license and certificate of declaration of marriage**

465. If no record of the solemnization of a marriage previously contracted is known to exist, the parties may purchase a License and Certificate of Declaration of Marriage

from the county clerk in the parties' county of residence. The license and certificate shall be filed in the manner specified in subdivision (b) of Section 351.

**Comment.** Section 465 continues former Civil Code Section 4210 without substantive change. The phrase "previously contracted" has been substituted for "heretofore contracted."

## CHAPTER 4. CONFIDENTIAL MARRIAGE

Article 1. General Provisions

Article 2. Approval of Notaries to Authorize Confidential Marriage

Article 3. Records of Confidential Marriages

### Article 1. General Provisions

§ 500. Validity of confidential marriage

§ 501. Requirements for confidential marriage generally

§ 502. Application by parties for and issuance of confidential marriage license

§ 503. Issuance of license where party unable to personally appear

§ 504. Issuance of license on request of approved notary public

§ 505. Form of confidential marriage license; form to include certificate of marriage and affidavit

§ 506. Preparation and filing of marriage certificate

§ 507. Delivery of copy of certificate to parties

§ 508. Application for certified copy of certificate

§ 509. Issuance of certified copy of certificate

§ 510. Replacement of lost certificate

#### § 500. Validity of confidential marriage

500. All marriages that have heretofore been, or that may hereafter be, consummated under the provisions of this chapter are hereby declared to be valid.

**Comment.** Section 500 continues former Civil Code Section 4214 without substantive change.

#### § 501. Requirements for confidential marriage generally

501. When an unmarried man and an unmarried woman, not minors, have been living together as husband and wife, they may be married pursuant to this chapter by a person authorized to solemnize a marriage under Article 1 (commencing with Section 450) of Chapter 3, without the necessity of first obtaining health certificates.

**Comment.** Section 501 continues first sentence of subdivision (a) of former Civil Code Section 4213 without substantive change. The phrase "pursuant to this chapter" has been added.

**Note:** Is it correct to add "pursuant to this chapter" to Section 501? In other words, is the need for health certificates dispensed with only in the case of a confidential marriage or can applicants for marriage avoid the need for health certificates by stating that they meet the requirements of Section 501?

#### § 502. Application by parties for and issuance of confidential marriage license

502. (a) Except as provided in Section 503, a confidential marriage license shall be issued by the county clerk upon the personal appearance of the parties to be married and their payment of the fees required by Sections 26840.1 and 26840.8 of the

Government Code and any fee imposed pursuant to the authorization of Section 26840.3 of the Government Code.

(b) A license issued pursuant to this section is valid only for a period of 90 days after its issuance and may only be used in the county in which it is issued.

(c) The license shall be presented to the person performing the ceremony.

**Comment.** Section 502 continues second, third, and fourth sentences of subdivision (a) of former Civil Code Section 4213 without substantive change.

**§ 503. Issuance of license where party unable to personally appear**

503. If, for any reason, either or both of the parties to be married is physically unable to appear in person before the county clerk, a confidential marriage license shall be issued by the county clerk to the person performing the ceremony upon that person's presenting an affidavit to the county clerk, signed by the person and the parties to be married, explaining the reason for the inability to appear.

**Comment.** Section 503 continues former Civil Code Section 4213.1 without substantive change.

**§ 504. Issuance of license on request of approved notary public**

504. (a) The county clerk shall issue a confidential marriage license upon the request of a notary public approved by the county clerk to authorize confidential marriages pursuant to Article 2 (commencing with Section 550) and upon payment by the notary public of the fees specified in Sections 26840.1 and 26840.8 of the Government Code. The parties shall reimburse a notary public who authorizes a confidential marriage for the amount of the fees.

(b) A confidential marriage license issued by the county clerk to a notary public is valid only for a period of 90 days after its issuance by the county clerk and may only be used in the county in which it was issued.

**Comment.** Section 504 continues subdivision (b) of former Civil Code Section 4213 without substantive change.

**§ 505. Form of confidential marriage license; form to include certificate of marriage and affidavit**

505. (a) The form of the confidential marriage license shall be prescribed by the State Registrar of Vital Statistics.

(b) The form shall be designed to require that the parties to be married declare or affirm that they meet all of the requirements of this chapter.

(c) The form shall include a certificate of marriage, which shall be filled out by the parties upon performance of the marriage and be authenticated by the person performing the marriage.

(d) The form shall include an affidavit on the back, which the husband and wife shall sign, affirming that they have received the brochure provided for in Section 370.

(e) The affidavit required by subdivision (d) shall state:

**AFFIDAVIT**

I acknowledge that I have received the brochure titled \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Wife) (Date)

\_\_\_\_\_  
(Signature of Husband) (Date)

**Comment.** Section 505 continues third paragraph of subdivision (a) and subdivision (i) of former Civil Code Section 4213 without substantive change.

**§ 506. Preparation and filing of marriage certificate**

506. (a) Upon performance of the ceremony, the confidential marriage certificate shall be filled out by the parties to the marriage and authenticated by the person performing the ceremony.

(b) The certificate shall be filed by the person performing the ceremony with the office of the county clerk in the county in which the license was issued within four days after the performance of the ceremony.

**Comment.** Section 506 continues fifth and sixth sentences of subdivision (a) of former Civil Code Section 4213 without substantive change.

**§ 507. Delivery of copy of certificate to parties**

507. Upon performance of the ceremony, the person performing the ceremony shall give a copy of the confidential marriage certificate to the parties who were married.

**Comment.** Section 507 continues first sentence of the second paragraph of subdivision (a) of former Civil Code Section 4213 without substantive change.

**§ 508. Application for certified copy of certificate**

508. The person performing the ceremony shall provide the parties who were married with an application for a certified copy of the confidential marriage certificate which shall be filled out by the parties and sent by the person performing the marriage to the county clerk.

**Comment.** Section 508 continues second sentence of the second paragraph of subdivision (a) of former Civil Code Section 4213 without substantive change.

**§ 509. Issuance of certified copy of certificate**

509. (a) A party to a confidential marriage may obtain a certified copy of the confidential marriage certificate from the county clerk of the county in which the certificate is filed in any of the following ways:

(1) By submitting the application for a certified copy of the confidential marriage certificate provided to the parties at the time of the marriage pursuant to Section 508.

(2) By personally appearing before a notary public or at the county clerk's office in the party's county of residence, producing proper identification, obtaining a certificate

attesting to his or her identity from the notary public or county clerk, and transmitting that certificate, together with a request for the certified copy of the confidential marriage certificate, to the county clerk of the county with which the certificate is filed.

(3) By personally appearing at the county clerk's office where the certificate is filed and producing proper identification.

(b) Copies of a confidential marriage certificate may be issued to the parties to the marriage upon the payment of a fee equivalent to that charged for copies of a certificate of marriage.

**Comment.** Section 509 continues subdivision (g) of former Civil Code Section 4213 without substantive change.

### **§ 510. Replacement of lost certificate**

510. If a certificate furnished pursuant to this chapter is lost, damaged, or destroyed after the performance of the marriage and before it is filed, the county clerk may issue a replacement upon the payment of a fee of five dollars (\$5).

**Comment.** Section 510 continues subdivision (h) of former Civil Code Section 4213 without substantive change.

## **Article 2. Approval of Notaries to Authorize Confidential Marriages**

§ 550. Only approved notary may authorize confidential marriage

§ 551. Application by notary for approval to authorize confidential marriages

§ 552. Required course of instruction before approval

§ 553. Approval valid one year; renewal

§ 554. List of notaries approved to authorize confidential marriages

§ 555. Suspending or revoking approval of notary

§ 556. Fees; use of money received

### **§ 550. Only approved notary may authorize confidential marriage**

550. (a) No notary public shall authorize a confidential marriage pursuant to this chapter unless he or she is approved by the county clerk to authorize confidential marriages pursuant to this chapter.

(b) A violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or six months in jail.

**Comment.** Section 550 continues subdivision (c)(1) and subdivision (d) of former Civil Code Section 4213 without substantive change.

### **§ 551. Application by notary for approval to authorize confidential marriages**

551. (a) An application for approval to authorize confidential marriages pursuant to this chapter shall be submitted to the county clerk in the county in which the notary public who is applying for the approval resides.

(b) The application shall include all of the following:

(1) The full name of applicant.

(2) The date of birth of the applicant.

(3) The applicant's current residential address and telephone number.

(4) The address and telephone number of the place where the applicant will issue authorizations for the performance of a marriage.

(5) The full name of the applicant's employer if the applicant is employed by another person.

(6) Whether or not the applicant has engaged in any of the acts specified in Section 8214.1 of the Government Code.

(c) The application shall be accompanied by the fee provided for in Section 556.

**Comment.** Section 551 continues subdivision (c)(2) of former Civil Code Section 4213 without substantive change. Subdivision (c) of Section 551 is drawn from the first sentence of subdivision (c)(3) of former Section 4213.

### **§ 552. Required course of instruction before approval**

552. No approval shall be granted pursuant to this article unless the notary public shows evidence of successful completion of a course of instruction concerning the authorization of confidential marriages that shall be conducted by the county clerk. The course of instruction shall not exceed two hours in duration.

**Comment.** Section 552 continues subdivision (c)(5) of former Civil Code Section 4213 without substantive change.

### **§ 553. Approval valid one year; renewal**

553. An approval to authorize confidential marriages pursuant to this article is valid for one year. The approval may be renewed for additional one year periods upon payment of the renewal fee provided for in Section 556.

**Comment.** The first sentence of Section 553 continues the second sentence of paragraph (3) of subdivision (c) of former Civil Code Section 4213 without substantive change. The second sentence is drawn from the third sentence of the same paragraph.

### **§ 554. List of notaries approved to authorize confidential marriages**

554. (a) The county clerk shall maintain a list of the notaries public who are approved to authorize confidential marriages. The list shall be available for inspection by the public.

(b) It is the responsibility of a notary public approved to authorize confidential marriages pursuant to this article to keep current the information required in paragraphs (1), (3), (4), and (5) of subdivision (b) of Section 551. This information shall be used by the county clerk to update the list required to be maintained by this section.

**Comment.** Section 554 continues subdivision (c)(6) of former Civil Code Section 4213 without substantive change.

### **§ 555. Suspending or revoking approval of notary**

555. (a) If, after an approval to authorize confidential marriages is granted pursuant to this article, it is discovered that the notary public has engaged in any of the actions

specified in Section 8214.1 of the Government Code, the approval shall be revoked, and any fees paid by the notary public may be retained by the county clerk.

(b) If a notary public who is approved to authorize confidential marriages pursuant to this article is alleged to have violated a provision of this part, the county clerk shall conduct a hearing to determine if the approval of the notary public should be suspended or revoked. The notary public may present such evidence as is necessary in his or her defense. If the county clerk determines that the notary public has violated a provision of this part, the county clerk may place the notary public on probation or suspend or revoke his or her registration. The county clerk shall report the findings of the hearing to the Secretary of State for whatever action the Secretary of State deems appropriate.

**Comment.** Section 555 continues paragraphs (4) and (7) of subdivision (c) of former Civil Code Section 4213 without substantive change.

**Note:** Should the last clause relating to retaining fees be made applicable to subdivision (b) as well as subdivision (a) of Section 555?

#### **§ 556. Fees; use of money received**

556. (a) The fee for an application for approval to authorize confidential marriages pursuant to this chapter is one hundred seventy-five dollars (\$175).

(b) The fee for a renewal of an approval is one hundred seventy-five dollars (\$175).

(c) Fees received pursuant to this article shall be deposited in a trust fund established by the county clerk. The money in the trust fund shall be used exclusively for the administration of the program described in this article.

**Comment.** Section 556 continues the first, third, and fourth sentences of subdivision (c)(3) of former Civil Code Section 4213 without substantive change.

### **Article 3. Records of Confidential Marriages**

§ 570. Record of confidential marriage; disclosing information concerning confidential marriage

#### **§ 570. Record of confidential marriage; disclosing information concerning confidential marriage**

570. (a) Except as provided in subdivision (b), the county clerk shall maintain the confidential marriage certificate filed pursuant to Section 506 as a permanent record which shall not be open to public inspection except upon order of the superior court issued upon a showing of good cause.

(b) The county clerk shall keep all original certificates of confidential marriages for one year from the date of filing. After one year, the clerk may microfilm the certificates and dispose of the original certificates. The county clerk shall promptly seal and store at least one original negative of each microphotographic film made in a manner and place as reasonable to assure its preservation indefinitely against loss, theft, defacement, or destruction. The microphotograph shall be made in a manner and on paper that complies with the minimum standards of quality approved by the National Bureau of

**Standards.** Every reproduction shall be deemed and considered an original. A certified copy of any reproduction shall be deemed and considered a certified copy of the original.

(c) The county clerk may conduct a search for a confidential marriage certificate for the purpose of confirming the existence of a marriage, but the date of the marriage and any other information contained in the certificate shall not be disclosed except upon order of the superior court.

(d) The county clerk shall, not less than quarterly, transmit copies of all confidential marriage certificates to the State Registrar of Vital Statistics. The registrar may destroy the copies so transmitted after they have been indexed. The registrar may respond to an inquiry as to the existence of a marriage performed pursuant to this chapter, but shall not disclose the date of the marriage.

**Comment.** Subdivision (a) of Section 570 continues the last sentence of the first paragraph of subdivision (a) former Civil Code Section 4213 without substantive change. Subdivision (b) continues former Civil Code Section 4213.2 without substantive change. Subdivision (c) continues subdivision (f) of former Civil Code Section 4213 without substantive change. Subdivision (d) continues subdivision (e) of former Civil Code Section 4213 without substantive change.

### **PART 3. PREMARITAL EXAMINATION**

- § 580. Physician's certificate required as prerequisite to obtaining marriage license
- § 581. Statement in certificate concerning standard serological test
- § 582. Statement concerning rubella
- § 583. Statement that HIV test was offered
- § 584. Capacity to consent to examinations and tests
- § 585. Information to be provided to laboratory
- § 586. Laboratory statement
- § 587. Certificate forms from other states
- § 588. Certificate forms from armed forces
- § 589. Standard serological test; approved laboratory; checking accuracy of tests
- § 590. Submission of laboratory reports or records; destruction of copies of old reports
- § 591. Court waiver of examination and test requirements; confidential proceedings; no court fee required
- § 592. Filing, preservation, and destruction of certificate forms and court orders
- § 593. Prohibited acts and criminal penalty
- § 594. Confidential documents; criminal penalty for unlawful disclosure

#### **§ 580. Physician's certificate required as prerequisite to obtaining marriage license**

580. Before any person, who is authorized to issue marriage licenses, shall issue the license, each applicant for the license shall file with the person a certificate from a licensed physician that satisfies the requirements of this part.

**Comment.** Section 580 continues the first portion of the first sentence of subdivision (a) of former Civil Code Section 4300 without substantive change. See also Sections 501, 591 (when health certificate not required).

**§ 581. Statement in certificate concerning standard serological test**

581. The certificate shall contain a statement that the applicant has been given the examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days prior to the date of issuance of the license, and that, in the opinion of the physician, the person either is not infected with syphilis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

**Comment.** Section 581 continues the last portion of the first sentence of subdivision (a) of former Civil Code Section 4300 without substantive change. See also Section 589 (standard serological test).

**§ 582. Statement concerning rubella**

582. (a) Except as provided in subdivision (b), the certificate shall contain a statement whether the female applicant has laboratory evidence of immunological response to rubella (German measles).

(b) The certificate shall not contain evidence of response to rubella where the female applicant (1) is over 50 years of age, or (2) has had a surgical sterilization, or (3) presents laboratory evidence of a prior test declaring her immunity to rubella.

**Comment.** Section 582 continues subdivision (b) of former Civil Code Section 4300 without substantive change.

**§ 583. Statement that HIV test was offered**

583. (a) The certificate shall indicate that an HIV test, as defined in Section 26 of the Health and Safety Code, including any appropriate confirmatory tests for positive reactors, was offered. It is the intention of the Legislature that the results of the tests shall be transmitted to the marriage license applicant, and that followup counseling by a knowledgeable and experienced person shall be made available.

(b) Disclosure of the results of any test performed in accordance with subdivision (a) shall not be made except as provided in Chapter 1.11 (commencing with Section 199.20) of Division 1 of the Health and Safety Code.

**Comment.** Section 583 continues subdivisions (c) and (d) of former Civil Code Section 4300 without substantive change.

**§ 584. Capacity to consent to examinations and tests**

584. A person who by law is validly able to obtain a marriage license in the State of California is validly able to give consent to any examinations and tests required by this part.

**Comment.** Section 584 continues the first sentence of subdivision (e) of former Civil Code Section 4300 without substantive change.

**§ 585. Information to be provided to laboratory**

585. In submitting the blood specimen to the laboratory the physician shall designate that this is a premarital test.

**Comment.** Section 585 continues the second sentence of subdivision (e) of former Civil Code Section 4300 without substantive change.

#### **§ 586. Laboratory statement**

586. The certificate shall be accompanied by a statement from the person in charge of the laboratory making the test, or from some other person authorized to make the report, setting forth all of the following:

- (a) The name of the test.
- (b) The date the test was made.
- (c) The name and address of the physician to whom the test was sent.
- (d) The name and address of the person whose blood was tested.

**Comment.** Section 586 continues former Civil Code Section 4301 without substantive change.

#### **§ 587. Certificate forms from other states**

587. (a) Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received serological tests for syphilis outside of California if the examinations and tests were performed not more than 30 days prior to the issuance of the marriage license.

(b) Certificate forms provided by other states not having comparable laws will be accepted for persons who have been examined by a physician and surgeon licensed in that state and who have received serological tests for syphilis performed by the official state public health laboratory in that state if the certificate states that the examination and tests were performed not more than 30 days prior to issuance of the marriage license.

**Comment.** Subdivision (a) of Section 587 continues the first sentence of the first paragraph of former Civil Code Section 4303 without substantive change. Subdivision (b) continues the second paragraph of former Section 4303 without substantive change.

#### **§ 588. Certificate forms from armed forces**

588. Certificates provided by the armed forces of the United States will be accepted for military personnel if the certificate is signed by a medical officer commissioned in the armed forces and the certificate states the examinations and serological tests for syphilis were performed not more than 30 days prior to the issuance of the marriage license.

**Comment.** Section 588 continues the second sentence of the first paragraph of former Civil Code Section 4303 without substantive change.

#### **§ 589. Standard serological test; approved laboratory; checking accuracy of tests**

589. (a) For the purpose of this part, a standard serological test is a test for syphilis approved by the State Department of Health Services made by an approved laboratory.

- (b) An approved laboratory is any of the following:
- (1) The laboratory of the State Department of Health Services.

(2) A laboratory approved by the State Department of Health Services.

(3) Any other laboratory the director of which is licensed by the State Department of Health Services according to law.

(c) In case of question concerning accuracy of tests prescribed in this part, the State Department of Health Services shall accept specimens for checking purposes from any district in the state.

**Comment.** Section 589 continues former Civil Code Section 4304 without substantive change.

**Note:** What is the meaning of the phrase "from any district in the state" in Section 589? Is this phrase necessary?

**§ 590. Submission of laboratory reports or records; destruction of copies of old reports**

590. The laboratory shall submit such laboratory reports or records to the State Department of Health Services as are required by regulation. The health officer may destroy copies of reports that have been retained pursuant to this section for a period of two years.

**Comment.** Section 590 continues former Civil Code Section 4305 without substantive change.

**§ 591. Court waiver of examination and test requirements; confidential proceedings; no court fee required**

591. (a) The judge of the superior court in the county in which the license is to be issued, on joint application by both parties to the marriage, may waive the requirements as to medical examinations, laboratory tests, and certificates, and may order the licensing authority to issue the license applied for, if (1) all other requirements of the marriage laws have been complied with and (2) the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for making the order exists and that the public health and welfare will not be injuriously affected by making the order.

(b) If the examinations and tests have been made and certificate or certificates have been refused because one or both of the applicants have been found to be infected with syphilis, the judge of the superior court in the county in which the license is to be issued nevertheless may, on application of both parties to the marriage, order the licensing authority to issue the license if (1) all other requirements of the marriage laws have been complied with and (2) the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for making the order exists and that the public health and welfare will not be injuriously affected by making the order.

(c) The order of the court shall be filed by the licensing authority in lieu of the certificate form.

(d) The clerk of the court shall transmit to the State Department of Health Services a transcript of the record and the order for such followup by the department as is

required by law or deemed necessary by the department for the protection of the public health.

(e) The superior court when it is deemed necessary may, to the extent authorized by law or rules of court, order all proceedings instituted under the provisions of this part to be confidential and private. There shall be no fee for these court proceedings.

**Comment.** Section 591 continues former Civil Code Section 4306 without substantive change. See also Section 501 (marriage without need to first obtain health certificate).

#### **§ 592. Filing, preservation, and destruction of certificate forms and court orders**

592. The certificate forms and the court orders shall be filed in the office of the county clerk. They shall be preserved for one year from the date of filing after which date they may be destroyed.

**Comment.** Section 592 continues former Civil Code Section 4307 without substantive change.

#### **§ 593. Prohibited acts and criminal penalty**

593. (a) An applicant for a marriage license, physician, or representative of a laboratory who misrepresents his or her identity or a fact called for by the certificate form prescribed by this part is guilty of a misdemeanor.

(b) A licensing officer who issues a marriage license without having received the certificate form or an order from the court, or who has reason to believe that a fact on the certificate form has been misrepresented but nevertheless issues a marriage license, is guilty of a misdemeanor.

(c) A person who otherwise fails to comply with the provisions of this part is guilty of a misdemeanor.

**Comment.** Section 593 continues former Civil Code Section 4308 without substantive change.

#### **§ 594. Confidential documents; criminal penalty for unlawful disclosure**

594. (a) Certificates, laboratory statements or reports, applications, and court orders, referred to in this part, and the information therein contained, is confidential and shall not be divulged to or be open to inspection by any person other than state or local health officers or their authorized representatives.

(b) A person who opens to inspection the certificates, laboratory statements or reports, applications, or court orders referred to in this part, or divulges any information therein contained, without authority, to a person not by law entitled to the same is guilty of a misdemeanor.

**Comment.** Section 594 continues former Civil Code Section 4309 without substantive change.

## DIVISION 4. HUSBAND AND WIFE

- Part 1. General Provisions
- Part 2. Characterization of Marital Property
- Part 3. Liability of Marital Property
- Part 4. Management and Control of Marital Property
- Part 5. Marital agreements

### PART 1. GENERAL PROVISIONS

- Chapter 1. Definitions
- Chapter 2. Relation of Husband and Wife
- Chapter 3. Property Rights

#### CHAPTER 1. DEFINITIONS

§ 700. Real property defined

#### § 700. Real property defined

700. As used in this division, real property does include, and personal property does not include, a leasehold interest in real property.

**Comment.** Section 700 continues the last sentence of former Civil Code Section 5110, but the coverage of the definition is expanded to cover the entire division.

#### CHAPTER 2. RELATION OF HUSBAND AND WIFE

- § 720. Mutual obligations
- § 721. Contracts with each other and third parties
- § 722. Methods of dissolution
- § 723. Tribal marriages and divorces

#### § 720. Mutual obligations

720. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

**Comment.** Section 720 is the same as former Civil Code Section 5100.

#### § 721. Contracts with each other and third parties

721. (a) Subject to subdivision (b), either husband or wife may enter into a transaction with the other, or with any other person, respecting property, which either might if unmarried.

(b) Except as provided in Sections 143, 144, and 146 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other.

**Comment.** Section 721 is the same as former Civil Code Section 5103. See also Code of Civil Procedure Sections 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right). For background on former Civil Code Section 5103, see *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984); 18 Cal. L. Revision Comm'n Reports 78 (1986); *Recommendation Proposing The Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

**Note:** The relationship of Section 721 and Section 1110 (duty of good faith) needs to be reviewed. One statement should be provided to state the duty of a husband and wife in transactions between themselves. Is subdivision (b) of Section 721 the only limit on marital agreements between spouses during the marriage? See also Section 1500 (marital property agreements).

### § 722. Methods of dissolution

722. Marriage is dissolved only by one of the following:

- (a) The death of one of the parties.
- (b) The judgment of dissolution of the marriage by a court of competent jurisdiction.
- (c) A judgment of nullity.

**Note:** Why does subdivision (b) of Section 722 include "by a court of competent jurisdiction" but this clause is not included in subdivision (c) of Section 722?

**Comment.** Section 722 continues former Civil Code Section 4350 without substantive change.

### § 723. Tribal marriages and divorces

723. (a) For the purpose of application of the laws of succession set forth in the Probate Code to a decedent, and for the purpose of determining the validity of a marriage under the laws of this state, an alliance entered into prior to 1958, which, by custom of the Indian tribe, band, or group of which the parties to the alliance, or either of them, are members, is commonly recognized in such tribe, band, or group as marriage, is deemed a valid marriage under the laws of this state.

(b) In the case of such marriages and for the purposes described in subdivision (a) a separation, which, by custom of the Indian tribe, band, or group of which the separating parties, or either of them, are members, is commonly recognized in such tribe, band, or group as a dissolution of marriage, is deemed a valid divorce under the laws of this state.

**Comment.** Section 723 continues former Civil Code Section 5138 without substantive change.

**Note:** Is subdivision (b) of Section 723 limited in its application to a "marriage" described in subdivision (a) (i.e., an alliance entered into prior to 1958)?

## CHAPTER 3. PROPERTY RIGHTS

§ 750. Methods of holding property

§ 751. Interests of spouses in community property

§ 752. Separate property

§ 753. Excluding one spouse from separate property dwelling of other spouse

§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded

§ 755. Payment or refund from employee retirement, death, benefit, or savings plan; discharge from adverse claims

**§ 750. Methods of holding property**

750. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

**Comment.** Section 750 is the same as former Civil Code Section 5104. See also Section 65 ("community property" defined). See also Code of Civil Procedure Sections 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

**§ 751. Interests of spouses in community property**

751. The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing, and equal interests. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

**Comment.** Section 751 is the same as former Civil Code Section 5105. See also Section 65 ("community property" defined). See also Code of Civil Procedure Sections 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

**Note:** Should the second sentence of Section 751 be retained? It appears unnecessary and to add nothing to the first sentence.

**§ 752. Separate property**

752. Except as otherwise provided in Sections 753 and 754, neither husband nor wife has any interest in the separate property of the other.

**Comment.** Section 752 continues the first portion of subdivision (a) of former Civil Code Section 5102 without substantive change. See also Section 130 ("separate property" defined). See also Code of Civil Procedure Sections 370 (right of married person to sue without spouse being joined as a party), 371 (right of married person to defend suit for spouse's right).

**Note:** Should the introductory clause read: "Except as otherwise provided by statute,"?

**§ 753. Excluding one spouse from separate property dwelling of other spouse**

753. (a) Notwithstanding Section 752, except as provided in subdivision (b) and in Chapter 1 (commencing with Section 1900) of Part 1 of Division 6, neither spouse may be excluded from the other's dwelling.

(b) In a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage, upon application of either party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other until the final determination of the proceeding, upon a showing that the party to be excluded has assaulted or threatens to assault the other party, or any other person under the care, custody, or control of the other party, or a minor child of the parties or of the other party, and that physical or emotional harm would otherwise

result to the other party or any other person under the care, custody, or control of the other party, or to a minor child of the parties or of either party, or, upon application and hearing, the court may order such temporary exclusion of either party upon a showing that physical or emotional harm would otherwise result.

**Comment.** Section 753 continues the last portion of subdivision (a) of former Civil Code Section 5102 without substantive change. See also Chapter 6 (commencing with Section 1800) of Part 1 of Division 5 (Uniform Parentage Act) and Division 12 (commencing with Section 5500) (prevention of domestic violence). See also Sections 5550(a)(2), 5552, 5750, 5751.

**Note:** Is subdivision (b) of Section 753 necessary or can the general provisions in Sections 1900 to 1908 be revised to cover the situation covered by subdivision (b) of Section 753? If subdivision (b) is omitted, Section 5550(a)(2) should be revised to delete the reference to Section 753 if that reference has been retained in Section 5550? If subdivision (b) of Section 753 is retained should subdivision (a) be revised to recognize other exceptions to the rule stated in subdivision (a), such as those listed in the Comment to Section 753? Should "abused or threatens to abuse" ("abuse" is defined in Section 55) be substituted in subdivision (b) for "assaulted or threatens to assault"? Why is there not one comprehensive statute governing exclusion of either party from the family dwelling or from the dwelling of the other??

**§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded**

754. If notice of the pendency of a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage is recorded in any county in which the husband or wife resides on real property that is the separate property of the other, the real property shall not for a period of three months thereafter be transferred, encumbered, or otherwise disposed of voluntarily or involuntarily without the joinder of both spouses, unless the court otherwise orders.

**Comment.** Section 754 continues subdivision (b) of former Civil Code Section 5102 without substantive change. See also Section 700 (real property includes leasehold interests in real property).

Section 754 provides a means of restraining transfer or encumbrance of the dwelling that is the separate property of a spouse during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to involuntary as well as voluntary dispositions of the dwelling, such as pursuant to writ of execution. As to the authority of the court to restrain transfer during pendency of the proceedings, see Section 1900(a). A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 1152 (disposition or encumbrance of personal property family dwelling), 1201 (lease, transfer, or encumbrance of real property). For background on former Civil Code Section 5102, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2630 (1980).

**Note:** What is the effect of a transfer or encumbrance after the notice of pendency of proceeding has been recorded? Is a purported transfer, encumbrance, gift, or creditor's levy VOID if made without "joinder" of both spouses?

**§ 755. Payment or refund from employee retirement, death, benefit, or savings plan; discharge from adverse claims**

755. (a) As used in subdivision (b), the terms "participant," "beneficiary," "employee benefit plan," "employer," "fiduciary," and "administrator" have the same meaning as provided in Section 3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended.

(b) Notwithstanding Section 751 and Chapter 2 (commencing with Section 1150) of Part 4, if payment or refund is made to a participant or his or her beneficiary or estate pursuant to a written employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, the payment or refund fully discharges the employer and the administrator, fiduciary, or insurance company making the payment or refund from all adverse claims thereto unless, before the payment or refund is made, the administrator of the plan has received at its principal place of business within this state, written notice by or on behalf of some other person that the other person claims to be entitled to the payment or refund or some part thereof. Nothing in this subdivision affects a claim or right to the payment or refund or part thereof as between persons other than the employer and the fiduciary or insurance company making the payment or refund.

(c) Notwithstanding Section 751 and Chapter 2 (commencing with Section 1150) of Part 4, if payment or refund is made to an employee, former employee or the beneficiary or estate of the employee or former employee pursuant to a written retirement, death, or other employee benefit plan or savings plan, other than a plan governed by the Employee Retirement Income Security Act of 1974, (P.L. 93-406), as amended, the payment or refund fully discharges the employer and the trustee or insurance company making the payment or refund from all adverse claims thereto unless, before the payment or refund is made, the employer or former employer has received at its principal place of business within this state, written notice by or on behalf of some other person that the other person claims to be entitled to the payment or refund or some part thereof. Nothing in this subdivision affects a claim or right to the payment or refund or part thereof as between persons other than the employer and the trustee or insurance company making the payment or refund.

**Comment.** Section 755 continues former Civil Code Section 5106 without substantive change.

**Note:** The federal statute needs to be checked to determine whether the definition in subdivision (a) of Section 755 also should apply to subdivision (c) of Section 755.

## PART 2. CHARACTERIZATION OF MARITAL PROPERTY

- Chapter 1. Community Property
- Chapter 2. Separate Property
- Chapter 3. Damages for Injuries to Married Person
- Chapter 4. Presumptions Concerning Nature of Property
- Chapter 5. Transmutation of Property

### CHAPTER 1. COMMUNITY PROPERTY

§ 760. Community property

§ 761. Property in certain revocable trusts as community property

#### § 760. Community property

760. Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in this state is community property.

**Comment.** Section 760 continues the substance of former Civil Code Section 687 and the first portion of former Section 5110, and extends the definition of community property to include real property situated outside this state. The phrase "except as otherwise provided by statute" has been substituted for the reference to the specific statutory provisions that were listed in former Section 5110.

The effect of including out-of-state real property in the definition is that California courts treat it as community for all purposes, including management and control and division at dissolution. The treatment given such property by the courts of the state in which the property is located will depend upon the applicable choice of law rules of the state.

Section 760 states the basic rule that all property acquired during marriage is community unless it comes within a specified exception. See also Sections 65 ("community property" defined), 800-804 (presumptions concerning nature of property), 850-853 (transmutation of property), 1500-1620 (marital property agreements).

The major exceptions to the basic community property rule are those relating to separate property. See, e.g., Sections 130 ("separate property" defined), 770 (separate property of wife), 771 (separate property of husband), 772 (while living separate and apart), 773 (after judgment of legal separation), 781 (personal injury damages). Section 760 is not an exclusive statement of property classified as community. See, e.g., Sections 761 (property transferred to trust), 780 (damages for personal injury to married person as community property).

#### § 761. Property in certain revocable trusts as community property

761. (a) Unless the trust instrument or the instrument of transfer expressly provides otherwise, community property that is transferred in trust remains community property during the marriage, regardless of the identity of the trustee, if the trust, originally or as amended before or after the transfer, provides that the trust is revocable as to that property during the marriage and the power, if any, to modify the trust as to the rights and interests in that property during the marriage may be exercised only with the joinder or consent of both spouses.

(b) Unless the trust instrument expressly provides otherwise, a power to revoke as to community property may be exercised by either spouse acting alone. Community

property, including any income or appreciation, that is distributed or withdrawn from a trust by revocation, power of withdrawal, or otherwise, remains community property unless there is a valid transmutation of the property at the time of distribution or withdrawal.

(c) The trustee may convey and otherwise manage and control the trust property in accordance with the provisions of the trust without the joinder or consent of the husband or wife unless the trust expressly requires the joinder or consent of one or both spouses.

(d) This section applies to a transfer made before, on, or after July 1, 1987.

(e) Nothing in this section affects the community character of property that is transferred before, on, or after July 1, 1987, in any manner or to a trust other than described in this section.

**Comment.** Section 761 is the same as former Civil Code Section 5110.150. It should be noted that a transfer in trust by a married person is not exempt from the general limitations on transfers and transmutations by married persons acting alone. See Sections 1151, 1152, and 1201 (joinder or consent) and Sections 5110.710-5110.740 (transmutation)].

Although subdivision (a) is intended to be consistent with Revenue Ruling 66-283 in order to obtain community property income tax treatment for the trust property under Internal Revenue Code Section 1014(b)(6), whether the terms of a particular trust are sufficient to obtain such treatment is ultimately a matter of federal law.

One consequence of retention of its community character is that the trust property is subject to claims of creditors and to division at dissolution to the same extent as any other community property. See Sections 910-916. See also Prob. Code § 18200 (creditors' rights against revocable trust during settlor's lifetime)]. Likewise, the interest of the decedent in the community property is subject to testamentary disposition at death unless a contrary method of disposition is provided in the trust instrument, as is typically the case. Prob. Code § 104. In this situation, the spouses' traditional community property right of testamentary disposition is substantially preserved by the unilateral power of revocation. See subdivision (b). Where the trust requires joint action for revocation, the trust could preserve the power of testamentary disposition by granting the first spouse to die a testamentary power of modification, appointment, or disposition as to the spouse's share of the community property.

Subdivision (b) establishes the presumption that either spouse acting alone may revoke the trust as to the community property. The statute makes clear, however, that a unilateral revocation does not change the community property character of property received by the revoking spouse.

Subdivision (c) makes clear that the trustee may manage the trust community property in the same manner as other trust assets, free from the general limitations on disposition of community property imposed on spouses, unless the trust expressly provides such limitations.

Section 761 is not restrictive and does not provide the exclusive means by which community property may be held in trust without loss of its community character. See subdivision (e).

For background on former Civil Code Section 5110.150, see *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

**CHAPTER 2. SEPARATE PROPERTY**

§ 770. Separate property of wife

§ 771. Separate property of husband

§ 772. Earnings and accumulations while living separate and apart

§ 773. Earnings and accumulations after judgment of legal separation

§ 774. Recording inventory of separate personal property

**§ 770. Separate property of wife**

770. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

**Comment.** Section 770 is the same as former Civil Code Section 5107.

**Note:** Probate Code Section 32 defines "devise" as follows: "when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will." "Devise" now covers personal as well as real property. The concept of a bequest of personal property has been eliminated. Should "bequest" be omitted from Section 770?

**§ 771. Separate property of husband**

771. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property. The husband may, without the consent of his wife, convey his separate property.

**Comment.** Section 771 is the same as former Civil Code Section 5108.

**Note:** Probate Code Section 32 defines "devise" as follows: "when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will." "Devise" now covers personal as well as real property. The concept of a bequest of personal property has been eliminated. Should "bequest" be omitted from Section 771?

**§ 772. Earnings and accumulations while living separate and apart**

772. The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

**Comment.** Section 772 is the same as former Civil Code Section 5118.

**§ 773. Earnings and accumulations after judgment of legal separation**

773. After entry of a judgment of legal separation of the parties, the earnings or accumulations of each party are the separate property of the party acquiring the earnings or accumulations.

**Comment.** Section 773 continues former Civil Code Section 5119 without substantive change except that "entry of a judgment" has been substituted for "rendition of a judgment."

**§ 774. Recording inventory of separate personal property**

774. (a) A full and complete inventory of the separate personal property of either spouse may be made out and signed by the spouse, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the recorder of the county in which the parties reside.

(b) The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the party filing the inventory.

**Comment.** Section 774 is the same as former Civil Code Sections 5114 and 5115. See also Section 700 (personal property does not include a leasehold interest in real property).

**Note:** Should Section 774 be retained? The provisions of this section go back to 1872. Is any use made of the procedure provided by this section? Does the filing of the inventory create a presumption (affecting the burden of proof or the burden of producing evidence?) that the property is separate property? If so, why should a spouse be able to reverse the presumption that all property acquired during marriage is community property merely by filing the inventory in the recorder's office? Or does the section apply only to property that actually is separate property? If so, what purpose does the section serve? Does a person dealing with a spouse have to check to see if there is an inventory recorded by the other spouse before engaging in a transaction? Does the filing of the inventory affect the right of, or burden of proof of, a creditor of the nonfiling spouse to reach the property? Must a person extending credit to one spouse only check for a recorded inventory by the other spouse in order to preserve the right to resort to assets listed in the inventory?

**CHAPTER 3. DAMAGES FOR INJURIES TO MARRIED PERSON**

§ 780. Damages for personal injury to married person as community property

§ 781. Cases where damages for personal injury are separate property

§ 782. Injuries to married person by spouse

§ 783. Injuries to married person by third party; extent concurring negligence of spouse allowable as defense

**§ 780. Damages for personal injury to married person as community property**

780. Except as provided in Section 781 and subject to Section 2603, money and other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is community property if the cause of action for the damages arose during the marriage.

**Comment.** Section 780 is drawn from subdivision (b)(4) of former Civil Code Section 4800. See also Code of Civil Procedure Section 370 (right of married person to sue without spouse being joined as a party).

**§ 781. Cases where damages for personal injury are separate property**

5126. (a) Money or other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is the

separate property of the injured person if the cause of action for the damages arose as follows:

(1) After the entry of a judgment of legal separation or a judgment of dissolution of a marriage.

(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.

(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of the spouse's personal injuries from his or her separate property or from the community property, he or she is entitled to reimbursement of his or her separate property or the community property for those expenses from the separate property received by his or her spouse under subdivision (a).

(c) Notwithstanding subdivision (a), if one spouse has a cause of action against the other spouse which arose during the marriage of the parties, money or property paid or to be paid by or on behalf of a party to his or her spouse of that marriage in satisfaction of a judgment for damages for personal injuries to such spouse, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is the separate property of the injured spouse.

(d) Subdivision (a) applies retroactively to any case where the property rights of the marriage have not been finally adjudicated by a judgment of dissolution or legal separation.

**Comment.** Section 781 is the same in substance as former Civil Code Section 5126, except that the phrase "entry of a judgment of legal separation" has been substituted in subdivision (a)(1) of Section 781 for the phrase "rendition of a decree of legal separation" which was used in former Section 5126.

**Note:** Subdivision (d) of Section 781 appears to be obsolete and, if so, need not be continued.

### § 782. Injuries to married person by spouse

782. (a) Where an injury to a married person is caused in whole or in part by the negligent or wrongful act or omission of his or her spouse, the community property may not be used to discharge the liability of the tortfeasor spouse to the injured spouse or his or her liability to make contribution to a joint tortfeasor until the separate property of the tortfeasor spouse, not exempt from execution, is exhausted.

(b) This section does not prevent the use of community property to discharge a liability referred to in subdivision (a) if the injured spouse gives written consent thereto after the occurrence of the injury.

(c) This section does not affect the right to indemnity provided by an insurance or other contract to discharge the tortfeasor spouse's liability, whether or not the consideration given for the contract consisted of community property.

**Comment.** Section 782 continues former Civil Code Section 5113 without substantive change.

**§ 783. Injuries to married person by third party; extent concurring negligence of spouse allowable as defense**

783. If a married person is injured by the negligent or wrongful act or omission of a person other than his or her spouse, the fact that the negligent or wrongful act or omission of the spouse of the injured person was a concurring cause of the injury is not a defense in an action brought by the injured person to recover damages for the injury except in cases where the concurring negligent or wrongful act or omission would be a defense if the marriage did not exist.

**Comment.** Section 783 continues former Civil Code Section 5112 without substantive change. See also Code of Civil Procedure Section 370 (right of married person to sue without spouse being joined as a party).

**CHAPTER 4. PRESUMPTIONS  
CONCERNING NATURE OF PROPERTY**

§ 800. Effect of presumptions

§ 801. Community property presumption

§ 802. Presumption not applicable where marriage terminated by dissolution more than four years before death

§ 803. Gift presumptions

§ 804. Property acquired by married woman before January 1, 1975

**§ 800. Effect of presumptions**

800. (a) The presumptions established by this chapter are presumptions affecting the burden of proof.

(b) The presumptions established by this chapter are rebuttable by tracing the property to a different source or by proof of a transmutation of the character of the property.

**Comment.** Section 800 is a new provision that codifies the rule that the statutory presumptions as to the character of marital property are rebuttable presumptions affecting the burden of proof. They may be rebutted by tracing the property to a contrary source (e.g., Sections 770 and 771) or by proof of a transmutation of the character of the property. See Sections 850-853 (transmutation of property), 1500-1620 (marital property agreements). See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

**Note:** Section 800 is a new provision. This provision was recommended by the Law Revision Commission in 1983. See Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal. L. Revision Comm'n Reports 205 (1984). However, the this provision was not enacted, because concern was raised about other provisions of the recommended legislation. Should Section 800 be added to existing law?

**§ 801. Community property presumption**

801. Except as otherwise provided by statute, property of a married person is presumed to be community property.

**Comment.** Section 801 is a new provision that codifies the case law community property presumption. See, e.g., *Haldeman v. Haldeman*, 202 Cal. App. 2d 498, 21 Cal. Rptr. 75 (1962); *Lynam v. Vorwerk*, 13 Cal. App. 507, 110 P. 355 (1910); *See v. See*, 64 Cal.2d 778, 415 P.2d 776, 51 Cal. Rptr 888 (1966). The effect of the basic community property presumption is to impose the burden of proof on the person seeking to show that property of a married person is separate property. See Section 800. An exception to the general community property presumption created by Section 801 may be found in Section 803 (gift presumptions). See also Prob. Code § 5305 (presumption that married persons hold their funds in deposit account as community property).

**§ 802. Presumption not applicable where marriage terminated by dissolution more than four years before death**

802. The presumption that property acquired during marriage is community property does not apply to any property to which legal or equitable title is held by a person at the time of his or her death if the marriage during which the property was acquired was terminated by dissolution of marriage more than four years prior to the death.

**Comment.** Section 802 continues former Civil Code Section 5111 without substantive change.

**§ 803. Gift presumptions**

803. The following presumptions apply to property acquired by a married person during marriage by gift from the person's spouse:

(a) Except as provided in subdivision (b), the property is presumed to be community property.

(b) Clothing, wearing apparel, jewelry, and other tangible articles of a personal nature, used solely or principally by the person, are presumed to be the person's separate property except to the extent they are substantial in value taking into account the circumstances of the marriage.

**Comment.** Section 803 is a new provision that qualifies the general rule that property acquired by a spouse by gift during marriage is separate property. See Sections 770 (separate property of wife) and 771 (separate property of husband). Notwithstanding this general rule, under Section 803, interspousal "gifts" are presumed to be separate or community, depending on the kind of property given.

Subdivision (b) provides an exception to the general rule stated in subdivision (a). Under subdivision (b), a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage becomes separate property of the spouse receiving the gift. The formal requirements that otherwise must be satisfied for a transmutation of property do not apply to such a gift. See Section 852(c). However, under subdivision (b), the gift of an automobile, for example, would not create a presumption that the property is separate, since the automobile is not an article of a personal nature within the meaning of the section.

The presumptions established by Section 803 can be rebutted by proof that the parties intended to make a transmutation of the character of the property. For limitations on transmutation, see Section 852 (form of transmutation).

**Note: Section 803 is a new provision. This provision was recommended by the Law Revision Commission in 1983. See Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal. L. Revision Comm'n Reports 205 (1984). The provision implements subdivision (c) of Section 852 which was enacted. Section 803 was not enacted because concern was raised about other provisions of the legislation recommended in 1983. Should Section 803 be added to existing law?**

#### **§ 804. Property acquired by married woman before January 1, 1975**

804. Notwithstanding any other provision of this chapter, whenever any real or personal property, or any interest therein or encumbrance thereon, was acquired prior to January 1, 1975, by a married woman by an instrument in writing, the following presumptions apply, and are conclusive in favor of any person dealing in good faith and for a valuable consideration with the married woman or her legal representatives or successors in interest, regardless of any change in her marital status after acquisition of the property:

(a) If acquired by the married woman, the presumption is that the property is the married woman's separate property.

(b) If acquired by the married woman and any other person, the presumption is that the married woman takes the part acquired by her as tenant in common, unless a different intention is expressed in the instrument.

(c) If acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife, unless a different intention is expressed in the instrument.

**Comment.** Section 804 continues a portion of the first paragraph of former Civil Code Section 5110 without substantive change.

### **CHAPTER 5. TRANSMUTATION OF PROPERTY**

§ 850. Transmutation of property by agreement or transfer

§ 851. Fraudulent transfers laws apply

§ 852. Form of transmutation

§ 853. Effect of will

#### **§ 850. Transmutation of property by agreement or transfer**

850. Subject to Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following:

(a) Transmute community property to separate property of either spouse.

(b) Transmute separate property of either spouse to community property.

(c) Transmute separate property of one spouse to separate property of the other spouse.

**Comment.** Section 850 is the same as former Civil Code Section 5110.710. Section 850 codifies the basic rule that spouses may transmute the character of community or separate property. See, e.g., Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143 (1981). In addition to the limitations on transmutation provided in Sections 851 to 853, inclusive, the spouses are subject to the general rules governing the validity of agreements and transfers as well as the special rules that control the actions of persons occupying confidential relations with each other. See Section 721. The characterization of community and separate property may be affected by a general marital property agreement, antenuptial or otherwise, as well as by a transmutation of specific property. For background on former Civil Code Section 5110.710, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 67 (1986).

### § 851. Fraudulent transfers laws apply

851. A transmutation is subject to the laws governing fraudulent transfers.

**Comment.** Section 851 is the same as former Civil Code Section 5110.720. Section 851 codified prior existing law. Cf. *Bailey v. Leeper*, 142 Cal. App. 2d 460, 298 P.2d 684 (1956) (transfer of property from husband to wife); *Frankel v. Boyd*, 106 Cal. 608, 614, 39 P. 939, 941 (1895) (dictum); *Wikes v. Smith*, 465 F.2d 1142 (1972) (bankruptcy). For background on former Civil Code Section 5110.720, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

### § 852. Form of transmutation

852. (a) A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

(b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.

(c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage.

(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.

(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to such a transmutation shall continue to apply.

**Comment.** Section 852 is the same as former Civil Code Section 5110.730. See also Section 700 (real property includes leasehold interests in real property).

Section 852 imposes formalities on interspousal transmutations for the purpose of increasing certainty in the determination whether a transmutation has in fact occurred. Section 852 makes clear that the ordinary rules and formalities applicable to real property transfers apply also to transmutations of real property between the spouses. See Civil Code §§ 1091 and 1624 (statute of frauds), 1213-1217 (effect of recording). This overruled existing case law. See, e.g., *Woods v. Security First Nat'l Bank*, 46 Cal. 2d 697, 701, 299 P.2d 657, 659 (1956). Section 852 also overruled prior existing law that permitted oral transmutation of personal property; however, transmutation by gift of certain personal property is recognized. For background on former Civil Code Section 5110.730, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 68 (1986).

### § 853. Effect of will

853. A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in a proceeding commenced before the death of the person who made the will.

**Comment.** Section 853 is the same as former Civil Code Section 5110.740.

Section 853 reversed the former case law rule that a declaration made in a will as to the character of property may be an effective transmutation of the property before the death of the declarant. See, e.g., *In re Marriage of Lotz*, 120 Cal. App. 3d 379, 174 Cal. Rptr. 618 (1981); *Estate of Wilson*, 64 Cal. App. 3d 786, 134 Cal. Rptr. 749 (1976). Section 853 is consistent with the general concepts that a will is ambulatory and subject to subsequent revocation or modification and does not speak until the testator's death.

For background on former Civil Code Section 5110.740, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984).

## PART 3. LIABILITY OF MARITAL PROPERTY

Chapter 1. Definitions

Chapter 2. General Rules of Liability

Chapter 3. Reimbursement

Chapter 4. Transitional Provisions

Chapter 5. Liability for Death or Injury

### CHAPTER 1. DEFINITIONS

§ 900. Application of definitions

§ 901. Community property

§ 902. Debt

§ 903. Time debt incurred

#### § 900. Application of definitions

900. Unless the provision or context otherwise requires, the definitions contained in this chapter govern the construction of this part.

**Comment.** Section 900 is the same as former Civil Code Section 5120.010. Section 900 limits the application of the definitions, which have specialized uses. See, e.g., Section 901 and Comment thereto ("community property" defined). For background on former Civil

Code Section 5120.010, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 901. Community property

901. "Community property" includes:

(a) Real property situated in another state that would be community property if situated in this state.

(b) Quasi-community property.

**Comment.** Section 901 is the same as former Civil Code Section 5120.020. See also Sections 125 ("quasi-community property" defined), 700 (real property includes leasehold interests in real property), 912 (liability of quasi-community property). The general definition of "community property" (Section 65) does not apply to this part.

Subdivision (a) of Section 901 treats real property situated in another jurisdiction as community property for the purpose of liability for debts. Such property is already treated as community property for purposes of division at dissolution of marriage or legal separation. See, e.g., *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Ford v. Ford*, 276 Cal. App. 2d 9, 80 Cal. Rptr. 435 (1969). This provision does not expand the jurisdiction of a California court to control real property located in another state beyond the constitutional limits on its jurisdiction. Although a California court may not affect title to such property, it may effectuate rights in the property by appropriate orders to parties subject to the personal jurisdiction of the court, such as orders for reimbursement or conveyance.

Subdivision (b) is intended to help implement the policy of Section 912 (liability of quasi-community property) that quasi-community property is treated as community rather than separate for purposes of this part.

For background on former Civil Code Section 5120.020, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 902. Debt

902. "Debt" means an obligation incurred by a married person before or during marriage, whether based on contract, tort, or otherwise.

**Comment.** Section 902 is the same as former Civil Code Section 5120.030. For background on former Civil Code Section 5120.030, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 903. Time debt incurred

903. A debt is "incurred" at the following time:

(a) In the case of a contract, at the time the contract is made.

(b) In the case of a tort, at the time the tort occurs.

(c) In other cases, at the time the obligation arises.

**Comment.** Section 903 is the same as former Civil Code Section 5120.040.

## CHAPTER 2. GENERAL RULES OF LIABILITY

§ 910. Community property liable for debt of either spouse

§ 911. Liability of married person's earnings for premarital debt of spouse

- § 912. Liability of quasi-community property
- § 913. Liability of separate property
- § 914. Liability for necessities
- § 915. Liability for support obligation
- § 916. Liability after property division

### § 910. Community property liable for debt of either spouse

910. (a) Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) For purposes of this section, "during marriage" does not include the period during which the spouses are living separate and apart prior to a judgment for dissolution of marriage or a judgment for legal separation.

**Comment.** Section 910 is the same as subdivision (a) and (c) of former Civil Code Section 5120.110. Section 910 makes clear that the community property is liable for the prenuptial contracts of the spouses. But see Section 911 (liability of earnings of the nondebtor spouse). See Section 901 ("community property" defined). The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of community property. However, special procedural provisions may apply. See, e.g., Code Civ. Proc. § 706.109 (wage garnishment). For rules governing liability after division of the community property, see Section 916. See also Code of Civil Procedure Section 371 (right of married person to defend suit for spouse's right).

The introductory and concluding clauses of subdivision (a) make clear that the community property is liable for all debts of either spouse absent an express statutory exception. Thus, community property under the management and control of one spouse pursuant to Section 1153 (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) or 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of community property, see Section 911 (premarital debts). See also Welf. & Inst. Code §§ 14006.1-14006.6 (eligibility for Medi-Cal).

Section 915 provides that a child or spousal support obligation that does not arise out of the marriage is to be treated as a debt incurred before marriage. Hence, such an obligation is governed by the provisions of Sections 910 and 911. If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Section 703.070 of the Code of Civil Procedure the extent to which the exempt property nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings which are not liable for child support under Sections 910 and 911. Although Section 703.070 of the Code of Civil Procedure requires the court to take into account property which is not liable under Section 911, Section 703.070 does not make the property described in Section 911 liable for payment of the support judgment. Nothing in Section 911 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of

Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of Section 911.

For background on former Civil Code Section 5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 56-57 (1986).

### **§ 911. Liability of married person's earnings for premarital debt of spouse**

911. (a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other community property, except property insignificant in amount.

(b) As used in this section:

(1) "Deposit account" has the meaning prescribed in Section 9105 of the Commercial Code.

(2) "Earnings" means compensation for personal services performed, whether as an employee or otherwise.

**Comment.** Section 911 continues subdivision (b) of former Civil Code Section 5120.110 without substantive change. See also the Comment to Section 910. See also Section 901 ("community property" defined).

The second sentence of subdivision (a) of Section 911 codifies the rule that, for purposes of liability, earnings may not be traced through changes in form. See, e.g., *Pfunder v. Goodwin*, 83 Cal. App. 551, 257 P. 119 (1927). The second sentence of subdivision (a) also makes clear the extent to which paid earnings remain not liable. The effect of the sentence is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community property deposited in the account is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other community property (such as the earnings of the other spouse or other community property income), the intent to segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

### **§ 912. Liability of quasi-community property**

912. For the purposes of this part, quasi-community property is liable to the same extent, and shall be treated the same in all other respects, as community property.

**Comment.** Section 912 is the same as former Civil Code Section 5120.120. See also Section 901 ("community property" defined). For background on former Civil Code Section

5120.110, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 913. Liability of separate property

913. (a) The separate property of a married person is liable for a debt incurred by the person before or during marriage.

(b) Except as otherwise provided by statute:

(1) The separate property of a married person is not liable for a debt incurred by the person's spouse before or during marriage.

(2) The joinder or consent of a married person to an encumbrance of community property to secure payment of a debt incurred by the person's spouse does not subject the person's separate property to liability for the debt unless the person also incurred the debt.

**Comment.** Section 913 is the same as former Civil Code Section 5120.130. See also Section 760 ("community property" defined). For an exception to the rule of subdivision (b), see Section 914 (liability for necessities). For background on former Civil Code Section 5120.130, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 57 (1986).

### § 914. Liability for necessities

914. (a) Notwithstanding the provisions of Section 913, a married person is personally liable for the following debts incurred by the person's spouse during marriage:

(1) A debt incurred for necessities of life of the person's spouse while the spouses are living together.

(2) Except as provided in Section 4302, a debt incurred for common necessities of life of the person's spouse while the spouses are living separately.

(b) The separate property of a married person may be applied to the satisfaction of a debt for which the person is personally liable pursuant to this section. If separate property is so applied at a time when nonexempt community property or separate property of the person's spouse is available but is not applied to the satisfaction of the debt, the married person is entitled to reimbursement to the extent such property was available.

**Comment.** Section 914 is the same as former Civil Code Section 5120.140. See also Section 760 ("community property" defined). Section 914 is an exception to the rule of Section 913 that the separate property of a spouse is not liable for a debt of the other spouse incurred during marriage. The separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse is made a party for the purpose of enforcing the liability. See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist. v. Terranova*, 15 Cal. App. 3d 854, 93 Cal. Rptr. 538 (1971).

Subdivision (a)(1) is consistent with Section 4301 (support obligation while spouses live together) but does not require exhaustion of community property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement).

Subdivision (a)(2) applies where the spouses are living separate not by agreement, as where one spouse leaves without an agreement between the spouses to live separate and apart. Compare Section 4302, which abrogates the obligation of support between spouses living separate by agreement, unless support is stipulated in the agreement. Nothing in subdivision (a)(2) should be deemed to limit the obligation of a spouse for support pursuant to a court order pendente lite or in a judgment of legal separation of the spouses. A spouse who desires to limit the liability pursuant to subdivision (a)(2), or a spouse who desires a greater support obligation than provided in subdivision (a)(2), may seek a support order, which supersedes liability under subdivision (a)(2).

Subdivision (a)(2) also abolishes the "station in life" test of cases such as *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses), in determining what is a necessary of life; the separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse while living separate and apart. Cf. *Ratzlaff v. Portillo*, 14 Cal. App. 3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is necessary required to sustain life).

For general provisions governing reimbursement, see Section 920. For background on former Civil Code Section 5120.140, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 58-59 (1986).

### § 915. Liability for support obligation

915. (a) For the purpose of this part, a child or spousal support obligation of a married person that does not arise out of the marriage shall be treated as a debt incurred before marriage, regardless whether a court order for support is made or modified before or during marriage and regardless whether any installment payment on the obligation accrues before or during marriage.

(b) If community property is applied to the satisfaction of a child or spousal support obligation of a married person that does not arise out of the marriage, at a time when nonexempt separate income of the person is available but is not applied to the satisfaction of the obligation, the community is entitled to reimbursement from the person in the amount of the separate income, not exceeding the community property so applied.

(c) Nothing in this section limits the matters a court may take into consideration in determining or modifying the amount of a support order, including, but not limited to, the earnings of the spouses of the parties.

**Comment.** Section 915 is the same as former Civil Code Section 5120.150. See also Section 760 ("community property" defined).

Subdivision (a) of Section 915 makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community property

of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Section 911 (liability of community property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

Subdivision (b) codifies the rule of *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967), that the community is entitled to reimbursement, but prescribes a fixed measure for the community reimbursement based on the separate income of the obligor spouse. See also *Bare v. Bare*, 256 Cal. App. 2d 684, Cal. Rptr. 335 (1967); *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (c) makes clear that despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings of the spouses of both parties may be taken into account by the court in setting the amount of the support obligation. This codifies prior case law. See, e.g., *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 178 Cal. Rptr. 477 (1981).

For background on former Civil Code Section 5120.150, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59 (1986).

### § 916. Liability after property division

916. (a) Notwithstanding any other provision of this chapter, after division of community and quasi-community property pursuant to Division 9 (commencing with Section 2500):

(1) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person before or during marriage and the person is personally liable for the debt, whether or not the debt was assigned for payment by the person's spouse in the division.

(2) The separate property owned by a married person at the time of the division and the property received by the person in the division is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property. Nothing in this paragraph affects the liability of property for the satisfaction of a lien on the property.

(3) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person's spouse before or during marriage, and the person is personally liable for the debt, if the debt was assigned for payment by the person in the division of the property. If a money judgment for the debt is entered after the division, the property is not subject to enforcement of the judgment and the judgment may not be enforced against the married person, unless the person is made a party to the judgment for the purpose of this paragraph.

(b) If property of a married person is applied to the satisfaction of a money judgment pursuant to subdivision (a) for a debt incurred by the person that is assigned for payment by the person's spouse, the person has a right of reimbursement from the

person's spouse to the extent of the property applied, with interest at the legal rate, and may recover reasonable attorney's fees incurred in enforcing the right of reimbursement.

**Comment.** Section 916 is the same as former Civil Code Section 5120.160, except that the reference in the former section to former Civil Code Section 4800 has been replaced in Section 916 by a reference to Division 9 (commencing with Section 2500). In addition to the provisions that were included in former Section 4800, Division 9 also includes provisions that were not included in former Section 4800.

Section 916 prescribes rules of liability of former community and quasi-community property and former separate property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a)(1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

Paragraph (2) and (3) of subdivision (a) reversed the former case law rule that a creditor may seek enforcement of a money judgment against the former community property in the hands of a nondebtor spouse after dissolution of the marriage. See, e.g., *Bank of America N.T. & S.A. v. Mantz*, 4 Cal. 2d 322, 49 P.2d 279 (1935). Subdivision (a)(2) makes clear that former community property received by the nondebtor spouse at division is liable only if the nondebtor spouse is assigned the debt in division. In the case of a judgment entered after the division of property, the nondebtor spouse must be made a party for due process reasons. If the property division calls for the one spouse to pay the debt and the creditor satisfies the judgment out of property of the other spouse, the other spouse will have a right of reimbursement pursuant to subdivision (b). Subdivision (a)(2) does not affect enforceability of liens on the property. See, e.g., *Kinney v. Vallentyne*, 15 Cal. 3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. For general provisions governing reimbursement, see Section 920. This subdivision is not intended to authorize reimbursement if reimbursement is precluded under Title 11 of the United States Code (Bankruptcy) by discharge of the debt in a case concerning the married person's spouse. Cf. *In re Marriage of Clements*, 134 Cal. App. 3d 737, 184 Cal. Rptr. 756 (1982).

For background on former Civil Code Section 5120.160, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 59-60 (1986).

### CHAPTER 3. REIMBURSEMENT

§ 920. General provisions

§ 920. General provisions

920. A right of reimbursement provided by this part is subject to the following provisions:

(a) The right arises regardless which spouse applies the property to the satisfaction of the debt, regardless whether the property is applied to the satisfaction of the debt voluntarily or involuntarily, and regardless whether the debt to which the property is applied is satisfied in whole or in part. The right is subject to an express written waiver of the right by the spouse in whose favor the right arises.

(b) The measure of reimbursement is the value of the property or interest in property at the time the right arises.

(c) The right shall be exercised not later than the earlier of the following times:

(1) Within three years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

(2) In proceedings for division of community and quasi-community property pursuant to Division 9 (commencing with Section 2500) or in proceedings upon the death of a spouse.

**Comment.** Section 920 is the same as former Civil Code Section 5120.210, except that the reference in the former section to former Civil Code Section 4800 has been replaced in Section 920 by a reference to Division 9 (commencing with Section 2500). In addition to the provisions that were included in former Section 4800, Division 9 also includes provisions that were not included in former Section 4800.

Section 920 limits reimbursement rights to a three-year enforceability period after discovery of the application of the property to the satisfaction of the debt, or less if a dissolution occurs before the end of the three-year period. Contrast *Weinberg v. Weinberg*, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967) (community property applied to support payments entitled to reimbursement at dissolution); *In re Marriage of Walter*, 57 Cal. App. 3d 802, 129 Cal. Rptr. 351 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution). Under Section 920, the reimbursement right applies even though the spouse seeking reimbursement may have satisfied or consented to satisfaction of the debt out of a particular type of property, unless the spouse expressly waived in writing the reimbursement right. Contrast *In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 147 Cal. Rptr. 154 (1978) (no reimbursement where community property applied to support payments and no separate property available to make payments).

For background on former Civil Code Section 5120.210, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 60-61 (1986).

## CHAPTER 4. TRANSITIONAL PROVISIONS

§ 930. Enforcement of debts

§ 931. Reimbursement rights

### § 930. Enforcement of debts

930. Except as otherwise provided by statute, the provisions of this part govern the liability of separate and community property and the personal liability of a married person for a debt enforced on or after January 1, 1985, regardless whether the debt was incurred before, on, or after that date.

**Comment.** Section 930 continues former Civil Code Section 5120.320 without substantive change and former Civil Code Section 5120.310 insofar as that section applied to former Section 5120.320. See also Section 760 ("community property" defined). Section 930 states the general rule that this part applies to all debts enforced on or after January 1, 1985, regardless of the time they were incurred. For an exception to the general rule, see Section 931 (reimbursement rights). For background on former Civil Code Sections 5120.310 and 5120.320, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 931. Reimbursement rights

931. The provisions of this part that govern reimbursement apply to all debts, regardless whether satisfied before, on, or after January 1, 1985.

**Comment.** Section 931 continues subdivision (a) of former Civil Code Section 5120.330 without substantive change and former Civil Code Section 5120.310 insofar as that section applied to former Section 5120.330(a). Section 931 makes clear that reimbursement rights provided in this part apply to debts satisfied before as well as after the operative date of former Section 5120.330.

Subdivision (b) of former Section 5120.330 is omitted as obsolete. For background on former Civil Code Section 5120.330, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

## CHAPTER 5. LIABILITY FOR DEATH OR INJURY

### § 1000. Liability for death or injury

#### § 1000. Liability for death or injury

1000. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where he or she would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community property and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community property.

(c) This section does not apply to the extent the liability is satisfied out of proceeds of insurance for the liability, whether the proceeds are community property or separate property. Notwithstanding Section 920, no right of reimbursement under this section shall be exercised more than seven years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

**Comment.** Section 1000 is the same as former Civil Code Section 5122. See also Section 760 ("community property" defined). Subdivision (c) of Section 1000 limits the order of satisfaction requirement to liabilities not covered by insurance. Subdivision (c) also imposes a seven-year limitation period on any reimbursement right implied by the order of satisfaction requirement. Cf. *In re Marriage of Stitt*, 147 Cal. App. 3d 579, 195 Cal. Rptr. 172 (1983). For background on former Civil Code Section 5122, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984); 18 Cal. L. Revision Comm'n Reports 61 (1986).

## **PART 4. MANAGEMENT AND CONTROL OF MARITAL PROPERTY**

Chapter 1. Definitions and General Provisions

Chapter 2. Community Personal Property

Chapter 3. Community Real Property

### **CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS**

Article 1. Definitions

Article 2. General Provisions

#### **Article 1. Definitions**

§ 1100. Definitions

#### **§ 1100. Definitions**

1100. Unless the provision or context otherwise requires, as used in this part:

(a) "Disposition" includes, but is not limited to, a transfer, conveyance, sale, gift, encumbrance, or lease.

(b) "Management and control" includes disposition.

(c) "Property" means real and personal property and any interest therein.

**Comment.** Section 1100 is new. Subdivision (a) makes clear that the term "disposition" is used in a broad sense and is not limited to a sale of the property. Subdivision (b) is included for drafting convenience. Subdivision (c) reflects the fact that real and personal property are treated the same in this part except in special cases. A reference to community property means any interest in the property, including the interest of either spouse in the property.

#### **Article 2. General Provisions**

§ 1110. Duty of good faith

§ 1111. Claims for breach of duty

§ 1112. Court ordered accounting and determination of rights in property

§ 1113. Addition of name of spouse to community property

§ 1114. Limitation of action

§ 1115. Dispensing with the requirement that other spouse consent

§ 1116. Independent action authorized

§ 1117. Where married person has conservator or lacks capacity

§ 1118. Agency

#### **§ 1110. Duty of good faith**

1110. (a) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general

rules which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure, upon request, to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable.

(b) The case law defining the standard of care applicable to Section 721, but not the case law applicable to former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code, applies to this section. In no case shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by former Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code (as repealed by Chapter 820 of the Statutes of 1986) or Division 9 (commencing with Section 15000) of the Probate Code.

**Comment.** Section 1110 is the same as subdivision (e) of former Civil Code Section 5125. For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Note:** Subdivision (b) of Section 1110 leaves a great deal to be desired as a clear statement of the duty to act in good faith. Can a better statement be developed? See also the Note to Section 721.

### § 1111. Claims for breach of duty

1111. A spouse has a claim against the other spouse for a breach of the duty imposed by this part that results in substantial impairment to the claimant spouse's present undivided one-half interest in the community estate.

**Comment.** Section 1111 is the same in substance as subdivision (a) of former Civil Code Section 5125.1.

**Note:** Does the word "present" add anything to Section 1111? Should the word be omitted or should more precise language be substituted for it?

### § 1112. Court ordered accounting and determination of rights in property

1112. A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

**Comment.** Section 1112 is the same as subdivision (b) of former Civil Code Section 5125.1.

### § 1113. Addition of name of spouse to community property

1113. A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community

property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

- (a) A partnership interest held by the other spouse as a general partner.
- (b) An interest in a professional corporation or professional association.
- (c) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.
- (d) Any other property, if the revision would adversely affect the rights of a third person.

**Comment.** Section 1113 is the same as subdivision (c) of former Civil Code Section 5125.1.

#### **§ 1114. Limitation of action**

1114. (a) Except as provided in subdivision (b), an action under Section 1111 shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(b) An action may be commenced under this article upon the death of a spouse or in conjunction with a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the marriage, without regard to the time limitations set forth in subdivision (a).

(c) The defense of laches may be raised in any action brought under this article.

(d) Except as to actions authorized by subdivision (b), remedies under Section 1111 apply only to transactions or events occurring on or after July 1, 1987.

**Comment.** Section 1114 is the same as subdivision (d) of former Civil Code Section 5125.1.

#### **§ 1115. Dispensing with the requirement that other spouse consent**

1115. In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

- (a) The proposed transaction is in the best interest of the community.
- (b) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

**Comment.** Section 1115 is the same as subdivision (e) of former Civil Code Section 5125.1.

**Note:** Section 1115 is inconsistent with Section 1117. Is Section 1115 an exception to Section 1117? If so, should this exception (Section 1115) be retained or should it be repealed? In what proceeding is the motion provided for in Section 1115 to be made?

#### **§ 1116. Independent action authorized**

1116. An action may be brought under this article without filing a proceeding for dissolution of the marriage or legal separation or for a judgment of nullity of the

marriage, or may be brought in conjunction with such a proceeding, or upon the death of a spouse.

**Comment.** Section 1116 continues subdivision (f) of former Civil Code Section 5125.1 without substantive change.

### **§ 1117. Where married person has conservator or lacks capacity**

1117. Where one or both of the spouses either has a conservator of the estate or lacks legal capacity to manage and control community property, the procedure for management and control (which includes disposition) of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

**Comment.** Section 1117 is the same as subdivision (a) of former Civil Code Section 5128. Subdivisions (b) and (c) of former Section 5128 were elaborations of subdivision (a) and are not continued because they are unnecessary. See Section 1100 ("management and control" includes disposition).

Section 1117 makes provisions of the Probate Code applicable:

(1) Where one or both spouses has a conservator of the estate or lacks legal capacity to manage and control community property (which includes the disposition of community property). See, e.g., Prob. Code § 3051.

(2) Where one or both spouses has a conservator of the estate or lacks legal capacity for a transaction requiring joinder or consent under Section 1151, 1152, or 1201. See, e.g., Prob. Code § 3071. See also Prob. Code § 3012 (legal capacity).

For background on former Civil Code Section 5128, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

### **§ 1118. Agency**

1118. A spouse may act by duly authorized agent in the management and control of community property, and may appoint the other spouse to act as agent.

**Comment.** Section 1118 generalizes a provision of former Section 5127 (real property joinder requirement may be satisfied by duly authorized agent). Language is added to make clear that one spouse may appoint the other spouse to act as an agent. See also Civil Code Sections 2400-2513 (powers of attorney).

## **CHAPTER 2. COMMUNITY PERSONAL PROPERTY**

§ 1150. Management and control

§ 1151. Gifts of community personal property

§ 1152. Disposition or encumbrance of family dwelling or household goods

§ 1153. Community property business

### **§ 1150. Management and control**

1150. Except as otherwise provided by statute, either spouse has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

**Comment.** Section 1150 is the same in substance as subdivision (a) of former Civil Code Section 5125. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in former Section 5125. Section 1150 omits the language found in former Section 5125 "whether acquired prior to or on or after January 1, 1975." The omitted language is unnecessary. See also Section 1100 (defining "management and control" to include disposition).

For exceptions to the rule stated in Section 1150, see Sections 761 (property in certain revocable trusts), 1151 (gifts of community personal property without a valuable consideration), 1152 (disposition or encumbrance of family dwelling or household goods), 1153 (community property business), and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (personal property does not include a leasehold interest in real property). See also Prob. Code §§ 5100-5407 (multiple-party account held by financial institution).

For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Note:** "Except as otherwise provided by statute," has been substituted in Section 1150 for an introductory clause of existing Section 5125(a) purports to list all the exceptions to the rule stated in what is now Section 1150.

Should the provision of existing Section 5125(a) that is omitted from Section 1150 as obsolete be continued in Section 1150?

### § 1151. Gifts of community personal property

1151. A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

**Comment.** Section 1151 is the same as subdivision (b) of former Civil Code Section 5125. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Note:** Should there be a provision permitting a married person to make a unilateral gift of community personal property (such as \$50.00 to the United Fund or \$10.00 in the church collection) if usual or moderate under the circumstances of the marriage? See also the Note to Section 1153.

### § 1152. Disposition or encumbrance of family dwelling or household goods

1152. A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

**Comment.** Section 1152 is the same as subdivision (c) of former Civil Code Section 5125. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Note:** Should a spouse be permitted to sell household goods and effects (such as at a garage sale) without the written consent of the person's spouse? Should it be required that the consent be "written" or should oral consent also be sufficient?

### § 1153. Community property business

1153. (a) Except as provided in Sections 1151 and 1152 and in Chapter 3 (commencing with Section 1200), a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction. A change of the form of a business is not subject to the requirement of written notice.

(b) Remedies for the failure by a managing spouse to give prior written notice as required by this section are only as specified in Article 2 (commencing with Section 1110) of Chapter 1. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

**Comment.** Section 1153 continues subdivision (d) of former Civil Code Section 5125 without substantive change. See also Section 700 (personal property does not include a leasehold interest in real property). For background on former Civil Code Section 5125, see *Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1784-85 (1982); *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

**Note:** Does the exception for Section 1151 in the introductory clause of Section 1153 mean that the operator of a community property business may not (without the WRITTEN consent of the other spouse) make a small contribution or gift to the girl scouts, little league, or similar organization as a means of promoting the good will of the business?

## CHAPTER 3. COMMUNITY REAL PROPERTY

§ 1200. Management and control

§ 1201. Requirement that spouse join in lease, transfer, or encumbrance

§ 1202. Limitation of actions

**§ 1200. Management and control**

1200. Except as otherwise provided by statute, either spouse has the management and control of the community real property.

**Comment.** Section 1200 is the same in substance as the introductory portion of the first sentence of former Civil Code Section 5127. The introductory clause ("Except as otherwise provided by statute") has been substituted for the listing of specific statutory provisions found in former Section 5127. Section 1200 omits the language found in former Section 5127 "whether acquired prior to or on or after January 1, 1975." The omitted language is obsolete and unnecessary.

For exceptions to the rule stated in Section 1200, see Sections 761 (property in certain revocable trusts) and 1117 (one or both spouses lacking capacity or having conservator). See also Section 700 (real property includes leasehold interests in real property).

**Note:** Should the provision "Except as otherwise provided by statute," be substituted in Section 1200 for an introductory clause which attempts to list all exceptions and qualifications of the rule stated in Section 1200? Existing Section 5127 (introductory portion) purports to list all the exceptions to the rule stated in what is now Section 1200.

Do we need to retain the phrase "whether acquired prior to or on or after January 1, 1975" at the end of Section 1200 or is this phrase obsolete and unnecessary?

**§ 1201. Requirement that spouse join in lease, transfer, or encumbrance**

1201. (a) Except as otherwise provided in this section, both spouses must join in executing any instrument by which community real property or an interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) This section does not apply to a lease, mortgage, conveyance, or transfer of real property, or of an interest in real property, between husband and wife.

(c) The sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, is presumed to be valid if executed prior to January 1, 1975.

(d) The sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, is presumed to be valid if executed on or after January 1, 1975.

**Comment.** Section 1201 continues the last portion of the first sentence of former Civil Code Section 5127 without substantive change. The clause "either personally or by duly authorized agent," which was included in former Section 5127, has been omitted as unnecessary in view of the general provision of Section 1118 which permits a spouse to act by duly authorized agent in the management and control of community property.

**§ 1202. Limitation of actions**

1202. No action to avoid an instrument mentioned in this chapter, affecting property standing of record in the name of either spouse alone, executed by the spouse alone,

shall be commenced after the expiration of one year from the filing for record of the instrument in the recorder's office in the county in which the land is situate.

**Comment.** Section 1202 continues a portion of the second sentence of former Civil Code Section 5127 without substantive change. The portion of the second sentence relating to an instrument executed by the husband alone is omitted as obsolete and unnecessary.

## **PART 5. MARITAL AGREEMENTS**

Chapter 1. General Provisions

Chapter 2. Uniform Premarital Agreement Act

Chapter 3. Agreements Between Husband and Wife

### **CHAPTER 1. GENERAL PROVISIONS**

§ 1500. Effect of premarital and other marital property agreements

§ 1501. Agreements by minors

§ 1502. Recording of agreements

§ 1503. Law applicable to premarital agreements made before January 1, 1986

#### **§ 1500. Effect of premarital and other marital property agreements**

1500. The property rights of husband and wife prescribed by statute may be altered by a premarital agreement or other marital property agreement.

**Comment.** Section 1500 is the same as former Civil Code Section 5200. See also Sections 1600-1617 (premarital agreements), Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

**Note:** Does the "other marital property agreement" have to be in writing? Does it have to be signed by both parties? Any other requirements, such as independent counsel? How does Section 1500 relate to "transmutations" and the statutory requirements for transmutations? It would be desirable to draft a statute covering marital property agreements made DURING the marriage. In this connection, see Probate Code Sections 140-147. See also Probate Code Section 150. See also Section 721 and the Comment to that section.

#### **§ 1501. Agreements by minors**

1501. A minor may make a valid premarital agreement or other marital property agreement if the minor is emancipated or is otherwise capable of contracting marriage.

**Comment.** Section 1501 is the same as former Civil Code Section 5201.

#### **§ 1502. Recording of agreements**

1502. (a) A premarital agreement or other marital property agreement that is executed and acknowledged or proved in the manner that a grant of real property is required to be executed and acknowledged or proved may be recorded in the office of the recorder of each county in which real property affected by the agreement is situated.

(b) Recording or nonrecording of a premarital agreement or other marital property agreement has the same effect as recording or nonrecording of a grant of real property.

**Comment.** Section 1502 is the same as former Civil Code Section 5202. See also Section 700 (real property includes leasehold interests in real property).

**§ 1503. Law applicable to premarital agreements made before January 1, 1986**

1503. Nothing in this part affects the validity or effect of premarital agreements made before January 1, 1986, and the validity and effect of those agreements shall continue to be determined by the law applicable to the agreements prior to January 1, 1986.

**Comment.** Section 1503 is the same as former Civil Code Section 5203 except that "this part" is substituted for "this chapter."

**CHAPTER 2. UNIFORM PREMARITAL AGREEMENT ACT**

Article 1. Preliminary Provisions

Article 2. Premarital Agreements

**Article 1. Preliminary Provisions**

§ 1600. Short title

§ 1601. Application of chapter

**§ 1600. Short title**

1600. This chapter shall be known and may be cited as the Uniform Premarital Agreement Act.

**Comment.** Section 1600 is the same as former Civil Code Section 5300. Section 1600 is the same as Section 10 of the Uniform Premarital Agreement Act (1983). See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

**§ 1601. Application of chapter**

1601. This chapter is effective on and after January 1, 1986, and applies to any premarital agreement executed on or after that date.

**Comment.** Section 1601 is the same as former Civil Code Section 5302. Section 1601 is the same as Section 12 of the Uniform Premarital Agreement Act (1983). See also Section 1503 (law applicable to premarital agreements made before January 1, 1986).

**Article 2. Premarital Agreements**

§ 1610. Definitions

§ 1611. Formalities; consideration

§ 1612. Subject matter of premarital agreement

§ 1613. Agreement becomes effective upon marriage

§ 1614. Amendment; revocation

§ 1615. Enforcement

§ 1616. Effect of void marriage

§ 1617. Limitation of actions

**§ 1610. Definitions**

1610. As used in this chapter:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(b) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

**Comment.** Section 1610 is the same as former Civil Code Section 5310. Section 1610 is the same as Section 1 of the Uniform Premarital Agreement Act (1983).

### § 1611. Formalities; consideration

1611. A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration.

**Comment.** Section 1611 is the same as former Civil Code Section 5311. Section 1611 is the same as Section 2 of the Uniform Premarital Agreement Act (1983). See also Sections 1501 (agreements by minors), 1502 (recording of agreements).

### § 1612. Subject matter of premarital agreement

1612. (a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

(5) The ownership rights in and disposition of the death benefit from a life insurance policy.

(6) The choice of law governing the construction of the agreement.

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

**Comment.** Section 1612 is the same as former Civil Code Section 5312. Section 1612 is the same in substance as Section 3 of the Uniform Premarital Agreement Act (1983) except that Section 1612 omits a provision of the uniform act which specifically provides that the parties to a premarital agreement may contract with respect to "the modification or elimination of spousal support." See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights), 150 (contracts concerning will or succession).

### § 1613. Agreement becomes effective upon marriage

1613. A premarital agreement becomes effective upon marriage.

**Comment.** Section 1613 is the same as former Civil Code Section 5313. Section 1613 is the same as Section 4 of the Uniform Premarital Agreement Act (1983).

**§ 1614. Amendment; revocation**

1614. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

**Comment.** Section 1614 is the same as former Civil Code Section 5314. Section 1614 is the same as Section 5 of the Uniform Premarital Agreement Act (1983).

**§ 1615. Enforcement**

1615. (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) He or she was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.

(B) He or she did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) He or she did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

**Comment.** Section 1615 is the same as former Civil Code Section 5315. Section 1615 is the same in substance as subsections (a) and (c) of Section 6 of the Uniform Premarital Agreement Act (1983). See also Prob. Code §§ 140-147 (surviving spouse's waiver of rights).

**§ 1616. Effect of void marriage**

1616. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

**Comment.** Section 1616 is the same as former Civil Code Section 5316. Section 1616 is the same as Section 7 of the Uniform Premarital Agreement Act (1983).

**§ 1617. Limitation of actions**

1617. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**Comment.** Section 1617 is the same as former Civil Code Section 5317. Section 1617 is the same as Section 8 of the Uniform Premarital Agreement Act (1983).

**CHAPTER 3. AGREEMENTS BETWEEN HUSBAND AND WIFE****§ 1620. Restrictions on contract altering spouses' legal relations****§ 1620. Restrictions on contract altering spouses' legal relations**

1620. Except as provided in Chapter 3 (commencing with Section 3580) of Part 1 of Division 11 and in Sections 3651, 4302, and 4337, a husband and wife cannot, by a contract with each other, alter their legal relations, except as to property.

**Comment.** Section 1620 continues the first portion of former Civil Code Section 4802 without substantive change except that a reference to Section 4302 has been added and the reference to Chapter 3 (commencing with Section 3580) of Part 1 of Division 11 includes Sections 3587 and 3591 which were not included within the provisions referred to in former Civil Code Section 4802. For provisions relating to support agreements, see Sections 3580-3591. See also Sections 2550 (agreement concerning division of community estate), 2641 (agreement concerning community contributions and loans for education or training of a spouse), 3592 (authority of court where obligations for property settlement or support are discharged in bankruptcy), 3651 (modification or termination of support order where there is an agreement between parties on the subject of support), 4302 (spouse living separate by agreement), and 4337 (unless otherwise agreed by parties in writing, support obligation terminates upon death of either party or the remarriage of the supported party). For the requirements for a waiver, agreement, or property settlement affecting certain rights of a surviving spouse upon death of other spouse, see Prob. Code §§ 140-147. See also Section 12 (construction of terms "husband" and "wife").

**Note:** Section 1620 is a completely inadequate statement of the extent to which a husband and wife may make an agreement during marriage affecting their property. A much more detailed statute in the Probate Code (Prob. Code §§ 140-147) governs agreements made during the marriage affecting rights upon the death of one of the spouses.

**DIVISION 5. PARENT AND CHILD RELATIONSHIP**

Part 1. Uniform Parentage Act

Part 2. Issue of Wife Cohabiting With Her Husband

Part 3. Blood Tests to Determine Paternity

**PART 1. UNIFORM PARENTAGE ACT**

Chapter 1. General Provisions

Chapter 2. Establishing Parent and Child Relationship

Chapter 3. Jurisdiction and Venue

Chapter 4. Determination of Parent and Child Relationship

Chapter 5. Termination of Parental Rights in Adoption Proceeding

Chapter 6. Protective and Temporary Custody Orders

**CHAPTER 1. GENERAL PROVISIONS**

§ 1700. Short title

§ 1701. "Parent and child relationship" defined

§ 1702. Relationship not dependent on marriage

§ 1703. Submission of child's birth certificate to court; check to determine if child is missing person

§ 1704. Pendente lite relief of custody or grant of visitation rights

**§ 1700. Short title**

1700. This part shall be known and may be cited as the "Uniform Parentage Act."

**Comment.** Section 1700 is the same as former Civil Code Section 7000. Section 1700 is similar to Section 27 of the Uniform Parentage Act (1973). See also Sections 3 (construction of provisions drawn from uniform acts) and 14 (severability of provisions).

**§ 1701. "Parent and child relationship" defined**

1701. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his or her natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

**Comment.** Section 1701 is the same as former Civil Code Section 7001. Section 1701 is the same in substance as Section 1 of the Uniform Parentage Act (1973). Compare Code Civ. Proc. § 377 (right to maintain wrongful death action).

**§ 1702. Relationship not dependent on marriage**

1702. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

**Comment.** Section 1702 is the same as former Civil Code Section 7002. Section 1702 is the same as Section 2 of the Uniform Parentage Act (1973).

**§ 1703. Submission of child's birth certificate to court; check to determine if child is missing person**

1703. Section 3140 is applicable to proceedings pursuant to this part.

**Comment.** Section 1703 continues former Civil Code Section 7017.6 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**Note:** Section 1703 is comparable to Section 3415.

**§ 1704. Pendente lite relief of custody or grant of visitation rights**

1704. A court may order pendente lite relief consisting of an award of custody pursuant to Section 3021, or the granting of reasonable visitation rights pursuant to Section 3100, if the court finds both of the following:

(a) Based on the tests authorized by Section 1851, a parent-child relationship exists pursuant to Section 1850.

(b) The award of custody or the granting of visitation rights would be in the best interests of the child.

**Comment.** Section 1704 continues former Civil Code Section 7004.5 without substantive change. The reference found in former Section 7004.5 to former Civil Code Section 4600 has been replaced in Section 1704 by a reference to the portion of former Section 4600 that authorized the court to make a custody order during the pendency of a proceeding where there is at issue the custody of a minor child. No provision comparable to Section 1704 is found in the Uniform Parentage Act (1973).

**Note:** What relationship does Section 1885 (rebuttable presumption of paternity based on paternity index) have to the standard set out in Section 1704 which refers to Section 1850 (conclusive presumption of paternity).

**CHAPTER 2. ESTABLISHING PARENT AND CHILD RELATIONSHIP**

§ 1710. Methods of establishing

§ 1711. Presumption of paternity

§ 1712. Nature of paternity presumptions

§ 1713. Artificial insemination

§ 1714. Promise to furnish support

**§ 1710. Methods of establishing**

1710. The parent and child relationship may be established as follows:

(a) Between a child and the natural mother, it may be established by proof of her having given birth to the child, or under this part.

(b) Between a child and the natural father, it may be established under this part.

(c) Between a child and an adoptive parent, it may be established by proof of adoption.

**Comment.** Section 1710 is the same as former Civil Code Section 7003. Section 1710 is the same in substance as Section 3 of the Uniform Parentage Act (1973), except that Section 1710 omits the Uniform Act reference to the Revised Uniform Adoption Act.

**§ 1711. Presumption of paternity**

1711. A man is presumed to be the natural father of a child if he meets the conditions as set forth in Part 2 (commencing with Section 1850) or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated

by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(1) With his consent, he is named as the child's father on the child's birth certificate, or

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

**Comment.** Section 1711 continues subdivision (a) of former Civil Code Section 7004 without substantive change. Section 1711 is the same in substance as subsection (a) of Section 4 of the Uniform Parentage Act (1973) with some additions and omissions. As to the nature of the presumption created, see Section 1712.

### § 1712. Nature of paternity presumptions

1712. (a) Except as provided in Part 2 (commencing with Section 1850), a presumption under Section 1711 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 1711 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 1711 is rebutted by a judgment establishing paternity of the child by another man.

**Comment.** Section 1712 continues subdivision (b) of former Civil Code Section 7004 without substantive change. "Judgment" has been substituted for "decree" in subdivision (c). Section 1712 is similar to subsection (b) of Section 4 of the Uniform Parentage Act (1973).

**§ 1713. Artificial insemination**

1713. (a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and retain the husband's consent as part of the medical record, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

**Comment.** Section 1713 is the same as former Civil Code Section 7005. Section 1713 is similar to Section 5 of the Uniform Parentage Act (1973).

**§ 1714. Promise to furnish support**

1714. (a) A promise in writing to furnish support for a child, growing out of a presumed or alleged father and child relationship, does not require consideration and, subject to Section 1732, is enforceable according to its terms.

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

**Comment.** Section 1714 continues without change former Civil Code Section 7016, but the former reference to subdivision (d) of former Section 7006 (which should have been a reference to subdivision (e) of former Section 7006) has been corrected to refer to what is now Section 1732. Section 1714 is the same in substance as Section 22 of the Uniform Parentage Act (1973).

**CHAPTER 3. JURISDICTION AND VENUE****§ 1720. Jurisdiction; venue****§ 1720. Jurisdiction; venue**

1720. (a) The superior court has jurisdiction of an action brought under this part.

(b) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(c) The action may be brought in the county in which the child resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

**Comment.** Section 1720 is the same as subdivisions (a), (b), and (c) of former Civil Code Section 7007. Section 1720 is the same in substance as portions of Section 8 of the Uniform Parentage Act (1973). See also Code Civ. Proc. § 395 (venue in proceeding under this division to determine parental relation).

**Note:** Section 395 of the Code of Civil Procedure provides in part:

In a proceeding to determine parental relation under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code . . . , the county in which the child resides is the proper county for the trial of the action."

Should this language be deleted from Section 395 because it is inconsistent with subdivision (c) of Section 1720?

## CHAPTER 4. DETERMINATION OF PARENT AND CHILD RELATIONSHIP

Article 1. Determination of Father and Child Relationship

Article 2. Determination of Mother and Child Relationship

### Article 1. Determination of Father and Child Relationship

§ 1730. Persons who may bring action; when action may be brought

§ 1731. Action by man not a presumed father to establish that he is natural father of child

§ 1732. Agreement between alleged father or mother or child does not bar action

§ 1733. Action before birth of child

§ 1734. Action by district attorney

§ 1735. Parties

§ 1736. Effect of judgment determining existence or nonexistence of parent and child relationship

§ 1737. Other provisions of judgment

§1737.5.

Factors court to consider in determining amount and period of support

§ 1738. Change of name of child

§ 1739. Issuance of new birth certificate

§ 1740. Award of attorney's fees and other costs

§ 1741. Enforcement of judgment

§ 1742. Modification of judgment

§ 1743. Confidentiality of hearings and records

### § 1730. Persons who may bring action; when action may be brought

1730. (a) A child, the child's natural mother, or a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 1711, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 1711.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 1711 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the

presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) of Section 1711.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 1711 or whose presumed father is deceased may be brought by the child or personal representative of the child, the State Department of Social Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 1762 if a proceeding has been filed under Chapter 5 (commencing with Section 1760). The parental rights of the alleged natural father shall be determined as set forth in Section 1764.

**Comment.** Section 1730 continues subdivisions (a), (b), and (c) of former Civil Code Section 7006 without substantive change. Section 1730 is similar to subsections (a), (b), and (c) of Section 6 of the Uniform Parentage Act (1973).

**§ 1731. Action by man not a presumed father to establish that he is natural father of child**

1731. Except as to cases coming within the provisions of Part 2 (commencing with Section 1850), a man not a presumed father may bring an action for the purpose of declaring that he is the natural father of a child having a presumed father under Section 1711, if the mother relinquishes for, consents to, or proposes to relinquish for or consent to, the adoption of the child. An action under this section shall be brought within 30 days after (1) the man is served as prescribed in Section 1766 with a notice that he is or could be the father of the child or (2) the birth of the child, whichever is later. The commencement of the action suspends a pending proceeding in connection with the adoption of the child until a judgment in the action is final.

**Comment.** Section 1731 continues subdivision (d) of former Civil Code Section 7006 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

**§ 1732. Agreement between alleged father or mother or child does not bar action**

1732. Regardless of its terms, an agreement between an alleged or presumed father and the mother or child does not bar an action under this chapter.

**Comment.** Section 1732 is the same as subdivision (e) of former Civil Code Section 7006. Section 1732 is similar to subsection (d) of Section 6 of the Uniform Parentage Act (1973).

**§ 1733. Action before birth of child**

1733. An action under this chapter may be brought before the birth of the child.

**Comment.** Section 1733 is the same as subdivision (f) of former Civil Code Section 7006. Section 1733 is a substitute for subsection (e) of Section 6 of the Uniform Parentage Act (1973).

#### **§ 1734. Action by district attorney**

1734. The district attorney may, at his or her discretion, bring an action under this chapter in any case in which the district attorney believes it to be appropriate.

**Comment.** Section 1734 is the same as subdivision (g) of former Civil Code Section 7006. No comparable provision is found in the Uniform Parentage Act (1973).

#### **§ 1735. Parties**

1735. (a) The child may, if under the age of 12 years, and shall, if 12 years of age or older, be made a party to the action. If the child is a minor and a party to the action, the child shall be represented by a guardian ad litem appointed by the court.

(b) The natural mother, each man presumed to be the father under Section 1711, and each man alleged to be the natural father, may be made parties and shall be given notice of the action in the manner prescribed in Section 1766 and an opportunity to be heard.

(c) The court may align the parties.

**Comment.** Section 1735 is the same as former Civil Code Section 7008. Section 1735 is similar to Section 9 of the Uniform Parentage Act (1973).

#### **§ 1736. Effect of judgment determining existence or nonexistence of parent and child relationship**

1736. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

**Comment.** Section 1736 is the same as subdivision (a) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493 § 29). Section 1736 is similar to subsection (a) of Section 15 of the Uniform Parentage Act (1973).

#### **§ 1737. Other provisions of judgment**

1737. (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(b) The judgment or order may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(1) Three years.

(2) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to subdivision (c).

(3) The date of separation of the parties until the date of the filing of the action.

(c) In circumstances where paternity has not been legally established or the parties were married but separated before the child's date of birth, the court shall not award child support under subdivision (b), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to subdivision (b) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period.

(d) Subdivisions (b) and (c) apply only to a child born on or after January 1, 1989.

**Comment.** Section 1737 continues subdivision (c) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493 § 29) without substantive change. Subdivision (a) of Section 1737 is the same as subsection (c) of Section 15 of the Uniform Parentage Act (1973). For general provisions comparable to subdivisions (b) and (c) of Section 1737, see Sections 4100-4104.

**Note:** Section 7010 of the Civil Code has a "sunset provision" that omits from the section the material set out above in subdivisions (b) to (d), inclusive, of Section 1737 as of January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends the January 1, 1993, expiration date.

Subdivisions (b)-(d) of Section 1737 largely duplicate the general provisions relating to the same subject matter found in Sections 4100-4104 of the second portion of the staff draft of the Family Code. Should subdivisions (b)-(d) of Section 1737 be omitted (together with Section 1737.5) from the Family Code and the general provisions in Sections 4100-4104 of the second portion of the staff draft be made applicable to the support order made under subdivision (a) of Section 1737? This will require that the substance of Section 1737.5 be included in the provisions of Sections 4100-4104. See the Note to Section 4100.

#### § 1737.5. Factors court to consider in determining amount and period of support

1737.5. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including, but not limited to, all of the following:

(a) Any agreements made between the parents before the date of the filing of the action.

(b) Any previous payments made for the support of the child by the parent from whom support is sought.

(c) Any bad faith on the part of either parent.

(d) Any undue delay in seeking to establish an order for child support, the reasons for the undue delay, and whether either parent has been prejudiced as a result of the delay.

(e) Any other factors deemed relevant by the court.

**Comment.** Section 1737.5 is the same as subdivision (d) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493 § 29) without substantive change. Section 1737.5 is similar to subdivision (e) of Section 15 of the Uniform Parentage Act (1973).

**Note:** Section 7010 of the Civil Code has a "sunset provision" that omits from the section all of the material set out above that follows the phrase "all relevant facts" in the introductory portion of Section 1737.5 as of January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends the January 1, 1993, expiration date.

#### § 1738. Change of name of child

1738. The superior court has jurisdiction in an action under this part to change the name of a minor or adult child for whom a parent and child relationship is established pursuant to Section 1736, upon application in accordance with Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure. The procedure for a change of name shall conform to those provisions, except that the application for the change of name may be included with the petition filed under this part and except as provided in Sections 1277 and 1278 of the Code of Civil Procedure.

**Comment.** Section 1738 is the same as subdivision (d) of former Civil Code Section 7007. No comparable provision is found in the Uniform Parentage Act (1973). See also Section 1739 (issuance of new birth certificate).

#### § 1739. Issuance of new birth certificate

1739. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8 of Division 9 of the Health and Safety Code.

**Comment.** Section 1739 is the same as subdivision (b) of former Civil Code Section 7010 (as amended by 1990 Cal. Stat. ch. 1493 § 29). Section 1739 is similar to subsection (b) of Section 15 of the Uniform Parentage Act (1973). See also Section 1738 (jurisdiction and proceedings to change name of child).

#### § 1740. Award of attorney's fees and other costs

1740. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including

blood tests, to be paid by the parties in proportions and at times determined by the court.

**Comment.** Section 1740 is the same as former Civil Code Section 7011. Section 1740 is the same as the first sentence of Section 16 of the Uniform Parentage Act (1973). For general provisions relating to award of attorney's fees and costs, see Sections 270-275.

### § 1741. Enforcement of judgment

1741. (a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the obligation of the father may be enforced in the same or other proceedings by any of the following:

(1) The mother.

(2) The child.

(3) The public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral.

(4) Any other person, including a private agency, to the extent the person has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to any of the following:

(1) The mother.

(2) The clerk of the court.

(3) A person, corporation, or agency designated to administer the payments for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments, including imprisonment for contempt, apply.

**Comment.** Section 1741 continues former Civil Code Section 7012 without substantive change. Section 1741 is the same in substance as Section 17 of the Uniform Parentage Act (1973).

### § 1742. Modification of judgment

1742. The court has continuing jurisdiction to modify a judgment or order made under this part. A judgment or order relating to an adoption may only be modified in the same manner and under the same conditions as a decree of adoption may be modified under Section 8100 or 8102.

**Comment.** Section 1742 is the same as former Civil Code Section 7013 (as amended by 1990 Cal. Stat. ch. 1363 § 8, which becomes operative on July 1, 1991). Section 1742 is similar to Section 18 of the Uniform Parentage Act (1973).

### § 1743. Confidentiality of hearings and records

1743. (a) Notwithstanding any other law concerning public hearings and records, a hearing or trial held under this part may be held in closed court without admittance of any person other than those necessary to the action or proceeding. Except as

provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown.

(b) Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys.

**Comment.** Section 1743 is the same as former Civil Code Section 7014. Section 1743 is similar to Section 20 of the Uniform Parentage Act (1973).

## **Article 2. Determination of Mother and Child Relationship**

§ 1750. Action to determine mother and child relationship

§ 1750. Action to determine mother and child relationship

1750. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

**Comment.** Section 1750 is the same as former Civil Code Section 7015. Section 1750 is the same as Section 21 of the Uniform Parentage Act (1973).

**Note:** Should "person" be substituted for "party" in Section 1750?

## **CHAPTER 5. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDING**

§ 1760. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child

§ 1761. Relinquishment or consent by father; notice to and rights of mother

§ 1762. Proceeding to terminate parental rights of father

§ 1763. Effort to identify natural father

§ 1764. Notice to man identified as possible natural father; determination and order concerning his parental rights

§ 1765. Order terminating parental rights of unknown natural father

§ 1766. Manner of giving notice; order dispensing with notice

§ 1767. Setting for hearing; preference for trial

§ 1768. Continuance of hearing

§ 1769. Appeal from order requiring or dispensing with father's consent

§ 1770. No filing fee

**§ 1760. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child**

1760. If a mother relinquishes for, consents to, or proposes to relinquish for or consent to the adoption of a child who has (1) a presumed father under Section 1711 or (2) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under Part 2 (commencing with Section 7600) of Division 16, unless the father's relationship to the child has been previously

terminated or determined by a court not to exist or the father has voluntarily relinquished or consented to the adoption of the child.

**Comment.** Section 1760 is the same as subdivision (a)(1) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9) without substantive change. Section 1760 is similar to Section 24 of the Uniform Parentage Act (1973).

**Note:** Should "the law" be substituted for "prior law" in clause (2) of the introductory portion of Section 1760?

### § 1761. Relinquishment or consent by father; notice to and rights of mother

1761. If a father relinquishes or consents to, or proposes to relinquish a child for adoption, the mother shall be given notice of the adoption proceeding and have the rights provided under Part 2 (commencing with Section 7600) of Division 16, unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily relinquished or consented to the adoption of the child.

**Comment.** Section 1761 is the same as subdivision (a)(2) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9). No comparable provision is found in the Uniform Parentage Act (1973).

**Note:** Does Section 1761, which is not found in the Uniform Act, add anything to the requirements of the California Adoption Law? If Section 1761 is retained, should the introductory clause of Section 1761 be revised to read: "If a father relinquishes, consents to, or proposes to relinquish for or consent to the adoption of a child,"? This substitution would conform Section 1761 to the language used in Sections 1760 and 1762.

### § 1762. Proceeding to terminate parental rights of father

1762. If a mother relinquishes for, consents to, or proposes to relinquish for or consent to the adoption of a child who does not have (1) a presumed father under Section 1711 or (2) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the superior court to terminate the parental rights of the father, unless:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court; or

(b) The father has been served as prescribed in Section 1766 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 1730 within 30 days of service of the notice or the birth of the child, whichever is later.

**Comment.** Section 1762 is the same as subdivision (b) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9). Section 1762 replaces subsection (a) of Section 25 of the Uniform Parentage Act (1973).

**Note:** Should "the law" be substituted for "prior law" in clause (2) of the introductory portion of Section 1762?

### § 1763. Effort to identify natural father

1763. (a) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by any of the following:

- (1) The State Department of Social Services.
- (2) A licensed county adoption agency.
- (3) The licensed adoption agency to which the child is to be relinquished.

(4) In the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department.

(b) The inquiry shall include all of the following:

(1) Whether the mother was married at the time of conception of the child or at any time thereafter.

(2) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(3) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(4) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) The department or the licensed adoption agency shall report the findings to the court.

**Comment.** Section 1763 continues subdivision (c) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9) without substantive change. Section 1763 is similar to subsection (b) of Section 25 of the Uniform Parentage Act (1973).

### § 1764. Notice to man identified as possible natural father; determination and order concerning his parental rights

1764. (a) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Section 1766, unless he has been served with a written notice alleging that he is or could be the natural father of the child to be adopted or placed or relinquished for adoption and has failed to bring an action pursuant to subdivision (c) of Section 1730 to declare the existence of the father and child relationship within 30 days of serving the notice or the birth of the child, whichever is later. If any of them fails to appear or, if appearing, fails to claim parental rights, his parental rights with reference to the child shall be terminated.

(b) If the natural father or a man representing himself to be the natural father claims parental rights, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his parental rights, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that that person's consent is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child.

(c) Section 4600 does not apply to the proceeding under this chapter.

(d) Nothing in this chapter changes the rights of a presumed father under Section 1711.

**Comment.** Section 1764 is the same as subdivision (d) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9). Section 1764 replaces subsection (c) of Section 25 of the Uniform Parentage Act (1973).

#### **§ 1765. Order terminating parental rights of unknown natural father**

1765. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child.

**Comment.** Section 1765 is the same as subdivision (e) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9) without substantive change. Section 1765 is the same as the first sentence of subsection (d) of Section 25 of the Uniform Parentage Act (1973).

#### **§ 1766. Manner of giving notice; order dispensing with notice**

1766. (a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the provisions of the Code of Civil Procedure for the service of process in a civil action in this state, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

(b) If a person identified as the natural father or possible natural father cannot be located or his whereabouts are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

**Comment.** Section 1766 is the same as subdivision (f) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9). Section 1766 is similar to subsection (e) of Section 25 of the Uniform Parentage Act (1973).

#### **§ 1767. Setting for hearing; preference for trial**

1767. (a) Notwithstanding any other provision of law, an action to terminate the parental rights of a father of a child as specified in this chapter shall be set for hearing not more than 45 days after filing of the petition therefor and completion of service thereon or the entry of an order dispensing with notice of the proceedings. The petition shall either specify the date of the hearing or state that a hearing will be held on a date as determined pursuant to this section, which shall be separately noticed.

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to terminate parental rights pursuant to Part 3 (commencing with Section 3200) of Division 10.

**Comment.** Section 1767 is the same as subdivision (a) and the first sentence of subdivision (b) of former Civil Code Section 7017.2. No comparable provision is found in the Uniform Parentage Act (1973).

#### **§ 1768. Continuance of hearing**

1768. (a) The court may continue the proceedings for not more than 30 days as necessary to appoint counsel and to enable counsel to adequately prepare for the case or for other good cause.

(b) In order to obtain an order for a continuance of the hearing, written notice shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

(c) Continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(d) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

**Comment.** Section 1768 continues the second sentence of subdivision (b) and subdivision (c) of former Civil Code Section 7017.2 without substantive change. No comparable provision is found in the Uniform Parentage Act (1973).

#### **§ 1769. Appeal from order requiring or dispensing with father's consent**

1769. An order requiring or dispensing with a father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

**Comment.** Section 1769 is the same as subdivision (g) of former Civil Code Section 7017 (as amended by 1990 Cal. Stat. ch. 1363 § 9, which becomes operative on July 1, 1991). Section 1769 replaces the second sentence of subdivision (d) of Section 25 of the Uniform Parentage Act (1973).

**§ 1770. No filing fee**

1770. There shall be no filing fee charged for a petition filed pursuant to Section 1762.

**Comment.** Section 1770 is the same as former Civil Code Section 7017.1. No comparable provision is found in the Uniform Parentage Act (1973).

**CHAPTER 6. PROTECTIVE AND TEMPORARY CUSTODY ORDERS**

Article 1. Ex Parte Orders

Article 2. Orders Issuable After Notice and Hearing

Article 3. Required Statements in Order

Article 4. Registration and Enforcement of Orders

Article 5. Protective Orders Included in Judgment

**Article 1. Ex Parte Orders**

§ 1800. Ex parte protective and temporary custody orders

§ 1801. Limitation on issuance of mutual restraining order

**§ 1800. Ex parte protective and temporary custody orders**

1800. During the pendency of a proceeding under this part, upon application, the superior court may, in the manner provided by Part 4 (commencing with Section 240) of Division 2, issue ex parte orders doing any one or more of the following:

(a) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party or the minor child.

(b) Excluding one party from the dwelling of the party who has care, custody and control of the child upon a showing of both of the following:

(1) The party to be excluded has assaulted or threatens to assault the other party or the minor child.

(2) Physical or emotional harm would otherwise result to the party or the minor child.

(c) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under subdivision (a) or (b).

(d) Determining the temporary custody of a minor child who is the subject of a proceeding under this part and the right of a party to visit the minor child upon such conditions as the court may determine.

**Comment.** Section 1800 continues the first sentence of subdivision (a) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) with the addition of "telephoning" in subdivision (a). No comparable provision is found in the Uniform Parentage Act (1973). As to when notice to the other party is required, see Section 241. As to the order

to show cause and hearing thereon, see Sections 242-244. See also Section 1811 (order after notice and a hearing excluding one party from dwelling upon a showing only that physical or emotional harm would otherwise result to the other party or the minor child).

### **§ 1801. Limitation on issuance of mutual restraining order**

1801. A mutual restraining order specified in subdivision (a) of Section 1800 may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in subdivision (a) of Section 1800.

**Comment.** Section 1801 is the same as subdivision (f) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 1901, 5514.

## **Article 2. Orders Issuable After Notice and Hearing**

§ 1810. Protective, temporary custody, and restitution orders

§ 1811. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result

§ 1812. Duration of restraining order granted after notice and hearing

### **§ 1810. Protective, temporary custody, and restitution orders**

1810. (a) The court may issue, after notice and a hearing, any of the orders set forth in Section 1800.

(b) Upon notice and a hearing, the court may also issue any of the following orders:

(1) An order that restitution be paid to the plaintiff for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing incurred as a direct result of the abuse or any actual physical injuries sustained therefrom.

(2) An order that restitution be paid by the plaintiff for out-of-pocket expenses incurred by a party as a result of any order issued *ex parte* which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order.

(3) An order requiring the defendant to pay any public or private agency for the reasonable cost of providing services to the plaintiff required as a direct result of the abuse inflicted by the opposing party or any injuries sustained therefrom.

(c) An order for restitution under subdivision (b) shall not include damages for pain and suffering.

**Comment.** Subdivision (a) of Section 1810 is the same as the first sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

Subdivisions (b) and (c) are the same as the same as the fourth and fifth sentences of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 55 ("abuse" defined).

**§ 1811. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result**

1811. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the party who has care, custody, and control of the minor child upon a showing only that physical or emotional harm would otherwise result to the party or the minor child.

**Comment.** Section 1811 is the same as the second sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

**§ 1812. Duration of restraining order granted after notice and hearing**

1812. A restraining order granted after notice and a hearing pursuant to this article shall remain in effect, in the discretion of the court, not to exceed three years, except as provided in Section 1840, unless otherwise terminated by the court, extended by mutual consent of the parties, or extended by further order of the court on the motion of a party.

**Comment.** Section 1812 is the same as the third sentence of subdivision (b) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973).

**Article 3. Required Statements in Order**

§ 1820. Statement of date of expiration

§ 1821. Notice to defendant in temporary restraining order

**§ 1820. Statement of date of expiration**

1820. An order issued pursuant to this chapter shall state on its face the date of expiration of the order.

**Comment.** Section 1820 continues subdivision (c) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1902(a).

**§ 1821. Notice to defendant in temporary restraining order**

1821. The temporary restraining order shall state on its face a notice in substantially the following form:

**"NOTICE TO DEFENDANT:** If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

**Comment.** Section 1821 continues subdivision (d) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2) without substantive change. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1902(b).

**Note:** Should the notice be directed as "NOTICE OF PETITIONER/RESPONDENT." See Section 1801 (mutual restraining order). Is "respondent" a better term than "defendant"?

**Article 4. Registration and Enforcement of Orders**

§ 1830. Transmittal to local law enforcement agency

§ 1831. Law enforcement agency to make information concerning order available to law enforcement officers

§ 1832. Service of restraining order against domestic violence by law enforcement officer

§ 1833. Criminal penalty for violation of order

**§ 1830. Transmittal to local law enforcement agency**

1830. The court shall order the party who obtained the order or the attorney for the party to deliver or the clerk to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to this chapter, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the party or the attorney for the party, having jurisdiction over the residence of the party who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence against the party and the minor child are likely to occur.

**Comment.** Section 1830 is the same as the first sentence of subdivision (e) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1903, 5800.

**§ 1831. Law enforcement agency to make information concerning order available to law enforcement officers**

1831. Each appropriate law enforcement agency shall make available to any law enforcement officer responding to the scene of reported domestic violence, through an existing system for verification, information as to the existence, terms, and current status of an order issued pursuant to this chapter.

**Comment.** Section 1831 is the same as the second sentence of subdivision (e) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1904, 5801.

**§ 1832. Service of restraining order against domestic violence by law enforcement officer**

1832. (a) A restraining order against domestic violence issued pursuant to subdivision (a), (b), or (c) of Section 1800 may, upon the request of the moving party, be served upon the responding party by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(b) The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

**Comment.** Section 1832 is the same as subdivision (g) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1906, 5802.

**Note:** Except for Section 1832, the provisions of this part relating to orders refer to the "plaintiff" and the "defendant," rather than to the "moving party" and the "responding party." Either Section 1832 should adopt the plaintiff-defendant language or the language of the other sections should be conformed to Section 1832.

### § 1833. Criminal penalty for violation of order

1833. A willful and knowing violation of an order granted pursuant to this chapter is a crime punishable under Section 273.6 of the Penal Code.

**Comment.** Section 1833 is the same as subdivision (h) of former Civil Code Section 7020 (as amended by 1990 Cal. Stat. ch. 935 § 2). No comparable provision is found in the Uniform Parentage Act (1973). For comparable provisions, see Sections 1907, 5807.

## Article 5. Protective Orders Included in Judgment

§ 1840. Protective orders included in judgment entered under this part

### § 1840. Protective orders included in judgment entered under this part

1840. (a) A judgment entered under this part may include any orders issued pursuant to subdivisions (a), (b), or (c) of Section 1800.

(b) If an order is included in the judgment pursuant to subdivision (a), the judgment shall state on its face both of the following:

- (1) Which provisions of the judgment are the orders.
- (2) The date of expiration of the orders, which shall be not more than three years from the date the judgment is issued unless extended by the court after notice and hearing.

(c) The judgments, or orders, or extensions thereof shall be transmitted to law enforcement agencies in the manner provided by Section 1830.

(d) A willful and knowing violation of an order included in the judgment pursuant to subdivision (a) is a crime punishable under Section 273.6 of the Penal Code.

**Comment.** Section 1840 is the same as former Civil Code Section 7021. No comparable provision is found in the Uniform Parentage Act (1973). For a comparable provision, see Section 1910.

## PART 2. ISSUE OF WIFE COHABITING WITH HER HUSBAND

§ 1850. Conclusive presumption concerning child of marriage

§ 1851. Use of blood tests to determine paternity

**§ 1850. Conclusive presumption concerning child of marriage**

1850. Except as provided in Section 1851, the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.

**Comment.** Section 1850 is the same as subdivision (a) of former Evidence Code Section 621 (as amended by 1990 Cal. Stat. ch. 543 § 2).

**Note:** Should "child" be substituted for "issue" in Section 1850?

**§ 1851. Use of blood tests to determine paternity**

1851. (a) Notwithstanding Section 1850, if the court finds that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to Part 3 (commencing with Section 1880), are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem. As used in this subdivision, "presumed father" has the meaning given in Sections 1711 and 1712.

(c) The notice of motion for blood tests under this section may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.

(d) The notice of motion for blood tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court.

(e) Subdivision (a) does not apply in any of the following cases:

(1) A case which reached final judgment of paternity on or before September 30, 1980.

(2) A case coming within the provisions of Section 1713.

(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.

**Comment.** Section 1851 restates without substantive change subdivisions (b) to (h), inclusive, of former Evidence Code Section 621 (as amended by 1990 Cal. Stat. ch. 543 § 2). The provision of former Section 621 that made what is now subdivision (d) of Section 1851 not applicable to a case pending before the court on September 30, 1980, has been omitted as obsolete.

**PART 3. BLOOD TESTS TO DETERMINE PATERNITY**

§ 1880. Short title

§ 1881. Order for blood tests in civil actions involving paternity

§ 1882. Tests made by experts

§ 1883. Compensation of experts

§ 1884. Effect of test results

§ 1885. Rebuttable presumption of paternity; paternity index of 100 or more

§ 1886. Limitation on application in criminal matters

§ 1887. Right to produce other expert evidence

**§ 1880. Short title**

1880. This part may be cited as the Uniform Act on Blood Tests to Determine Paternity.

**Comment.** Section 1880 is the same as former Evidence Code Section 890. Section 1880 is similar to Section 9 of the Uniform Act on Blood Tests to Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts) and 14 (severability of provisions).

**§ 1881. Order for blood tests in civil actions involving paternity**

1881. In a civil action in which paternity is a relevant fact, the court may upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, and shall upon motion of any party to the action made at a time so as not to delay the proceedings unduly, order the mother, child, and alleged father to submit to blood tests. If a party refuses to submit to the tests, the court may resolve the question of paternity against that party or enforce its order if the rights of others and the interests of justice so require. A party's refusal to submit to the tests is admissible in evidence in any proceeding to determine paternity.

**Comment.** Section 1881 is the same as former Evidence Code Section 892. Section 1881 is similar to Section 1 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**Note:** Does "civil action" as used in Section 1881 also cover a "civil proceeding"? Should the language be revised to make clear that a "proceeding" also is covered by the section?

**§ 1882. Tests made by experts**

1882. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and are subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court.

**Comment.** Section 1882 is the same as former Evidence Code Section 893. Section 1882 is the same as Section 2 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 1883. Compensation of experts**

1883. The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe,

or that the proportion of any party be paid by the county, and that, after payment by the parties or the county or both, all or part or none of it be taxed as costs in the action.

**Comment.** Section 1883 is the same as former Evidence Code Section 894. Section 1883 is similar to the first three sentences of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

#### § 1884. Effect of test results

1884. (a) If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly.

(b) If the experts disagree in their findings or conclusions, or if the tests show the probability of the alleged father's paternity, the question, subject to the provisions of Section 352 of the Evidence Code, shall be submitted upon all the evidence, including evidence based upon the tests.

**Comment.** Section 1884 is the same as former Evidence Code Section 895. Section 1884 is similar to Section 4 of the Uniform Act on Blood Tests to Determine Paternity (1952).

#### § 1885. Rebuttable presumption of paternity; paternity index of 100 or more

1885. (a) There is a rebuttable presumption, affecting the burden of proof, of paternity, if the court finds that the paternity index, as calculated by the experts qualified as examiners of genetic markers, is 100 or greater. This presumption may only be rebutted by a preponderance of the evidence.

(b) As used in this section:

(1) "Genetic markers" mean separate identifiable genes or complexes of genes generally isolated as a result of blood typing, at least seven of which are normally tested in a paternity determination.

(2) "Paternity index" means the commonly accepted indicator used for denoting the existence of paternity. It represents the mathematically computed probability that the putative father is the true father of the child, as opposed to any other man of similar ethnic background. The paternity index, computed using results of various paternity tests following accepted statistical principles for the computation of probability, shall be in accordance with the method of expression accepted at the International Conference on Parentage Testing at Airlie House, Virginia, May 1982, sponsored by the American Association of Blood Banks.

**Comment.** Section 1885 is the same as former Evidence Code Section 895.5.

#### § 1886. Limitation on application in criminal matters

1886. This part applies to criminal actions subject to the following limitations and provisions:

(a) An order for the tests shall be made only upon application of a party or on the court's initiative.

(b) The compensation of the experts shall be paid by the county under order of court.

(c) The court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of Section 1884; otherwise, the case shall be submitted for determination upon all the evidence.

**Comment.** Section 1886 is the same as former Evidence Code Section 896. Section 1886 is similar to Section 6 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**§ 1887. Right to produce other expert evidence**

1887. Nothing in this part prevents a party to a action from producing other expert evidence on the matter covered by this part; but, where other expert witnesses are called by a party to the action, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action.

**Comment.** Section 1887 is the same as former Evidence Code Section 897. The last portion of Section 1887 is similar to the last sentence of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

**DIVISION 6. PROVISIONS COMMON  
TO NULLITY AND DISSOLUTION PROCEEDINGS**

- Part 1. Restraining and Protective Orders
- Part 2. Notice to Insurance Carriers
- Part 3. Restoration of Wife's Former Name

**PART 1. RESTRAINING AND PROTECTIVE ORDERS**

- Chapter 1. Ex Parte Orders
- Chapter 2. Judgment

**CHAPTER 1. EX PARTE ORDERS**

- § 1900. Ex parte protective orders during pendency of proceeding; purposes of order
- § 1901. Limitation on issuance of mutual restraining order
- § 1902. Required statements in order
- § 1903. Transmittal to local law enforcement agency
- § 1904. Law enforcement agency to make information concerning order available to law enforcement officers
- § 1905. Enforcement of order
- § 1906. Service of restraining order against domestic violence by law enforcement officer
- § 1907. Penalty for violation of restraining order against domestic violence
- § 1908. Judicial Council forms and instructions

**§ 1900. Ex parte protective orders during pendency of proceeding; purposes of order**

1900. During the pendency of any proceeding for dissolution of marriage, for a judgment of nullity of marriage, or for legal separation, upon application of either party, the court may, in the manner provided by Part 4 (commencing with Section 240) of Division 2, issue ex parte orders doing any one or more of the following:

(a) Restraining a person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring that party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures.

(b) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court, upon a showing of good cause, other named family and household members.

(c) Excluding one party from the family dwelling or from the dwelling of the other for the period of time and upon the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling, upon a showing, as provided in Section 753, of both of the following:

(1) The party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or any minor child of the parties or of the other party.

(2) Physical or emotional harm would otherwise result to the other party or any person under the care, custody, or control of the other party, or to any minor child of the parties or of the other party.

(d) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under subdivision (b) or (c).

(e) Determining the temporary custody of any minor children of the marriage, and the right of a party to visit the minor children upon the conditions the court determines.

(f) Determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the pendency of the order.

**Comment.** Section 1900 continues the first paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) with the addition of "telephoning" in subdivision (b). The reference to the "superior court" had been omitted as unnecessary in view of the general provision found in Section 200. For general provisions relating to temporary restraining orders, See Sections 240-244. See also Sections 3100, 3101 (visitation rights). For comparable provisions, see Sections 753(b), 1800, 5550.

**Note:** Should the court be authorized to issue a restraining order under subdivision (a) of Section 1900 against a person who is not a party to the proceeding? Is Section 753(b) necessary in view of subdivision (c) of Section 1900?

### § 1901. Limitation on issuance of mutual restraining order

1901. A mutual restraining order specified in subdivision (b) of Section 1900 may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in that subdivision.

**Comment.** Section 1901 continues the second paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 1801, 5514.

### § 1902. Required statements in order

1902. (a) An order issued pursuant to this chapter shall include on its face all of the following:

- (1) A statement of the date of expiration of the order.
- (2) The following statement: "This order shall be enforced by all law enforcement officers."
- (3) The following statement: "This order is effective when made. The law enforcement agency shall enforce it immediately upon receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it."

(b) The temporary restraining order specified in subdivision (b) of Section 1900 shall also state on its face a notice in substantially the following form:

**"NOTICE TO PETITIONER/RESPONDENT:** If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

**Comment.** Paragraph (1) of subdivision (a) of Section 1902 continues the third paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. Paragraph (2) of subdivision (a) is new and is drawn from former Code of Civil Procedure Section 552 (Domestic Violence Prevention Act). Paragraph (3) of subdivision (a) supersedes the first sentence of subdivision (c) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1), and uses language taken from the official Judicial Council form for restraining orders in place of the similar language used in former Section 4359. See Temporary Restraining Orders (Family Law) Judicial Council Form 1285.05 (Rev. July 1, 1987). For a provision comparable to subdivision (a)(1), see Section 1820.

Subdivision (b) continues subdivision (d) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For a provision comparable to subdivision (b), see Section 1821.

**Note:** Should the provisions of Section 1902 relating to enforcement of the order by law enforcement officers be limited to orders set forth in subdivisions (b), (c), and (d) of Section 1900? Should subdivision (b) apply to any of the restraining orders, rather than being limited to an order specified in subdivision (b) of Section 1900? Note that Section 1821 makes the provision of subdivision (b) applicable to any of the restraining orders.

### **§ 1903. Transmittal to local law enforcement agency**

1903. The court shall order the party who obtained the order or the attorney for that party to deliver or the clerk to mail a copy of any order, or extension, modification or termination thereof, granted pursuant to this part, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the party or the attorney for the party, having jurisdiction over the residence of the party and other locations where the court determines that acts of domestic violence against the party are likely to occur.

**Comment.** Section 1903 continues the first sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1830, 5800.

**Note:** Should Section 1903 apply only to orders set forth in subdivisions (b), (c), and (d) of Section 1900? See Section 1906 which limits scope of provision relating to service of the restraining order against domestic violence by the law enforcement officer.

**§ 1904. Law enforcement agency to make information concerning order available to law enforcement officers**

1904. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of an order issued pursuant to this part to any law enforcement officer responding to the scene of reported domestic violence.

**Comment.** Section 1904 continues the second sentence of the first paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1831, 5801.

**Note:** Should Section 1904 apply to any order issued pursuant to "this part," which would include an order included in a judgment under Section 1910?

**§ 1905. Enforcement of order**

1905. (a) Notwithstanding Section 1903, subject to subdivision (b), an order issued pursuant to this chapter is enforceable in any place in this state.

(b) An order issued pursuant to this chapter is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to Section 1903 or has otherwise received a copy of the order or the officer enforcing the order has been shown a copy of the order.

**Comment.** Section 1905 continues the second paragraph of subdivision (b) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change.

**Note:** Should Section 1905 apply to an order issued pursuant to "this part," thereby including an order in the judgment pursuant to Section 1910? Should there be a comparable provision included in the comparable provisions of other divisions that provide for a protective order against domestic violence?

**§ 1906. Service of restraining order against domestic violence by law enforcement officer**

1906. (a) A restraining order against domestic violence issued pursuant to subdivision (b), (c), or (d) of Section 1900 may, upon the request of the moving party, be served upon the responding party by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(b) The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

**Comment.** Section 1906 continues subdivision (e) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1832, 5802.

**§ 1907. Penalty for violation of restraining order against domestic violence**

1907. A willful and knowing violation of any order granted pursuant to subdivision (b), (c), or (d) of Section 1900 is a misdemeanor punishable under Section 273.6 of the Penal Code.

**Comment.** Section 1907 continues the second sentence of subdivision (c) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 1833, 5807.

**Note:** Why does the criminal penalty apply only to violation of an order granted pursuant to subdivision (b), (c), or (d) of Section 1900? The Judicial Council form for the order states: "Violation of these temporary restraining orders is a misdemeanor, punishable by a \$1000 fine, six months in jail, or both." The actual order made on the Judicial Council form is not limited to the subdivisions listed above; it covers all of the subdivisions now found in Section 1900. Should "crime" be substituted for "misdemeanor" in Section 1907?

**§ 1908. Judicial Council forms and instructions**

1908. The Judicial Council shall promulgate forms and instructions for applications for orders and orders granted pursuant to this part.

**Comment.** Section 1908 continues the fourth paragraph of subdivision (a) of former Civil Code Section 4359 (as amended by 1990 Cal. Stat. ch. 935 § 1) without substantive change. For comparable provisions, see Sections 5519, 6295. See also Section 210 and the Comment to that section.

**Note:** Is Section 1908 necessary in view of Section 210 (general provision that Judicial Council may provide by rule for the practice and procedure under the Family Law Act)? Note that Section 1908 is mandatory ("shall promulgate") and specifically mentions not only "forms" and "orders" but also "instructions for applications for orders."

**CHAPTER 2. JUDGMENT**

§ 1910. Protective orders included in judgment

§ 1911. Notice concerning effect of judgment on will, insurance, and other matters

**§ 1910. Protective orders included in judgment**

1910. (a) A judgment entered in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation may include any orders issued pursuant to subdivisions (b), (c), and (d) of Section 1900.

(b) If an order is included in the judgment pursuant to subdivision (a), the judgment shall state on its face both of the following:

(1) Which provisions of the judgment are the orders.

(2) The date of expiration of the orders, which shall be not more than three years from the date the judgment is issued unless extended by the court after notice and hearing.

(c) The judgments, or orders, or extensions thereof, shall be transmitted to law enforcement agencies in the manner provided by Section 1903.

(d) A willful and knowing violation of an order included in the judgment pursuant to subdivision (a) is a misdemeanor punishable under Section 273.6 of the Penal Code.

**Comment.** Section 1910 continues former Civil Code Sections 4458 and 4516 with two revisions:

(1) The former provisions applied to "this part," thus apparently applying to the entire Family Law Act. Section 1910 is limited to a judgment in a marriage dissolution or nullity proceeding. But see Section 1840.

(2) Section 1910 includes the orders set forth in subdivision (c) of Section 1900, whereas the former sections did not specifically include those orders although they did include an order set forth in subdivision (d) of Section 1900.

For a comparable provision, see Section 1840.

**Note:** Should "crime" be substituted for "misdemeanor" in Section 1910?

### § 1911. Notice concerning effect of judgment on will, insurance, and other matters

1911. Every judgment declaring a marriage a nullity or dissolving a marriage shall contain the following notice:

**Notice.** Please review your will, insurance policies, retirement benefit plans, and other matters that you may want to change in view of the dissolution or annulment of your marriage. Ending your marriage may automatically change a disposition made by your will to your former spouse.

**Comment.** Section 1911 is the same as former Civil Code Section 4352. See also Prob. Code § 6122 and the Comment thereto. For background on former Civil Code Section 4352, see *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2485 (1982).

## PART 2. NOTICE TO INSURANCE CARRIERS

§ 1920. Notice of pending proceeding

§ 1921. Notice of entry and requirements of judgment

§ 1922. Manner of giving notice

§ 1923. Policyholder to furnish other party with name and address of insurer

### § 1920. Notice of pending proceeding

1920. Upon filing of a petition for dissolution of marriage, for a judgment of nullity of marriage, or for legal separation, or at any time during the proceeding, a party may transmit to, or the court may order transmittal to, a health, life, or disability insurance carrier or plan the following notice in substantially the following form:

"YOU ARE HEREBY NOTIFIED, PURSUANT TO A PENDING PROCEEDING, IN RE MARRIAGE OF \_\_\_\_\_, CASE NUMBER \_\_\_\_\_, FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_, THAT OWNERSHIP OF, OR BENEFITS PAYABLE UNDER, A POLICY OF HEALTH, LIFE, OR DISABILITY INSURANCE WHICH YOU HAVE ISSUED TO ONE OF THE PARTIES TO THIS PROCEEDING, POLICY NO. \_\_\_\_\_, IS AT ISSUE OR MAY BE AT ISSUE IN THE PROCEEDING.

YOU ARE HEREBY INSTRUCTED TO MAINTAIN THE NAMED BENEFICIARIES OR COVERED DEPENDENTS UNDER THE POLICY, UNLESS THE TERMS OF THE POLICY OR OTHER PROVISIONS OF LAW REQUIRE OTHERWISE, OR UNTIL RECEIPT OF A COURT ORDER, JUDGMENT, OR STIPULATION BETWEEN THE PARTIES PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON CANCELLATION, LAPSE, OR CHANGE OF THE COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THE POLICY."

**Comment.** Section 1920 continues subdivision (a) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

**§ 1921. Notice of entry and requirements of judgment**

1921. Upon the entry of an order or judgment in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation requiring a party to maintain existing health, life, or disability insurance coverage for a spouse or children or after an order or judgment in one of those proceedings requiring a party to purchase life or disability insurance and name the spouse or children as beneficiaries and upon receipt of the name, title, and address of the insurer, or the name of the plan's trustee, administrator, or agent for service of process, a party may transmit to, or the court may order transmittal to, the insurer or plan a copy of the order or judgment endorsed by the court, together with the following notice in substantially the following form:

"PURSUANT TO A PROCEEDING, IN RE MARRIAGE OF \_\_\_\_\_, CASE NUMBER \_\_\_\_\_, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_, YOUR INSURED, \_\_\_\_\_, HAS BEEN ORDERED TO MAINTAIN THE EXISTING (HEALTH) (LIFE) (DISABILITY) INSURANCE COVERAGE, POLICY NO. \_\_\_\_\_, IN FORCE FOR THE NAMED BENEFICIARIES OR COVERED DEPENDENTS AS SPECIFIED IN THE ATTACHED ORDER OR JUDGMENT.

THE ATTACHED ORDER OR JUDGMENT REQUIRES YOU TO MAINTAIN THE NAMED BENEFICIARIES UNDER THE POLICY AS IRREVOCABLE BENEFICIARIES OR COVERED DEPENDENTS OF THE POLICY AND YOU MUST ADMINISTER THE COVERAGE ACCORDINGLY, UNTIL THE DATE SPECIFIED, IF ANY, IN THE ORDER OR JUDGMENT, OR UNTIL THE RECEIPT OF A COURT ORDER, JUDGMENT, OR STIPULATION PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON ANY CANCELLATION, LAPSE, OR CHANGE OF COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THIS POLICY."

**Comment.** Section 1921 continues subdivision (b) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

**§ 1922. Manner of giving notice**

1922. Notice pursuant to this part may be sent by regular mail, postage prepaid, to the last known address of the covered dependents, named beneficiaries, or other specified persons who have requested receipt of notification.

**Comment.** Section 1922 continues subdivision (c) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

**§ 1923. Policyholder to furnish other party with name and address of insurer**

1923. The insured or policyholder who is a party to the proceeding shall furnish to the other party the name, title, and address of the insurer or the insurer's agent for service of process.

**Comment.** Section 1923 continues subdivision (d) of former Civil Code Section 4366 (added by 1990 Cal. Stat. ch. 1493 § 4) without substantive change.

**PART 3. RESTORATION OF WIFE'S FORMER NAME**

§ 2000. Restoration of wife's former name

§ 2001. Restoration not to be denied for any reason other than fraud

§ 2002. Common law right to change name not limited

§ 2003. Prohibition against refusing to do business with or to provide service to woman using former name

**§ 2000. Restoration of wife's former name**

2000. In a proceeding for dissolution of marriage or for a judgment of nullity of marriage, but not in a proceeding for legal separation, the court, upon the request of the wife, shall restore the birth name or former name of the wife, regardless of whether or not a request for restoration of the name was included in the petition.

**Comment.** Section 2000 continues subdivision (a) of former Civil Code Section 4362 and subdivision (a) of former Civil Code Section 4457 without substantive change.

**Note:** Section 2000 has been phrased to continue what appeared to be the substantive effect of former Civil Code Sections 4362 and 4457. Former Civil Code Section 4362 applied to a proceeding under "this part [the Family Law Act], except an action for legal separation." This language appears to have been intended to cover a proceeding for the dissolution of the marriage. Former Civil Code Section 4457 applied only to a proceeding "under this title" which covered only a proceeding for a judgment of nullity of marriage.

**§ 2001. Restoration not to be denied for any reason other than fraud**

2001. The restoration of a former name or birth name requested under Section 2000 shall not be denied (1) on the basis that the wife has custody of a minor child who bears a different name or (2) for any other reason other than fraud.

**Comment.** Section 2001 continues subdivision (c) of former Civil Code Section 4362 and subdivision (c) of former Civil Code Section 4457 without substantive change.

**§ 2002. Common law right to change name not limited**

2002. Nothing in the Family Law Act shall be construed to abrogate the common law right of any person to change one's name.

**Comment.** Section 2002 continues subdivision (b) of former Civil Code Section 4362 and subdivision (b) of former Civil Code Section 4457 without substantive change.

**Note:** Should Section 2002 apply to "this code" instead of merely "the Family Law Act"?

**§ 2003. Prohibition against refusing to do business with or to provide service to woman using former name**

2003. No person engaged in a trade or business of any kind or in the provision of a service of any kind shall do any of the following:

(a) Refuse to do business with a woman, or refuse to provide the service to a woman, regardless of her marital status, because she has chosen to use or regularly uses her birth name or former name.

(b) Impose as a condition of doing business with a woman, or as a condition of providing the service to a woman, a requirement that the woman, regardless of her marital status, use a name other than her birth name or former name if she has chosen to use or regularly uses her birth name or former name.

**Comment.** Section 2003 continues subdivision (d) of former Civil Code Section 4362 and subdivision (d) of former Civil Code Section 4457 without substantive change.



## DIVISION 7. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE

- Part 1. Void Marriage  
Part 2. Voidable Marriage  
Part 3. Procedural Provisions

### PART 1. VOID MARRIAGE

- § 2200. Incestuous marriages  
§ 2201. Bigamous and polygamous marriages

#### § 2200. Incestuous marriages

2200. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

**Comment.** Section 2200 is the same as former Civil Code Section 4400.

#### § 2201. Bigamous and polygamous marriages

2201. (a) A subsequent marriage contracted by a person during the life of a former husband or wife of the person, with a person other than the former husband or wife, is illegal and void from the beginning, unless:

(1) The former marriage has been dissolved or declared a nullity prior to the date of the subsequent marriage.

(2) The former husband or wife (i) is absent, and not known to the person to be living for the space of five successive years immediately preceding the subsequent marriage, or (ii) is generally reputed or believed by the person to be dead at the time the subsequent marriage was contracted.

(b) In either of the cases described in paragraph (2) of subdivision (a), the subsequent marriage is valid until its nullity is adjudged pursuant to subdivision (b) of Section 2210.

**Comment.** Section 2201 continues former Civil Code Section 4401 without substantive change.

**Note:** Should "period" be substituted for "space" in subdivision (a)(2)(i) of Section 2201?

### PART 2. VOIDABLE MARRIAGE

- § 2210. Grounds for adjudging marriage a nullity  
§ 2211. Limitations of actions  
§ 2212. Effect of judgment of nullity

#### § 2210. Grounds for adjudging marriage a nullity

2210. A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was without the capability of consenting to the marriage as provided in Section 301 or 302, unless, after attaining the age of consent, the party for any time freely cohabited with the other as husband and wife.

(b) The husband or wife of either party was living and the marriage with that husband or wife was then in force and that husband or wife (i) was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought, or (ii) was generally reputed or believed by the party commencing the proceeding to be dead at the time the subsequent marriage was contracted.

(c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as husband and wife.

(d) The consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

(e) The consent of either party was obtained by force, unless the party whose consent was obtained by force afterwards freely cohabited with the other as husband or wife.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage state, and that incapacity continues, and appears to be incurable.

**Comment.** Section 2210 continues former Civil Code Section 4425 without substantive change.

### § 2211. Limitations of actions

2211. A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, must be commenced within the periods and by the parties, as follows:

(a) For causes mentioned in subdivision (a) of Section 2210, by any of the following:

(1) The party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent.

(2) A parent, guardian, conservator, or other person having charge of the underaged male or female, at any time before the married minor has arrived at the age of legal consent.

(b) For causes mentioned in subdivision (b) of Section 2210, by either of the following:

(1) Either party during the life of the other.

(2) The former husband or wife.

(c) For causes mentioned in subdivision (c) of Section 2210, by the party who was of unsound mind, or by a relative or conservator of the party of unsound mind, at any time before the death of either party.

(d) For causes mentioned in subdivision (d) of Section 2210, by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud.

(e) For causes mentioned in subdivision (e) of Section 2210, by the party whose consent was obtained by force, within four years after the marriage.

(f) For causes mentioned in subdivision (f) of Section 2210, by the injured party, within four years after the marriage.

**Comment.** Section 2211 continues former Civil Code Section 4426 without substantive change. For background on former Civil Code Section 4426, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

### § 2212. Effect of judgment of nullity

2212. (a) The effect of a judgment of nullity is to restore the parties to the status of unmarried persons.

(b) A judgment of nullity is conclusive only as to the parties to the proceeding and those claiming under them.

**Comment.** Subdivision (a) of Section 2212 is the same as former Civil Code Section 4429. Subdivision (b) is the same as former Civil Code Section 4451.

## PART 3. PROCEDURAL PROVISIONS

§ 2250. Petition for judgment of nullity; filing and service

§ 2251. Status of putative spouse; division of quasi-marital property

§ 2252. Liability of quasi-marital property for debts

§ 2253. Custody of children

§ 2254. Support of putative spouse

§ 2255. Attorney's fees and costs

### § 2250. Petition for judgment of nullity; filing and service

2250. (a) A proceeding based on void or voidable marriage is commenced by filing in the superior court a petition entitled "In re the marriage of \_\_\_\_\_ and \_\_\_\_\_" which shall state that it is a petition for a judgment of nullity of the marriage.

(b) A copy of the petition together with a copy of a summons in form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

**Comment.** Section 2250 continues former Civil Code Section 4450 without substantive change. See also Sections 2000-2003 (restoration of wife's former name).

**Note:** Section 2250 requires that the petition be filed in the "superior" court. This is unnecessary in view of Section 200, but may be useful to retain anyway. Should the word "superior" be omitted from Section 2250?

### § 2251. Status of putative spouse; division of quasi-marital property

2251. (a) If a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall:

(1) Declare the party or parties to have the status of a putative spouse.

(2) If the division of property is in issue, divide, in accordance with Division 9 (commencing with Section 2500), that property acquired during the union which

would have been community property or quasi-community property if the union had not been void or voidable. This property is known as "quasi-marital property".

(b) If the court expressly reserves jurisdiction, it may make the property division at a time subsequent to the judgment.

**Comment.** Section 2251 continues the first three sentences of former Civil Code Section 4452 without substantive change except that the provision of the former section referring to former Civil Code Section 4800 has been expanded to include all of Division 9 (commencing with Section 2500) of the Family Code.

### § 2252. Liability of quasi-marital property for debts

2252. The property divided pursuant to Section 2251 is liable for debts of the parties to the same extent as if the property had been community property or quasi-community property.

**Comment.** Section 2252 continues the last sentence of former Civil Code Section 4452 without substantive change. Under Section 4452, quasi-marital property is treated the same as community and quasi-community property for purposes of creditors' remedies. See Section 916 (liability of property after division). For background on former Civil Code Section 4452, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

### § 2253. Custody of children

2253. In a proceeding under this division, custody of the children shall be determined according to Section 3020 to 3022, inclusive, and Chapter 2 (commencing with Section 3040) of Part 2 of Division 10.

**Comment.** Section 2253 continues former Civil Code Section 4454 without substantive change.

### § 2254. Support of putative spouse

2254. The court may, during the pendency of a proceeding to have a marriage adjudged a nullity or upon judgment, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable if the party for whose benefit the order is made is found to be a putative spouse.

**Comment.** Section 2254 continues former Civil Code Section 4455 without substantive change.

### § 2255. Attorney's fees and costs

2255. The court may grant attorney's fees and costs in accordance with Part 6 (commencing with Section 270) of Division 2 in proceedings to have the marriage adjudged void and in those proceedings based upon voidable marriage in which the party applying for attorney's fees and costs is found to be innocent of fraud or wrongdoing in inducing or entering into the marriage, and free from knowledge of the then existence of any prior marriage or other impediment to the contracting of the marriage for which a judgment of nullity is sought.

**Comment.** Section 2255 continues former Civil Code Section 4456 without substantive change except that a reference of all of Part 6 (commencing with Section 270) has been substituted for the former more limited reference to former Civil Code Section 4370.

**Note:** Is it necessary to that the party applying for attorney's fees be found innocent of fraud or wrongdoing in a proceeding to have the marriage adjudged void?



**DIVISION 8. DISSOLUTION OF MARRIAGE**

Part 1. General Provisions

Part 2. Uniform Divorce Recognition Act

**PART 1. GENERAL PROVISIONS**

Chapter 1. Effect of Dissolution

Chapter 2. Grounds for Dissolution or Legal Separation

Chapter 3. Residence Requirements

Chapter 4. General Procedural Provisions

Chapter 5. Summary Dissolution

**CHAPTER 1. EFFECT OF DISSOLUTION**

§ 2300. Effect of dissolution

**§ 2300. Effect of dissolution**

2300. The effect of a judgment of dissolution of marriage is to restore the parties to the state of unmarried persons.

Comment. Section 2300 continues former Civil Code Section 4501 without substantive change.

Note: Should "final judgment" be substituted for "judgment" in Section 2300?

**CHAPTER 2. GROUNDS FOR  
DISSOLUTION OR LEGAL SEPARATION**

§ 2310. Grounds for dissolution or legal separation

§ 2311. Irreconcilable differences defined

§ 2312. Proof required for dissolution on grounds of incurable insanity

§ 2313. Duty of support not affected by dissolution on grounds of insanity

**§ 2310. Grounds for dissolution or legal separation**

2310. Dissolution of the marriage or legal separation of the parties may be based on either of the following grounds, which shall be pleaded generally:

(a) Irreconcilable differences, which have caused the irremediable breakdown of the marriage.

(b) Incurable insanity.

Comment. Section 2310 continues former Civil Code Section 4506 without substantive change.

**§ 2311. Irreconcilable differences defined**

2311. Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

Comment. Section 2311 continues former Civil Code Section 4507 without substantive change.

**§ 2312. Proof required for dissolution on grounds of incurable insanity**

2312. A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane.

**Comment.** Section 2312 is the same as subdivision (a) of former Civil Code Section 4510.

**§ 2313. Duty of support not affected by dissolution on grounds of insanity**

2313. No dissolution granted on the ground of incurable insanity relieves a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support, or require a bond therefor, as the circumstances require.

**Comment.** Section 2313 continues subdivision (b) of former Civil Code Section 4510 without substantive change.

**Note:** Should the phrase "or require a bond therefor" be omitted from Section 2313, since the support order will be enforceable in the same manner as any other support order? If necessary the following sentence could be added to Section 2313: "The support order may be enforced in the same manner as any other spousal support order." Consideration should be given to omitting Section 2313 as unnecessary, since the grounds on which the dissolution is granted does not affect the obligation for support. Also is the standard "as the circumstances require" set out in Section 2313 intended to be a substitute for the more detailed standard governing whether support should be granted, and the amount of support, set out in Chapter 2 (commencing with Section 4320) of Part 3 of Division 11?

**CHAPTER 3. RESIDENCE REQUIREMENTS**

§ 2320. Residence requirement for dissolution judgment

§ 2321. Conversion of separation proceeding to dissolution proceeding

§ 2322. Separate domicile or residence

**§ 2320. Residence requirement for dissolution judgment**

2320. A judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.

**Comment.** Section 2320 continues subdivision (a) of former Civil Code Section 4530 without substantive change. See also Code Civ. Proc. § 395 (venue for marriage dissolution proceeding).

**§ 2321. Conversion of separation proceeding to dissolution proceeding**

2321. (a) In a proceeding for legal separation in which neither party, at the time the proceeding was commenced, has complied with the residence requirements of Section 2320, either party may, upon complying with the residence requirements, amend his or her petition or responsive pleading in the proceeding to request that a judgment of dissolution of the marriage be entered. The date of the filing of the amended petition

or pleading shall be deemed to be the date of commencement of the proceeding for the dissolution of the marriage for the purposes only of the residence requirements of Section 2320.

(b) If the other party has appeared in the proceeding, notice of the amendment shall be given to the other party in the manner provided by rules adopted by the Judicial Council. If no appearance has been made by the other party in the proceeding, notice of the amendment may be given to the other party by mail to the last known address of the other party, or by personal service, if the intent of the party to so amend upon satisfaction of the residence requirements of Section 2320 is set forth in the initial petition or pleading in the manner provided by rules adopted by the Judicial Council.

**Comment.** Section 2321 continues subdivision (b) of former Civil Code Section 4530 without substantive change.

### § 2322. Separate domicile or residence

2322. For the purpose of a proceeding for dissolution of marriage, the husband and wife each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions.

**Comment.** Section 2322 continues former Civil Code Section 4531 without substantive change.

## CHAPTER 4. GENERAL PROCEDURAL PROVISIONS

### § 2330. Petition

#### §2330.5. Financial declaration not required in certain default cases

### § 2331. Service on other spouse

### § 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem

### § 2333. Court finding and order where grounds is irreconcilable differences

### § 2334. Continuance for reconciliation

### § 2335. Evidence of specific acts of misconduct

### § 2336. Proof required for default

### § 2337. Severance and grant of early trial on issue of dissolution status

### § 2338. Decisions; judgments

### § 2339. Waiting period before dissolution judgment becomes final

### § 2340. Statement in judgment of date marriage terminates

### § 2341. Effect of appeal or motion for new trial

### § 2342. Calculating permissible date of entry of judgment where joint petition for summary dissolution is revoked

### § 2343. Court may retain jurisdiction over date of termination or order termination at future specified date

### § 2344. Effect of death of either party after entry of judgment

### § 2345. Consent of parties to legal separation

### § 2346. Entry of judgment nunc pro tunc

### § 2347. Legal separation judgment does not bar subsequent dissolution judgment

**§ 2330. Petition**

2330. (a) A proceeding for dissolution of marriage or for legal separation is commenced by filing in the superior court a petition entitled "In re the marriage of \_\_\_\_\_ and \_\_\_\_\_" which shall state whether it is a petition for dissolution of the marriage or for legal separation of the parties.

(b) In a proceeding for dissolution of marriage, the petition shall set forth among other matters, as nearly as can be ascertained, the following facts:

- (1) The state of county in which the parties were married.
- (2) The date of marriage.
- (3) The date of separation.
- (4) The number of years from marriage to separation.
- (5) The number of children of the marriage, if any, and if none a statement of that fact.
- (6) The age and birth date of each minor child of the marriage.
- (7) The social security numbers of the husband and wife, if available, and if not available, a statement to that effect.

**Comment.** Subdivision (a) of Section 2330 continues first sentence of former Civil Code Section 4503 without substantive change. Subdivision (b) continues former Code of Civil Procedure Section 429.10 without substantive change.

**Note:** Should subdivision (b) apply in a proceeding for legal separation?

**§ 2330.5. Financial declaration not required in certain default cases**

2330.5. Notwithstanding any other provision of law, if no demand for money, property, costs, or attorney's fees is contained in the petition and the decree of dissolution is entered by default, the filing of a financial declaration in connection therewith shall not be required.

**Comment.** Section 2330.5 continues former Civil Code Section 4364 without substantive change.

**Note:** What is the meaning of "financial declaration"? The terminology generally used is "income and expense declarations" and "property declaration." See, e.g., former Civil Code Sections 4357.5(a)(third paragraph), 4700.1 and 4700.2. See the definitions of these terms in Sections 95 and 115 of the staff draft of the Family Code. Should there be general provisions relating to income and expense declarations and should Section 2330.5 be included in those general provisions? Where should the general provisions relating to income and expense declarations be compiled? Should these general provisions be compiled in the chapter on general procedural provisions or in the general provisions relating to support? Note that Section 2330.5 is broader than support; it would apply to property disposition and attorney's fees as well as support.

**§ 2331. Service on other spouse**

2331. A copy of the petition, together with a copy of a summons in form and content approved by the Judicial Council, shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

**Comment.** Section 2331 is the same as the second sentence of former Civil Code Section 4503. See also Section 2332 (service on guardian or conservator of insane spouse where dissolution based on incurable insanity).

**§ 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem**

2332. (a) If the petition for dissolution of the marriage is based on the ground of incurable insanity and the insane spouse has a guardian or conservator, other than the spouse filing the petition, the petition and summons shall be served upon the insane spouse and the guardian or conservator. The guardian or conservator shall defend and protect the interests of the insane spouse.

(b) If the insane spouse has no guardian or conservator, or if the spouse filing the petition is the guardian or conservator of the insane spouse, the court shall appoint a guardian ad litem, who may be the district attorney or the county counsel, if any, to defend and protect the interests of the insane spouse. If a district attorney or county counsel is appointed guardian ad litem pursuant to this subdivision, the successor in the office of district attorney or county counsel, as the case may be, succeeds as guardian ad litem, without further action by the court or parties.

(d) As used in this section, "guardian or conservator" means:

(1) With respect to the issue of the dissolution of the marriage relationship, the guardian or conservator of the person.

(2) With respect to support and property division issues, the guardian or conservator of the estate.

**Comment.** Section 2332 continues subdivisions (c) and (d) of former Civil Code Section 4510 without substantive change. For background on former Civil Code Section 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

**§ 2333. Court finding and order where grounds is irreconcilable differences**

2333. Subject to Section 2334, if from the evidence at the hearing the court finds that there are irreconcilable differences which have caused the irremediable breakdown of the marriage, the court shall order the dissolution of the marriage or a legal separation.

**Comment.** Section 2333 continues the first sentence of subdivision (a) of former Civil Code Section 4508 without substantive change.

**§ 2334. Continuance for reconciliation**

2334. (a) If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for the dissolution of the marriage or for a legal separation for a period not to exceed 30 days.

(b) During the period of the continuance, the court may make orders for the support and maintenance of the parties, the custody, support, maintenance, and education of the minor children of the marriage, attorney's fees, and for the preservation of the property of the parties.

(c) At any time after the termination of the period of the continuance, either party may move for the dissolution of the marriage or a legal separation, and the court may enter a judgment of dissolution of the marriage or legal separation.

**Comment.** Section 2334 continues the second, third, and fourth sentences of subdivision (a) of former Civil Code Section 4508 without substantive change.

**§ 2335. Evidence of specific acts of misconduct**

2335. In a pleading or proceeding for dissolution of marriage or legal separation, including depositions and discovery proceedings, evidence of specific acts of misconduct is improper and inadmissible, except where child custody is in issue and the evidence is relevant to that issue.

**Comment.** Section 2335 continues former Civil Code Section 4509 without substantive change.

**§ 2336. Proof required for default**

2336. (a) No judgment of dissolution or of legal separation may be granted upon the default of one of the parties or upon a statement or finding of fact made by a referee; but the court shall, in addition to the statement or finding of the referee, require proof of the grounds alleged, and the proof, if not taken before the court, shall be by affidavit.

(b) If the proof is by affidavit, the personal appearance of the affiant is required only when it appears to the court that any of the following circumstances exist:

- (1) Reconciliation of the parties is reasonably possible.
- (2) A proposed child custody order is not in the best interests of the child.
- (3) A proposed child support order is less than a noncustodial parent is capable of paying.

(4) A personal appearance of a party or interested person would be in the best interests of justice.

(c) An affidavit submitted pursuant to this section shall contain a stipulation by the affiant that he or she understands that proof will be by affidavit and that he or she will not appear before the court unless so ordered by the court.

**Comment.** Section 2336 continues former Civil Code Section 4511 without substantive change.

**§ 2337. Severance and grant of early trial on issue of dissolution status**

2337. (a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.

(b) The court may impose upon a party any of the following conditions on granting a severance of the issue of the dissolution of the status of the marriage, and in case of that party's death, an order of any of the following conditions continues to be binding upon his or her estate:

(1) The party shall indemnify and hold the other party harmless from any taxes, reassessments, interest, and penalties payable by the other party if the dissolution of the marriage prior to the division of the parties' community property results in a taxable event to either of the parties by reason of the ultimate division of their community property, which taxes would not have been payable if the parties were still married at the time the division was made.

(2) Until judgment has been entered on all remaining issues and has become final, the party shall maintain all existing health and medical insurance coverage for the other party and the minor children as named dependents, so long as he or she is legally able to do so. At the time the party is no longer legally eligible to maintain the other party as a named dependent under the existing health and medical policies, the party or his or her estate shall, at his or her sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance coverage is not obtained, the party or his or her estate is responsible for the health and medical expenses incurred by the other party which would have been covered by the insurance coverage, and shall indemnify and hold the other party harmless from any adverse consequences resulting from the lack of insurance.

(3) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

(4) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse of the party.

(5) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the other party's rights to pension benefits, elections, or survivors' benefits under the

party's pension or retirement plan to the extent that the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(6) The party shall cause his or her retirement or pension plan to be joined as a party to the proceeding for dissolution, and if the party has a private pension plan covered by ERISA, then he or she shall cause a qualified domestic relations order, as defined in Section 1056 of Title 29 of the United States Code, to be served upon the party's pension plan.

(7) The party shall indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(8) Any other condition the court determines is just and equitable.

(c) A judgment granting a dissolution of the status of the marriage shall expressly reserve jurisdiction for later determination of all other pending issues.

**Comment.** Section 2337 continues former Civil Code Section 4515 without substantive change. See also Section 85 ("Family Law Act" defined).

#### § 2338. Decisions; judgments

2338. (a) In a proceeding for dissolution of the marriage, the court shall file its decision and any statement of decision as in other cases.

(b) If the court determines that no dissolution should be granted, a judgment to that effect only shall be entered.

(c) If the court determines that a dissolution should be granted, a judgment shall be entered declaring that the parties are entitled to have their marriage dissolved. After the entry of the judgment and before it becomes final, neither party has the right to dismiss the proceeding without the consent of the other.

**Comment.** Section 2338 continues former Civil Code Section 4512 without substantive change. The word "proceeding" has been substituted for "action."

**Note:** Should the requirement of subdivision (a) of Section 2338 be retained?

#### § 2339. Waiting period before dissolution judgment becomes final

2339. (a) Subject to subdivision (b), no judgment entered pursuant to Section 2338 is final until six months have expired from the date of service of a copy of summons and petition or the date of appearance of the respondent, whichever occurs first.

(b) The court may extend the six-month period described in subdivision (a) for good cause shown.

**Comment.** Section 2339 continues the first sentence of subdivision (a) former Civil Code Section 4514 without substantive change.

**§ 2340. Statement in judgment of date marriage terminates**

2340. A judgment of dissolution shall specify the date on which the judgment becomes finally effective for the purpose of terminating the marriage relationship of the parties.

**Comment.** Section 2340 continues second sentence of subdivision (a) of former Civil Code Section 4514 without substantive change.

**§ 2341. Effect of appeal or motion for new trial**

2341. (a) Notwithstanding Section 2340, if an appeal is taken from the judgment or a motion for a new trial is made, the dissolution of marriage does not become final until the motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed.

(b) Notwithstanding any other provision of law, the filing of an appeal or of a motion for a new trial does not stay the effect of a judgment insofar as it relates to the dissolution of the marriage status and restoring the parties to the status of unmarried persons, unless the appealing or moving party specifies in the notice of appeal or motion for new trial an objection to the termination of the marriage status. No party may make such an objection to the termination of the marriage status unless such an objection was also made at the time of trial.

**Comment.** Subdivision (a) of Section 2341 continues the third sentence of subdivision (a) of former Civil Code Section 4514 without substantive change. Subdivision (b) continues subdivision (b) of former Civil Code Section 4514 without substantive change.

**§ 2342. Calculating permissible date of entry of judgment where joint petition for summary dissolution is revoked**

2342. Where a joint petition under Chapter 5 (commencing with Section 2400) is thereafter revoked and either party commences a proceeding pursuant to Section 2330 within 90 days from the date of the filing of the revocation, the permissible date of entry of judgment pursuant to Section 2339 shall be calculated by deducting the period of time which has elapsed from the date of the filing the joint petition to the date of the filing of the revocation.

**Comment.** Section 2342 continues subdivision (c) of former Civil Code Section 4514 without substantive change.

**Note:** Section 2342 appears to contemplate that the court will enter a "final judgment" when the time specified in Sections 2339-2342 has run. However, the scheme of those provisions appears to be that the judgment is entered and becomes final when the time runs without further action by the court. Should Section 2344 be revised to read:

**§ 2342. Calculating date judgment becomes final where joint petition for summary dissolution is revoked**

2342. Where a joint petition under Chapter 5 (commencing with Section 2400) is thereafter revoked and either party commences a proceeding pursuant to

**Section 2330 within 90 days from the date of the filing of the revocation, the date the judgment becomes a final judgment under Section 2339 shall be calculated by deducting the period of time which has elapsed from the date of the filing the joint petition to the date of the filing of the revocation.**

**§ 2343. Court may retain jurisdiction over date of termination or order termination at future specified date**

2343. The court may, upon notice and for good cause shown, or on stipulation of the parties, retain jurisdiction over the date of termination of the marital status, or may order that the marital status be terminated at a future specified date. On the date of termination of the marital status, the parties are restored to the status of unmarried persons.

**Comment.** Section 2343 continues subdivision (e) of former Civil Code Section 4514 without substantive change.

**§ 2344. Effect of death of either party after entry of judgment**

2344. (a) The death of either party after the entry of the judgment does not impair the power of the court to enter final judgment.

(b) The entry of final judgment under subdivision (a) does not validate a marriage by either party before the entry of the final judgment, nor does it constitute a defense in a criminal prosecution against either party.

**Comment.** Section 2344 continues subdivision (d) of former Civil Code Section 4514 without substantive change.

**Note:** Section 2344 appears to contemplate that the court will enter a "final judgment" when the time specified in Sections 2339-2342 has run. However, the scheme of those provisions appears to be that the judgment is entered and becomes final when the time runs without further action by the court. Should Section 2344 be revised to read:

**2344. (a) The death of either party after entry of the judgment does not prevent the judgment from becoming a final judgment under Sections 2339 to 2342, inclusive.**

**(b) Subdivision (a) does not validate a marriage by either party before the judgment becomes final if the marriage takes place before the death of the other party, nor does it constitute a defense in a criminal prosecution against either party.**

**§ 2345. Consent of parties to legal separation**

2345. The court may not render a judgment of the legal separation of the parties without the consent of both parties unless one party has not made a general appearance and the petition is one for legal separation.

**Comment.** Section 2345 continues the first sentence of subdivision (b) of former Civil Code Section 4508 without substantive change.

**§ 2346. Entry of judgment nunc pro tunc**

2346. (a) If the court determines that a judgment of dissolution of the marriage should be granted, but by mistake, negligence, or inadvertence, the judgment has not been signed, filed, and entered, the court may cause the judgment to be signed, dated, filed, and entered in the proceeding as of the date when the judgment could have been signed, dated, filed, and entered originally, if it appears to the satisfaction of the court that no appeal is to be taken in the proceeding or motion made for a new trial, to annul or set aside the judgment, or for relief under Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure.

(b) The court may act under subdivision (a) on its own motion or upon the motion of either party to the proceeding. In contested cases, the motion of a party shall be with notice to the other party.

(c) The court may cause the judgment to be entered nunc pro tunc as provided in this section, even though the judgment may have been previously entered, where through mistake, negligence, or inadvertence the judgment was not entered as soon as it could have been entered under the law if applied for.

(d) The court shall not cause a judgment to be entered nunc pro tunc as provided in this section as of a date prior to trial in the matter, prior to the date of an uncontested judgment hearing in the matter, or prior to the date of submission to the court of an application for judgment on affidavit pursuant to Section 2336. Upon the entry of the judgment, the parties have the same rights with regard to the dissolution of marriage becoming final on the date that it would have become final had the judgment been entered upon the date when it could have been originally entered.

**Comment.** Section 2346 continues former Civil Code Section 4513 without substantive change.

**§ 2347. Legal separation judgment does not bar subsequent dissolution judgment**

2347. A judgment of legal separation of the parties does not bar a subsequent judgment of dissolution of the marriage granted pursuant to a petition for dissolution filed by either party.

**Comment.** Section 2347 continues the second sentence of subdivision (b) of former Civil Code Section 4508 without substantive change.

**CHAPTER 5. SUMMARY DISSOLUTION**

§ 2400. Conditions necessary at commencement of proceeding

§ 2401. Joint petition

§ 2402. Revocation of joint petition and termination of proceeding

§ 2403. Entry of final judgment

§ 2404. Effect of entry of final judgment

§ 2405. Action to set aside final judgment

§ 2406. Brochure describing summary dissolution proceedings

**§ 2400. Conditions necessary at commencement of proceeding**

2400. (a) A marriage may be dissolved by the summary dissolution procedure specified in this chapter when all of the following conditions exist at the time the proceeding is commenced:

(1) Either party has met the jurisdictional requirements of Chapter 3 (commencing with Section 2320) with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.

(3) There are no children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant.

(4) The marriage is not more than five years in duration at the time the petition is filed.

(5) Neither party has any interest in real property wheresoever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of the filing of the petition.

(6) There are no unpaid obligations in excess of four thousand dollars (\$4,000) incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligation with respect to an automobile.

(7) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than twenty-five thousand dollars (\$25,000), and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of twenty-five thousand dollars (\$25,000).

(8) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(9) The parties waive any rights to spousal support.

(10) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal and their rights to move for a new trial.

(11) The parties have read and understand the summary dissolution brochure provided for in Section 2406.

(12) The parties desire that the court dissolve the marriage.

(b) On January 1 of each odd-numbered year, the amounts in paragraph (6) of subdivision (a) shall be adjusted to reflect any change in the value of the dollar. On January 1, 1993, and on January 1 of each odd-numbered year thereafter, the amounts in paragraph (7) of subdivision (a) shall be adjusted to reflect any change in the value of the dollar. The adjustments shall be made by multiplying the base amounts by the

percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars. The Judicial Council shall compute and publish the amounts.

**Comment.** Section 2400 continues former Civil Code Section 4550 (as amended by 1990 Cal. Stat. ch. 1493 § 5) without substantive change. The amounts set out in Section 2400 are the amounts effective January 1, 1991, as computed by the Judicial Council pursuant to subdivision (b). See "Joint Petition for Summary Dissolution of Marriage," Form Adopted by Rule 1295.10 Judicial Council of California.

### § 2401. Joint petition

2401. (a) A proceeding for summary dissolution of the marriage shall be commenced by filing in the superior court a joint petition in the form prescribed by the Judicial Council.

(b) The petition shall be signed under oath by both the husband and the wife, and shall include all of the following:

(1) A statement that as of the date of the filing of the joint petition all of the conditions set forth in Section 2400 have been met.

(2) The mailing address of both the husband and the wife.

(3) A statement whether or not the wife elects to have her maiden or former name restored, and, if so, the name to be restored.

**Comment.** Section 2401 continues former Civil Code Section 4551 without substantive change.

### § 2402. Revocation of joint petition and termination of proceeding

2402. (a) At any time prior to the filing of application for final judgment, either party to the marriage may revoke the joint petition and thereby terminate the summary dissolution proceeding filed pursuant to this chapter.

(b) The revocation shall be effected by filing with the clerk of the court where the proceeding was commenced a notice of revocation in such form and content as shall be prescribed by the Judicial Council.

(c) The revoking party shall send a copy of the notice of revocation to the other party by first-class mail, postage prepaid, at his or her last known address.

**Comment.** Section 2402 is the same as former Civil Code Section 4552.

### § 2403. Entry of final judgment

2403. When six months have expired from the date of the filing of the joint petition for summary dissolution, the court may, upon application of either party, enter the final judgment dissolving the marriage. The final judgment restores to the parties the status of single persons, and either party may marry after the entry of the final judgment. The clerk shall send a notice of entry of final judgment to each of the parties at his or her last known address.

**Comment.** Section 2403 continues former Civil Code Section 4553 without substantive change.

#### **§ 2404. Effect of entry of final judgment**

2404. Entry of the final judgment constitutes:

(a) A final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights.

(b) A waiver of their respective rights to spousal support, rights to appeal, and rights to move for a new trial.

**Comment.** Section 2404 continues former Civil Code Section 4554 without substantive change.

#### **§ 2405. Action to set aside final judgment**

2405. (a) A final judgment made pursuant to Section 2403 does not prejudice nor bar the rights of either of the parties to institute an action to set aside the 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.

(b) The court shall set aside a final judgment made pursuant to Section 2403 regarding all matters except the status of the marriage, upon proof that the parties did not meet the requirements of Section 2400 at the time the petition was filed.

**Comment.** Section 2405 continues former Civil Code Section 4555 without substantive change.

#### **§ 2406. Brochure describing summary dissolution proceedings**

2406. (a) Each superior court shall make available a brochure, the contents and form of which shall be prescribed by the Judicial Council, describing the requirements, nature, and effect of proceedings under this chapter. The brochure shall be printed and distributed by the Judicial Council in both English and Spanish.

(b) The brochure shall state, in nontechnical language, all the following:

(1) It is in the best interests of the parties to consult an attorney regarding the dissolution of their marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal services, or legal aid organizations.

(2) The parties should not rely exclusively on this brochure which is not intended as a guide for self-representation in proceedings under this chapter.

(3) A concise summary of the provisions and procedures of this chapter and Sections 2320 and 2322 and Sections 2339 to 2344, inclusive.

(4) The nature of services of the conciliation court, where available.

(5) Neither party to the marriage can in the future obtain spousal support from the other.

(6) A statement in boldface type to the effect that upon entry of the final judgment, the rights and obligations of the parties to the marriage with respect to the marriage, including property and spousal support rights, will be permanently adjudicated without right of appeal, except that neither party will be barred from instituting an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds at law or in equity, or to make a motion pursuant to Section 473 of the Code of Civil Procedure.

(7) The parties to the marriage retain the status of married persons and cannot remarry until final judgment dissolving the marriage is entered.

(8) Such other matters as the Judicial Council considers appropriate.

**Comment.** Section 2406 continues former Civil Code Section 4556 without substantive change.

**Note:** The Judicial Council should review this section to determine any revisions needed to make it consistent with the brochure prepared by the Judicial Council.

## **PART 2. UNIFORM DIVORCE RECOGNITION ACT**

§ 2450. Short title

§ 2451. Effect of foreign divorce of parties domiciled in this state

§ 2452. Prima facie evidence of domicile

§ 2453. Full faith and credit limitation

### **§ 2450. Short title**

2450. This part may be cited as the Uniform Divorce Recognition Act.

**Comment.** Section 2450 continues former Civil Code Section 5000 without substantive change. See also Sections 3 (construction of provisions drawn from uniform act), 14 (severability of provisions).

### **§ 2451. Effect of foreign divorce of parties domiciled in this state**

2451. A divorce obtained in another jurisdiction shall be of no force or effect in this state if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

**Comment.** Section 2451 is the same as former Civil Code Section 5001.

### **§ 2452. Prima facie evidence of domicile**

2452. Proof that a person hereafter obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his or her departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state, when the divorce proceeding was commenced.

**Comment.** Section 2452 is the same as former Civil Code Section 5002. The word "hereafter" which is used in Section 2452 is to be construed as of the time former Section 5002

was enacted. See Section 2 (provision to be construed as a restatement and continuation and not as a new enactment).

**§ 2453. Full faith and credit limitation**

2453. The application of this part is limited by the requirement of the Constitution of the United States that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.

**Comment.** Section 2453 is the same as former Civil Code Section 5004. See also Section 14 (severability of provisions).

## DIVISION 9. DIVISION OF COMMUNITY ESTATE

- Part 1. Definitions
- Part 2. General Provisions
- Part 3. Presumption Concerning Property Held in Joint Form
- Part 4. Special Rules for Division of Community Estate
- Part 5. Retirement Plan Benefits
- Part 6. Debts and Liabilities
- Part 7. Reimbursements
- Part 8. Jointly Held Separate Property
- Part 9. Real Property Located in Another State

### PART 1. DEFINITIONS

- § 2500. Application of definitions
- § 2501. "Community estate"
- § 2502. "Separate property"

#### § 2500. Application of definitions

2500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

**Comment.** Section 2500 is a standard provision found in recently enacted codes. See, e.g., Prob. Code § 20. The introductory portion of Section 2500 recognizes that the context of a particular section may require that a phrase used in that section be given a meaning different from the definition provided in this part.

#### § 2501. "Community estate"

2501. "Community estate" includes both the community and quasi-community assets and liabilities of the parties.

**Comment.** Section 2501 continues the substance of the third paragraph of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. See also Section 125 ("quasi-community property" defined).

#### § 2502. "Separate property"

2502. "Separate property" does not include quasi-community property.

**Comment.** Section 2502 continues former Civil Code Section 4804 without substantive change insofar as it applied to division of property. See also Section 125 ("quasi-community property" defined). For a comparable definition applicable to support, see Section 3515.

### PART 2. GENERAL PROVISIONS

- § 2550. Division of community estate equally
- § 2551. Characterization of liabilities as separate or community and confirming or assigning them to parties
- § 2552. Valuation date for assets and liabilities
- § 2553. Orders necessary to carry out purposes of this division
- § 2554. Arbitration where parties do not voluntarily agree to division
- § 2555. Revision of property disposition on appeal

§ 2556. Continuing jurisdiction to award community property or adjudicate debts

**§ 2550. Division of community estate equally**

2550. Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.

**Comment.** Section 2550 continues the first sentence of subdivision (a) of former Civil Code Section 4800 except that the scope of the provision has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the definition applied only to the provisions in former Section 4800. "Community estate" is defined in Section 2501. See also Sections 1620 (contract between married persons concerning their property), 2650 (division of jointly held separate property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2660 (real property located in another state), 3592 (obligations of property settlement discharged in bankruptcy).

**§ 2551. Characterization of liabilities as separate or community and confirming or assigning them to parties**

2551. For the purposes of division and in confirming or assigning the liabilities of the parties for which the community estate is liable, the court shall characterize liabilities as separate or community and confirm or assign them to the parties in accordance with Part 6 (commencing with Section 2620).

**Comment.** Section 2551 continues the second paragraph of subdivision (a) of former Civil Code Section 4800 without substantive change.

**§ 2552. Valuation date for assets and liabilities**

2552. (a) For the purpose of division of property upon dissolution of marriage or legal separation, except as provided in subdivision (b), the court shall value the assets and liabilities as near as practicable to the time of trial.

(b) Upon 30 days' notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and prior to trial to accomplish an equal division of the community estate of the parties in an equitable manner.

**Comment.** Section 2552 continues the second sentence of subdivision (a) of former Civil Code Section 4800 without substantive change.

**§ 2553. Orders necessary to carry out purposes of this division**

2553. The court may make any orders the court considers necessary to carry out the purposes of this division.

**Comment.** Section 2553 continues subdivision (f) of former Civil Code Section 4800 without substantive change except that the scope of the former provision has been expanded

to cover all of Division 9 (commencing with Section 2500) of the new code. The former provision applied only to the provisions of former Section 4800. See also Section 3592 (obligations of property settlement discharged in bankruptcy).

**§ 2554. Arbitration where parties do not voluntarily agree to division**

2554. (a) Notwithstanding any other provision of this division, in any case in which the parties do not agree in writing to a voluntary division of the community property and quasi-community property of the parties, the issue of the character, the value, and the division of the property may be submitted by the court to arbitration for resolution pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, if the total value of the community property in controversy in the opinion of the court does not exceed fifty thousand dollars (\$50,000). The decision of the court regarding the value of the community property for purposes of this section is not appealable.

(b) The court may submit the matter to arbitration at any time it believes the parties are unable to agree upon a division of the property.

**Comment.** Section 2554 continues former Civil Code Section 4800.9 without change except that the scope of the "notwithstanding" clause at the beginning of the section has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. The "notwithstanding" clause of former Section 4800.9 included only the provisions of former Section 4800.

**Note:** Should this section apply only if "the total value of the community property *AND QUASI-COMMUNITY PROPERTY* in controversy in the opinion of the court does not exceed fifty thousand dollars (\$50,000)"?

**§ 2555. Revision of property disposition on appeal**

2555. The disposition of the community and quasi-community property, as provided in this division, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

**Comment.** Section 2555 continues former Civil Code Section 4810 without change.

**Note:** In the existing statutes, the provision compiled in Section 2555 governed the "disposition of community and quasi-community property" but the provision also may have applied to former Civil Code Sections 4805, 4806, and 4807 (provisions relating to support). Section 2555 limits the application of the provision to property disposition provisions (excluding support orders). This appears to continue the substantive effect of the provision of former law. See also Sections 3555 (appeal from order or judgment under provisions relating to support), 3650-3655 (modification or termination of support).

Does Section 2555 give the appellate court authority to revise an arbitration award under Section 2554?

**§ 2556. Continuing jurisdiction to award community property or adjudicate debts**

2556. In a proceeding for dissolution of marriage, for a judgment of nullity of marriage, or for legal separation, the court has continuing jurisdiction to award community property or community debts to the parties that has not been previously adjudicated by a judgment therein. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community asset or debt omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community asset or debt, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or debt.

**Comment.** Section 2556 continues former Civil Code Section 4353 without substantive change.

**Note:** Should Section 2556 apply to quasi-community property?

**Why does Section 2556 apply in a proceeding "for a judgment of nullity of marriage" ("annulment" in former Civil Code Section 4353), whereas most of the other provisions of this division apply only in proceedings for dissolution or legal separation? See, for example, Section 2550.**

**PART 3. PRESUMPTION CONCERNING PROPERTY HELD IN JOINT FORM**

§ 2580. Community property presumption for property held in joint form

**§ 2580. Community property presumption for property held in joint form**

2580. (a) For the purpose of division of property upon dissolution of marriage or legal separation:

(1) Property acquired by the parties during marriage on or after January 1, 1984, and before January 1, 1987, in joint tenancy form is presumed to be community property.

(2) Property acquired by the parties during marriage on or after January 1, 1987, in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property.

(b) The presumptions under subdivision (a) are presumptions affecting the burden of proof and may be rebutted by either of the following:

(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(2) Proof that the parties have made a written agreement that the property is separate property.

(c) Nothing in this section affects the character of property acquired by married persons that is not described in subdivision (a).

**Comment.** Subdivision (a)(1) of Section 2580 continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as enacted by 1983 Cal. Stat. ch. 342 § 1) with the

addition of language that recognizes the constitutional limitations on the application of Section 2580. See the discussion that follows. Subdivision (a)(2) continues the first sentence of subdivision (b) of former Civil Code Section 4800.1 (as amended by 1986 Cal. Stat. ch. 539 § 1) without substantive change. Subdivision (b) of Section 2580 continues the last portion of subdivision (b) of former Civil Code Section 4800.1 without substantive change. See also Section 2650 (division of jointly held separate property).

Under Section 2580, all property held in joint form by the spouses is presumed to be community absent a written agreement otherwise; and under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions absent an express agreement otherwise. These sections were enacted to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court's interpretation in the *Lucas* case of the community property presumption for a joint tenancy single-family residence under former law to find a gift of separate funds used to acquire a community asset absent an express agreement otherwise. See *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). The *Lucas* decision was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence under former law by evidence of an oral agreement that the residence is separate property. This rule promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long ago filed a joint tenancy deed may be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties; it seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646 (1984) (disapproved in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985)).

The community property presumptions created by subdivision (a) of Section 2580 are applicable in dissolution and legal separation proceedings only. The presumptions govern both real and personal property, whether situated in California or another jurisdiction, and include property acquired during marriage while domiciled in another jurisdiction. The presumptions also govern property initially acquired before marriage, the title to which is taken in joint form or as community property by the spouses during marriage. The measure of the separate property contribution under Section 2580 in such a case, is the value of the property at the time of its conversion to joint or community property form.

Subdivision (b) of Section 2580 requires a writing to rebut the community property presumption. To permit oral statements to defeat the community property presumption for purposes of dissolution of marriage would frustrate the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration.

Section 2580 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, together with Section 2640, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage as a rule are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

Subdivision (a) of former Civil Code Section 4800.1, which sought to justify the application of Section 4800.1 without regard to the date the property was acquired, has not been continued. Instead, language has been added to Section 2580 to recognize that the section cannot constitutionally be applied to property described in subdivision (a) prior to the date of acquisition specified in paragraph (1) or (2) of subdivision (a), whichever is applicable. See, e.g., *In re Marriage of Delgado*, 176 Cal. App. 3d 666, 222 Cal. Rptr. 119 (1986). See also *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985); *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988); *In re Marriage of Colombo*, 197 Cal. App. 3d 572, 242 Cal. Rptr. 100 (1987).

Subdivision (c) of Section 2580 is new and makes clear that the law concerning property not described in subdivision (a) is not affected by Section 2580. Accordingly, the character of the interest in property acquired in joint tenancy form by the parties before January 1, 1984, is not determined under or affected by Section 2580. Likewise, the character of the interest in property acquired by the parties before January 1, 1987, and held in tenancy in common, tenancy by the entirety, or as community property is not determined under or affected by Section 2580.

For background on former Civil Code Section 4800.1, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

#### **PART 4. SPECIAL RULES FOR DIVISION OF COMMUNITY ESTATE**

§ 2600. Special rules for division of community estate

§ 2601. Awarding asset to one party to effect substantially equal division

§ 2602. Award or offset of amount deliberately misappropriated by party

§ 2603. Community estate personal injury damages

§ 2604. Award where community estate less than \$5,000 and one party cannot be located

#### **§ 2600. Special rules for division of community estate**

2600. Notwithstanding Sections 2550 to 2552, inclusive, the court may divide the community estate as provided in this part.

**Comment.** Section 2600 continues the introductory portion of subdivision (b) of former Civil Code Section 4800 without substantive change.

**§ 2601. Awarding asset to one party to effect substantially equal division**

2601. Where economic circumstances warrant, the court may award an asset of the community estate to one party on such conditions as the court deems proper to effect a substantially equal division of the community estate.

**Comment.** Section 2601 continues subdivision (b)(1) of former Civil Code Section 4800 without substantive change.

**§ 2602. Award or offset of amount deliberately misappropriated by party**

2602. As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate.

**Comment.** Section 2602 continues subdivision (b)(2) of former Civil Code Section 4800 without substantive change.

**§ 2603. Community estate personal injury damages**

2603. (a) As used in this section, "community estate personal injury damages" means all money or other property received or to be received by a person in satisfaction of a judgment for damages for his or her personal injuries or pursuant to an agreement for the settlement or compromise of a claim for the damages, if the cause of action for the damages arose during the marriage but is not separate property as defined in Section 781, unless the money or other property has been commingled with other assets of the community estate.

(b) Community estate personal injury damages shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages or the accrual of the cause of action, and all other facts of the case, determines that the interests of justice require another disposition. In such a case, the community property personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just, except that at least one-half of the damages shall be assigned to the party who suffered the injuries.

**Comment.** Section 2603 continues subdivision (b)(4) of former Civil Code Section 4800 without substantive change. See also Sections 780-783 (damages for injuries to married person).

**§ 2604. Award where community estate less than \$5,000 and one party cannot be located**

2604. If the net value of the community estate is less than five thousand dollars (\$5,000) and one party cannot be located through the exercise of reasonable diligence, the court may award all the community estate to the other party on such conditions as the court deems proper in its judgment of dissolution of marriage or legal separation.

**Comment.** Section 2604 continues subdivision (b)(3) of former Civil Code Section 4800 without substantive change.

### **PART 5. RETIREMENT PLAN BENEFITS**

§ 2610. Division of retirement plan benefits

§ 2610. Division of retirement plan benefits

2610. The court shall make whatever orders are necessary or appropriate to assure that each party receives his or her full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(a) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with the provisions of this division.

(b) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election.

(c) Order the division of accumulated community property contributions and service credit as provided in Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(d) Order the division of community property rights in accounts with the State Teachers' Retirement System pursuant to Chapter 7.5 (commencing with Section 22650) of Part 13 of the Education Code.

**Comment.** Section 2610 continues former Civil Code Section 4800.8 without change except that the reference in subdivision (a) has been expanded to cover all of Division 9 (commencing with Section 2500) of the new code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

### **PART 6. DEBTS AND LIABILITIES**

§ 2620. Confirmation or division of debts of community estate

§ 2621. Debts incurred before marriage

§ 2622. Debts incurred after marriage but before separation

§ 2623. Debts incurred after separation but before judgment

§ 2624. Debts incurred after entry of judgment

§ 2625. Separate debts

§ 2626. Reimbursement for debts paid after separation but prior to trial

§ 2627. Educational loans and tort liability

§ 2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party

§ 2620. Confirmation or division of debts of community estate

2620. The debts for which the community estate is liable which are unpaid at the time of trial, or for which the community estate becomes liable after trial, shall be confirmed or divided as provided in this part.

**Comment.** Section 2620 continues the introductory portion of subdivision (c) of former Civil Code Section 4800 without substantive change. See also Sections 2551 (characterizing

liabilities as separate or community by court and confirming or assigning them to parties), 2552 (valuation date for liabilities).

**§ 2621. Debts incurred before marriage**

2621. Debts incurred by either spouse before the date of marriage shall be confirmed without offset to the spouse who incurred the debt.

**Comment.** Section 2621 continues subdivision (c)(1) of former Civil Code Section 4800 without change.

**§ 2622. Debts incurred after marriage but before separation**

2622. (a) Except as provided in subdivision (b), debts incurred by either spouse after the date of marriage but prior to the date of separation shall be divided as set forth in Sections 2550 to 2552, inclusive, and 2601 to 2604, inclusive.

(b) To the extent that community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems just and equitable, taking into account factors such as the parties' relative ability to pay.

**Comment.** Section 2622 continues subdivision (c)(2) of former Civil Code Section 4800 without substantive change.

**§ 2623. Debts incurred after separation but before judgment**

2623. Debts incurred by either spouse after the date of separation but before entry of a judgment of dissolution or legal separation shall be confirmed as follows:

(a) Debts incurred by either spouse for the common necessities of life of either spouse or the necessities of life of the minor children of the marriage, in the absence of a court order or written agreement for support or for the payment of these debts, shall be confirmed to either spouse according to the parties' respective needs and abilities to pay at the time the debt was incurred.

(b) Debts incurred by either spouse for nonnecessaries of that spouse or minor children of the marriage shall be confirmed without offset to the spouse who incurred the debt.

**Comment.** Section 2623 continues subdivision (c)(3) of former Civil Code Section 4800 without substantive change.

**§ 2624. Debts incurred after entry of judgment**

2624. Debts incurred by either spouse after entry of a judgment of dissolution but prior to termination of the parties' marital status or after entry of a judgment of legal separation shall be confirmed without offset to the spouse who incurred the debt.

**Comment.** Section 2624 continues subdivision (c)(4) of former Civil Code Section 4800 without change.

**§ 2625. Separate debts**

2625. Notwithstanding Sections 2620 to 2624, inclusive, all separate debts, including those debts incurred by a spouse during marriage and before the date of

separation that were not incurred for the benefit of the community, shall be confirmed without offset to the spouse who incurred the debt.

**Comment.** Section 2625 continues subdivision (d) of former Civil Code Section 4800 without change.

**§ 2626. Reimbursement for debts paid after separation but prior to trial**

2626. The court has jurisdiction to order reimbursement in cases it deems appropriate for debts paid after separation but prior to trial.

**Comment.** Section 2626 continues subdivision (e) of former Civil Code Section 4800 without change.

**§ 2627. Educational loans and tort liability**

2627. Notwithstanding Sections 2550 to 2552, inclusive, and Sections 2620 to 2624, inclusive, educational loans shall be assigned pursuant to 2641 and liabilities subject to paragraph (2) of subdivision (b) of Section 1000 shall be assigned to the spouse whose act or omission provided the basis for the liability, without offset.

**Comment.** Section 2627 continues subdivision (b)(5) of former Civil Code Section 4800 without change.

**§ 2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party**

2628. The judgment of dissolution of marriage, or the judgment of legal separation, shall contain the following notice: "A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party."

**Comment.** Section 2628 continues former Civil Code Section 4800.6 without change.

**PART 7. REIMBURSEMENTS**

§ 2640. Separate property contributions to acquisition of property

§ 2641. Community contributions for education or training

**§ 2640. Separate property contributions to acquisition of property**

2640. (a) As used in this section, "contributions to the acquisition of the property" include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of community estate property acquired on or after January 1, 1984, by the parties during marriage unless a party has made a written waiver of the right to reimbursement or signed a writing that has the effect of a waiver, the party shall be reimbursed for his or her contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount

reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division.

**Comment.** Section 2640 continues former Civil Code Section 4800.2 with two additions:

(1) Language is added to make clear that the section applies to quasi-community property as well as to community property. The language of former Section 4800.2 referred only to "community property," but the courts construed the section to apply to quasi-community property as well. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990).

(2) Language is added that limits reimbursement to cases where the property was "acquired on or after January 1, 1984, by the parties during marriage." This addition codifies a case law rule, based on impairment of vested rights without due process, that the section cannot constitutionally be applied to a case where the property was acquired prior to the effective date of the section. See, e.g., *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Cairo*, 204 Cal. App. 3d 1255, 251 Cal. Rptr. 731 (1988); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988).

Section 2640 reversed the rule of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980) (and cases following it), which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift. Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time the contribution is made. Under this rule, if the property has since appreciated in value, the community is entitled to the appreciation. If the property has since depreciated in value, reimbursement may not exceed the value of the property; if both parties are entitled to reimbursement and the property has insufficient value to permit full reimbursement of both, reimbursement should be on a proportionate basis.

For background on former Civil Code Section 4800.2, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

### § 2641. Community contributions for education or training

2641. (a) As used in this section, "community contributions to education or training" means payments made with community property for education or training or for the repayment of a loan incurred for education or training.

(b) Subject to the limitations provided in this section, upon dissolution of marriage or legal separation:

(1) The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party. The amount reimbursed shall be with interest at the legal rate, accruing from the end of the calendar year in which the contributions were made.

(2) A loan incurred during marriage for the education or training of a party shall not be included among the liabilities of the community for the purpose of division pursuant to this division but shall be assigned for payment by the party.

(c) The reimbursement and assignment required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including but not limited to any of the following:

(1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding, and that the community has substantially benefited from community contributions to the education or training made more than 10 years before the commencement of the proceeding.

(2) The education or training received by the party is offset by the education or training received by the other party for which community contributions have been made.

(3) The education or training enables the party receiving the education or training to engage in gainful employment that substantially reduces the need of the party for support that would otherwise be required.

(d) Reimbursement for community contributions and assignment of loans pursuant to this section is the exclusive remedy of the community or a party for the education or training and any resulting enhancement of the earning capacity of a party. However, nothing in this subdivision limits consideration of the effect of the education, training, or enhancement, or the amount reimbursed pursuant to this section, on the circumstances of the parties for the purpose of an order for support pursuant to Section 4320.

(e) This section is subject to an express written agreement of the parties to the contrary.

**Comment.** Section 2641 continues former Civil Code Section 4800.3 except that the reference in subdivision (b)(2) has been expanded to cover all of Division 9 (commencing with Section 2500) of the Family Code. Formerly, the reference was to the provisions of former Civil Code Section 4800.

Section 2641 provides authority for reimbursement of educational expenses that have benefited primarily one party to the marriage. Although the education, degree, or license or the resulting enhanced earning capacity is not "property" subject to division, community expenditures for them are properly subject to reimbursement. See subdivision (d).

Subdivision (a) does not detail the expenditures that might be included within the concept of "community contributions." These expenditures would at least include cost of tuition, fees, books and supplies, and transportation.

Subdivision (b)(1) states the basic rule that community contributions must be reimbursed. The reimbursement right is limited to cases where the earning capacity of a party is substantially enhanced; this limitation is intended to restrict litigation by requiring that the education or training must demonstrably enhance earning capacity and to implement the

policy of the section to redress economic inequity. However, it is not required that the party actually work in an occupation to which the enhancement applies; community contributions were made to the enhancement for the benefit of one party, who retains the potential to realize the enhancement in the future. Unless the rebuttable presumption of subdivision (c)(1) is overcome, reimbursement is limited to contributions made during the preceding ten years to minimize proof problems as well as potential inequity. Interest at the legal rate (Code Civ. Proc. § 685.010) accrues only from the end of each year in which expenditures were made in order to simplify accounting for numerous small expenditures made over the course of the education or training.

Subdivision (c) is intended to permit the court to avoid the requirements of this section in an appropriate case. For example, if one party receives a medical education, degree, and license at community expense, but the marriage endures for some time with a high standard of living and substantial accumulation of community assets attributable to the medical training, it might be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or training at community expense, it may be appropriate to allow no reimbursement even though the exact amounts expended for each are not equal. Subdivision (c)(2). This limitation is especially important where one party received education or training more than 10 years before the commencement of the dissolution or separation proceeding. See subdivision (c)(1). If toward the end of a lengthy marriage one party, who had been a homemaker during the marriage and had never completed an education or developed job skills, receives education or training to enable him or her to be gainfully employed, reimbursement could be improper. Subdivision (c)(3). Absent the education or training, support might be necessary to maintain the party or to permit the party to obtain education or training.

Subdivision (e) recognizes that at the time community contributions are made to the education or training of a spouse, the parties may have an agreement as to the conditions of the contributions. Since such agreements may be subject to litigation, subdivision (e) requires a writing.

For background on former Civil Code Section 4800.3, see *Recommendation Relating to Reimbursement of Educational Expenses*, 17 Cal. L. Revision Comm'n Reports 229 (1984). See also *In re Marriage of Sullivan*, 37 Cal. 3d 762, 209 Cal. Rptr. 354, 691 P.2d 1020 (1984).

**Note: Should Section 2641 cover quasi-community contributions also? Suppose one spouse works to put the other through school in a noncommunity property state and the parties to the marriage move to California shortly thereafter and then one files for marriage dissolution? The language of former Section 4800.2 (reimbursement for separate property contributions to acquire community property) referred only to "community property," but the courts construed the section to apply to quasi-community property as well. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990) ("California's marital property laws are designed to provide for uniform treatment of quasi-community and community property where the parties have changed their domicile to this state and seek to legally alter their marital status in a California court. This intent is apparent from statutes such as section 4800 (equal division of 'community estate' consisting of community and quasi-community property) and section 4800.5 (power to order conveyance of out-of-state property)").**

**PART 8. JOINTLY HELD SEPARATE PROPERTY****§ 2650. Division of jointly held separate property****§ 2650. Division of jointly held separate property**

2650. In a proceeding for division of the community estate, the court has jurisdiction, at the request of either party, to divide the separate property interests of the parties in real and personal property, wherever situated and whenever acquired, held by the parties as joint tenants or tenants in common. The property shall be divided together with, and in accordance with the same procedure for and limitations on, division of community estate.

**Comment.** Section 2650 continues subdivision (a) of former Civil Code Section 4800.4 without substantive change. See Section 2501 ("community estate" defined). Section 2650 applies regardless of when the separate property was acquired. Subdivision (b) of former Section 4800.4, which provided that the "section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before, on, or after January 1, 1986" has been omitted as unnecessary in view of Section 4(c).

Section 2650 reversed the former rule that the court in a dissolution or separation proceeding had no jurisdiction over property of the parties other than community or quasi-community property. The section supplements provisions governing community property held in joint tenancy form by extending the jurisdiction of the court to separate property held in joint tenancy form as well. It is consistent with the general rule that the court has jurisdiction to settle the property rights of the parties and with the principle that the court has jurisdiction to settle matters submitted to it by the parties. See Section 200 (jurisdiction of court). It is also consistent with the rule that the court may reserve jurisdiction to divide community property that has become tenancy in common by operation of law upon dissolution or separation. See, e.g., *Marriage of Borges*, 83 Cal. App. 3d 771, 148 Cal. Rptr. 118 (1978); *Comment, Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979).

Section 2650 supplements the other provisions of this division by giving the court express jurisdiction over joint tenancy or tenancy in common separate property submitted by a party in a proceeding to divide property in a proceeding for dissolution or legal separation. Property subject to division includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 2660 (community and quasi-community property). See also Section 202 (jurisdiction where service is by publication). The jurisdiction of the court extends only to the interests of the spouses, whether equal or unequal, and the court may not affect interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

It should be noted that division of property pursuant to this section is subject to the same limitations applicable to division of community estate. Therefore, an express agreement of the parties precluding partition or other division of the property and providing a mechanism for dispute resolution or otherwise governing their rights in the property prevails over this section. See Section 2550 (division of community estate "[e]xcept upon the written agreement of the parties").

For background on former Civil Code Section 4800.4, see *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm'n Reports 147 (1986); 18 Cal. L. Revision Comm'n Reports 365 (1986).

## **PART 9. REAL PROPERTY LOCATED IN ANOTHER STATE**

§ 2660. Division where community estate includes real property located in another state

### **§ 2660. Division where community estate includes real property located in another state**

2660. (a) Except as provided in subdivision (b), if the property subject to division includes real property situated in another state, the court shall, if possible, divide the community property and quasi-community property as provided for in this division in such a manner that it is not necessary to change the nature of the interests held in the real property situated in the other state.

(b) If it is not possible to divide the property in the manner provided for in subdivision (a), the court may do any of the following in order to effect a division of the property as provided for in this division:

(1) Require the parties to execute such conveyances or take such other actions with respect to the real property situated in the other state as are necessary.

(2) Award to the party who would have been benefited by the conveyances or other actions the money value of the interest in the property that he or she would have received if the conveyances had been executed or other actions taken.

**Comment.** Section 2660 continues former Civil Code Section 4800.5 except that a reference to "this division" has been substituted for the references to former Section 4800. Section 2660 specifies the procedure to be followed when the property subject to division includes real property situated in another state.

When real property is acquired in another state with community funds, the property is treated as community property for the purpose of division on dissolution of the marriage or on legal separation. See *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P.2d 905 (1944); *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113, 119 n. 12 (1969). Quasi-community property likewise may include real property situated in another state. See 125 ("quasi-community property" defined). See also *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

Section 2660 recognizes that the judgment of the court dividing the property cannot directly affect real property in another state, even though the court has jurisdiction in personam over both spouses, unless the judgment is allowed that effect by the laws of the state in which the property is situated. *Fall v. Eastin*, 215 U.S. 1 (1909); *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Taylor v. Taylor*, 192 Cal. 71, 218 P. 756 (1923). On the other hand, where the court has jurisdiction in personam over both parties, it may order one of the parties to execute a deed by acting in personam; if the person so ordered does execute the deed, it effectively conveys the interest transferred, even though executed under threat of contempt proceedings. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

Section 2660 requires that the court first attempt to effect the equal division of the community property and quasi-community property required by this division without making any change in the nature of the interests held in the real property situated in the other state. This will be the result where the value of the other community and quasi-community property is equal to or exceeds the value of the real property situated in the other state that is subject to division. Where the court determines that the real property situated in another state or an interest in such property must be transferred from one party to the other to effect the equal division of community and quasi-community property required by this division, the court may order the parties to execute the necessary conveyances or to take such other actions—such as selling the property and including the proceeds in the property division—as may be necessary to effect an equal division of the community and quasi-community property and may enforce its order by contempt proceedings. If a party refuses to execute the instrument necessary to effect the transfer or sale of the property or to take some other necessary action, the problem may be dealt with by awarding the money value of the property or interest therein to the other party, which award must be given full faith and credit. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd*, *Fall v. Eastin*, 215 U.S. 1 (1909).

For background on former Civil Code Section 4800.5, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969); *Report of Assembly Committee on Judiciary on Assembly Bill 124*, 10 Cal. L. Revision Comm'n Reports 1042-43 (1971).

## DIVISION 10. CUSTODY OF CHILDREN

- Part 1. General Provisions
- Part 2. Right to Custody of Minor Child
- Part 3. Freedom from Parental Custody and Control
- Part 4. Interstate Compact on Placement of Children
- Part 5. Priorities for Foster Care Placement
- Part 6. Uniform Child Custody Jurisdiction Act

### PART 1. GENERAL PROVISIONS

- § 3000. Right of parent to custody, services, and earnings of unmarried minor child
- § 3001. Right of parent to determine residence of child
- § 3002. Parent cannot control property of child
- § 3003. Payment of earnings to minor
- § 3004. Parent may relinquish control and earnings of child
- § 3005. When parental authority ceases
- § 3006. Compensation where adult child continues to serve and be supported by parent
- § 3007. Order for support where custodial parent receiving assistance pursuant to Burton-Miller Act
- § 3008. Remedy for abuse of parental authority [omit]

#### § 3000. Right of parent to custody, services, and earnings of unmarried minor child

3000. (a) The mother of an unmarried minor child is entitled to its custody, services, and earnings.

(b) The father of the child, if presumed to be the father under Section 1711, is equally entitled to the custody, services, and earnings of the unmarried minor.

(c) If either the father or mother is dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the unmarried minor.

**Comment.** Section 3000 continues as former Civil Code Section 197 without substantive change. See also Sections 3003 (payment of earnings to minor), 3004 (parent may relinquish right of controlling child and receiving child's earnings).

#### § 3001. Right of parent to determine residence of child

3001. A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal which would prejudice the rights or welfare of the child.

**Comment.** Section 3001 continues former Civil Code Section 213 without substantive change. The word "court" is substituted for "proper Court." See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

#### § 3002. Parent cannot control property of child

3002. The parent, as such, has no control over the property of the child.

**Comment.** Section 3002 is the same as former Civil Code Section 202. See also Section 3902 (court allowance to parent for support of child from child's property).

**§ 3003. Payment of earnings to minor**

3003. The employer of a minor shall pay the earnings of the minor to the minor until the parent or guardian entitled to the earnings gives the employer notice that the parent or guardian claims the earnings.

**Comment.** Section 3003 restates the substance of former Civil Code Section 212 except that former Section 212 provided that the employer "may" (rather than "shall") pay the earnings to the minor. See also Prob. Code § 2601 (unless otherwise ordered by court, earnings of minor ward are not part of guardianship estate and are subject to control of ward). See also Section 3004 (relinquishment by parent of right to receive earnings of child).

**§ 3004. Parent may relinquish control and earnings of child**

3004. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child's earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

**Comment.** Section 3004 continues former Civil Code Section 211 without substantive change.

**§ 3005. When parental authority ceases**

3005. The authority of a parent ceases upon any of the following:

- (a) The appointment, by a court, of a guardian of the person of the child.
- (b) The marriage of the child.
- (c) The child attaining majority.

**Comment.** Section 3005 continues former Civil Code Section 204 without substantive change. See also Sections 3203 (effect of declaration of freedom from parental custody and control), 7050-7052 (effect of emancipation of minor under Emancipation of Minors Act).

**Note:** Section 3005 fails to recognize that a declaration of freedom from parental custody and control under Part 3 (commencing with Section 3200) terminates all parental rights and responsibilities with regard to the child. See Section 3203. Should this be recognized in Section 3005? Also, need the effect of emancipation of the minor under the Emancipation of Minors Act be recognized in the text of Section 3005?

**§ 3006. Compensation where adult child continues to serve and be supported by parent**

3006. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement for the compensation.

**Comment.** Section 3006 continues former Civil Code Section 210 without substantive change.

**§ 3007. Order for support where custodial parent receiving assistance pursuant to Burton-Miller Act**

3007. An order awarding custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the Burton-Miller Act (Chapter 2

(commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child shall include an order pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 11, directing the noncustodial parent to pay any amount necessary for the support of the child, to the extent of the noncustodial parent's ability to pay.

**Comment.** Section 3007 continues former Civil Code Section 4600.2 with the expansion in Section 3007 of the reference found in former Section 4600.2 (to support order provisions) so that the reference in Section 3007 includes relevant provisions not included in the former reference.

**§ 3008. Remedy for abuse of parental authority [OMIT]**

3008. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

**Comment.** Section 3008 is the same as former Civil Code Section 203.

**Note:** Existing Civil Code Section 203, continued as Family Code Section 3008 (set out above), is obsolete and unnecessary in view of the detailed provisions relating to dependent children and obtaining support for a dependent child. See Welfare and Institutions Code Sections 300 et seq. and 900 et seq. (Existing Section 203 was enacted in 1872.).

**PART 2. RIGHT TO CUSTODY OF MINOR CHILD**

- Chapter 1. General Provisions
- Chapter 2. Matters to be Considered in Awarding Custody
- Chapter 3. Temporary Custody Order During Pendency of Proceeding
- Chapter 4. Joint Custody
- Chapter 5. Visitation Rights
- Chapter 6. Custody Investigation and Report
- Chapter 7. Action for Exclusive Custody
- Chapter 8. Location of Missing Party or Child
- Chapter 9. Check to Determine Whether Child is Missing Person
- Chapter 10. Appointment of Counsel to Represent Child
- Chapter 11. Mediation of Contested Visitation or Custody Issues
- Chapter 12. Counseling of Parents and Child

**CHAPTER 1. GENERAL PROVISIONS**

- § 3020. Legislative findings and declarations
- § 3021. Authority of court to make custody order
- § 3022. Factors considered in determining best interest of child
- § 3023. Preference for trial on issue of custody
- § 3024. Notice to other parent of change of residence of child
- § 3025. Parental access to records
- § 3026. Family reunification services

§ 3027. Monetary sanction for false accusation of child abuse or neglect

§ 3028. Compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights

### § 3020. Legislative findings and declarations

3020. The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child.

**Comment.** Section 3020 continues the first sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1) without substantive change. The reference in former Section 4600 to the section setting out the factors to be considered in determining the best interest of the child has been omitted as unnecessary. See also Section 3022 (factors to be considered in determining best interest of child).

### § 3021. Authority of court to make custody order

3021. In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

**Comment.** Section 3021 is the same as the second sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1). As to jurisdiction of the court, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act). See also Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Note:** Is Section 3021 superseded by the general provisions governing ex parte and noticed motion custody orders?

### § 3022. Factors considered in determining best interest of child

3022. In making a determination of the best interest of the child in any proceeding under this code, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent against the child or against the other parent. As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against the child" means child abuse as defined in Section 11165.6 of the Penal Code and "abuse against the other parent" means abuse as defined in Section 5501.

(c) The nature and amount of contact with both parents.

**Comment.** Section 3022 is the same as former Civil Code Section 4608 (as amended by 1990 Cal. Stat. ch. 610 § 3) except that former Section 4608 applied only to proceedings under Title 4 (commencing with Section 4600) (custody of children) of the Family Law Act. See also Sections 70 ("domestic violence" defined), 3040 (order of preference in awarding custody), 3041 (additional requirements for custody award to nonparent), 3042 (consideration of wishes of child in custody case), 3043 (nomination of guardian by parent), 3044 (parent convicted under certain Penal Code provisions), 3080 (presumption for joint custody where parents agree to joint custody).

**Note:** If Section 3022 is to apply to all proceedings "under this code," should the section be moved to the part of the new Family Code containing "general provisions"? Existing Section 4608 is now compiled in the title on custody of children.

### § 3023. Preference for trial on issue of custody

3023. (a) In any case in which a contested issue of custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.

(b) In any case in which there is more than one contested issue and one of the issues is of the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

**Comment.** Section 3023 is the same as former Civil Code Section 4600.6. See also Sections 3041 (excluding public from hearing on award of custody to nonparent), 4003 (separate trial on issue of child support).

### § 3024. Notice to other parent of change of residence of child

3024. In making an order for custody, if the court does not consider it inappropriate, the court may specify that a parent shall notify the other parent if he or she plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal. The notice shall be given prior to the contemplated move, by mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent's counsel of record. To the extent feasible, the notice shall be provided within a minimum of 45 days prior to the proposed change of residence so as to allow time for mediation of a new agreement concerning custody. This section does not affect orders made before January 1, 1989.

**Comment.** Section 3024 continues subdivision (m) of former Civil Code Section 4600.5 without substantive change. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

**Note:** Section 3024 continues without substantive change a provision found in the existing section relating to joint custody. However, the existing provision is not by its terms limited to joint custody orders, and Section 3024 applies to any custody order, not just a joint custody order.

**§ 3025. Parental access to records**

3025. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

**Comment.** Section 3025 is the same as subdivision (f) of former Civil Code Section 4600.5.

**Note:** Section 3025 continues without substantive change a provision found in the existing section relating to joint custody. However, the existing provision is not by its terms limited to joint custody orders, and Section 3025 applies to any custody order, not just a joint custody order.

**§ 3026. Family reunification services**

3026. In accordance with Section 16507 of the Welfare and Institutions Code, family reunification services shall not be ordered as part of a child custody or visitation rights proceeding brought under the Family Law Act.

**Comment.** Section 3026 is the same as former Civil Code Section 4609 without substantive change. For the provisions that constitute the Family Law Act, see Section 120.

**Note:** Should something be substituted for "Family Law Act" in the text of Section 3026? Do recent amendments to Section 16507 permit family reunification services to be ordered in some situations in proceedings brought under the Family Law Act? Should Section 3026 be revised to read:

**3026. Except as provided in Section 16507 of the Welfare and Institutions Code, family reunification services shall not be ordered as a part of a child custody or visitation rights proceeding brought under this code.**

**§ 3027. Monetary sanction for false accusation of child abuse or neglect**

3027. (a) If a court determines that an accusation of child abuse or neglect made during a child custody proceeding under this division was false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed one thousand dollars (\$1,000) and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

(b) Upon motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served upon the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

**Comment.** Section 3027 continues former Civil Code Section 4611 (as added by 1990 Cal. Stat. ch. 297 § 1) without substantive change.

**Note:** Should Section 3027 apply to a child custody proceeding “under this code” rather than being limited to one under “this division” or to a child custody proceeding, whether or not “under this code”?

**§ 3028. Compensation for failure to assume caretaker responsibility or for thwarting other parent’s visitation or custody rights**

3028. (a) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights contemplated by a custody or visitation order entered under this code, including but not limited to an order for joint physical custody, or by a written or oral agreement between the parents.

(b) The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent’s failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent’s thwarting of his or her efforts to exercise visitation or custody rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.

(c) The compensation may be requested by noticed motion or an order to show cause, which shall allege, under penalty of perjury, (1) a minimum of one hundred dollars (\$100) of expenses incurred or (2) at least three occurrences of failure to exercise visitation or custody rights or (3) at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

(d) Attorney’s fees shall be awarded to the prevailing party upon a showing of the nonprevailing party’s ability to pay.

**Comment.** Section 3028 continues subdivision (b) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) without substantive change, except that Section 3028 covers visitation or custody rights contemplated by a custody or visitation order entered “under this code.” Subdivision (b) of former Section 4700 covered an order under the Family Law Act. See also Section 105 (“joint legal custody” defined).

**CHAPTER 2. MATTERS TO BE  
CONSIDERED IN AWARDING CUSTODY**

§ 3040. Order of preference in awarding custody

§ 3041. Additional requirements for custody award to nonparent

§ 3042. Wishes of child

§ 3043. Nomination of guardian by parent

§ 3044. Parent convicted under Penal Code provisions

**§ 3040. Order of preference in awarding custody .**

3040. (a) Custody should be awarded in the following order of preference according to the best interest of the child pursuant to Section 3022:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, subject to Section 3022, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan which is in the best interest of the child.

**Comment.** Section 3040 continues subdivisions (b) and (d) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1) without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined), 3022 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3041. Additional requirements for custody award to nonparent**

3041. Before making an order awarding custody to a person or persons other than a parent, without the consent of the parents, the court shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

**Comment.** Section 3041 continues subdivision (c) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1) without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

**§ 3042. Wishes of child**

3042. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof.

**Comment.** Section 3042 is the same as the third sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1).

**§ 3043. Nomination of guardian by parent**

3043. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (a) of Section 3040, the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

**Comment.** Section 3043 is the same as the last sentence of subdivision (a) of former Civil Code Section 4600 (as amended by 1990 Cal. Stat. ch. 610 § 1). Section 3043 makes clear that a nomination under the Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding. For background on former Civil Code Section 4600, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

**§ 3044. Parent convicted under Penal Code provisions**

3044. No parent shall be awarded custody of, or unsupervised visitation with, a child if the parent has been convicted under Section 273a, 273d, or 647.6 of the Penal Code unless the court finds that there is no significant risk to the child.

**Comment.** Section 3044 is the same as former Civil Code Section 4610. See also Section 3100(b) (visitation limited to situations in which third person present).

**CHAPTER 3. TEMPORARY CUSTODY  
ORDER DURING PENDENCY OF PROCEEDING**

§ 3060. Petition for temporary custody order

§ 3061. Order for temporary custody in accordance with agreement or understanding of parties

§ 3062. Ex parte order and order to show cause

§ 3063. Order restraining removal of child from state

§ 3064. Limitation on ex parte order granting or modifying custody order

**§ 3060. Petition for temporary custody order**

3060. In any proceeding for dissolution of marriage, for a judgment of nullity of marriage, or for legal separation, where there are minor children of the marriage, and in any action for exclusive custody under Section 3120, a petition for a temporary custody order containing the statement required by Section 3409 may be included with the initial filing of the petition or action or may be filed at any time thereafter.

**Comment.** Section 3060 is the same as subdivision (a) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). See also Sections 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney). As to jurisdiction of the court, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

**§ 3061. Order for temporary custody in accordance with agreement or understanding of parties**

3061. If the parties have agreed to or reached an understanding on the custody or temporary custody of their children, a copy of the agreement or an affidavit as to their understanding shall be attached to the petition or action. As promptly as possible after this filing, the court shall, except in exceptional circumstances, enter an order awarding temporary custody in accordance with the agreement or understanding or in accordance with any stipulation of the parties.

**Comment.** Section 3061 is the same as subdivision (b) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2).

**§ 3062. Ex parte order and order to show cause**

3062. (a) In the absence of an agreement, understanding, or stipulation, the court may, if jurisdiction is appropriate, enter an ex parte temporary custody order, set a hearing date within 20 days, and issue an order to show cause on the responding party. If the responding party does not appear or respond within the time set, the temporary custody order may be extended as necessary, pending the termination of the proceedings.

(b) If, despite good faith efforts, service of the ex parte order and order to show cause has not been effected in a timely fashion and there is reason to believe, based on an affidavit, or other manner of proof made under penalty of perjury, by the petitioner, that the responding party has possession of the minor child and seeks to avoid the jurisdiction of the court or is concealing the whereabouts of the child, then the hearing date may be reset and the ex parte order extended up to an additional 90 days. After service has been effected, either party may request ex parte that the hearing date be advanced or the ex parte order be dissolved or modified.

**Comment.** Section 3062 is the same as subdivisions (c) and (d) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Section 3130 (action by district attorney to locate missing party and child and to procure compliance with order to appear).

**§ 3063. Order restraining removal of child from state**

3063. In conjunction with any ex parte order seeking or modifying an order of custody, the court shall enter an order restraining the person receiving custody from removing the child from the state pending notice and a hearing on the order seeking or modifying custody.

**Comment.** Section 3063 is the same as the first sentence of subdivision (e) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3064. Limitation on ex parte order granting or modifying custody order**

3064. The court shall refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. "Immediate harm to the child" includes having a parent who has committed acts of domestic violence, where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence.

**Comment.** Section 3064 is the same as the second and third sentences of subdivision (e) of former Civil Code Section 4600.1 (as amended by 1990 Cal. Stat. ch. 610 § 2). See also Section 70 ("domestic violence" defined).

**CHAPTER 4. JOINT CUSTODY**

**§ 3080. Presumption for joint custody where parents agree to joint custody**

**§ 3081. Award of joint custody absent agreement of parents**

**§ 3082. Statement by court of reasons for grant or denial of joint custody request**

**§ 3083. Content and effect of joint legal custody order**

**§ 3084. Content of joint physical custody order**

**§ 3085. Awarding joint legal custody without joint physical custody**

**§ 3086. Order may specify one parent as primary caretaker of child**

**§ 3087. Modification or termination of joint custody order**

**§ 3088. Modification to make custody order a joint custody order**

**§ 3089. Consultation with conciliation court**

**§ 3080. Presumption for joint custody where parents agree to joint custody**

3080. There is a presumption, affecting the burden of proof, that joint custody is in the best interest of a minor child, subject to Section 3022, where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage.

**Comment.** Section 3080 is the same as subdivision (a) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Sections 3022 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

**§ 3081. Award of joint custody absent agreement of parents**

3081. Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases, subject to Section 3022. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this section, the court may direct that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110).

**Comment.** Section 3081 is the same as subdivision (b) of former Civil Code Section 4600.5. See Section 100 ("joint custody" defined). See also Section 3131 (action by district attorney where child taken or detained in violation of custody order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3082. Statement by court of reasons for grant or denial of joint custody request**

3082. When a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A statement that joint physical custody is, or is not, in the best interest of the child is not sufficient to satisfy the requirements of this section.

**Comment.** Section 3082 continues subdivision (c) of former Civil Code Section 4600.5 without substantive change. See also Sections 100 ("joint custody" defined), 110 ("joint physical custody" defined), 3022 (factors to be considered in determining best interest of child).

**§ 3083. Content and effect of joint legal custody order**

3083. In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

**Comment.** Section 3083 is the same as subdivision (e) of former Civil Code Section 4600.5. See also Section 105 ("joint legal custody" defined); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3084. Content of joint physical custody order**

3084. In making an order of joint physical custody, the court shall specify the rights of each parent to physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

**Comment.** Section 3084 is the same as subdivision (f) of former Civil Code Section 4600.5. See also Section 110 ("joint physical custody" defined).

**§ 3085. Awarding joint legal custody without joint physical custody**

3085. In making an order for custody with respect to both parents, the court may award joint legal custody without awarding joint physical custody.

**Comment.** Section 3085 is the same as subdivision (g) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined).

**§ 3086. Order may specify one parent as primary caretaker of child**

3086. In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

**Comment.** Section 3086 is the same as subdivision (h) of former Civil Code Section 4600.5. See also Sections 105 ("joint legal custody" defined), 110 ("joint physical custody" defined), 3028 (compensation for failure to assume caretaker responsibility).

**§ 3087. Modification or termination of joint custody order**

3087. An order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination of the order. If either parent opposes the modification or termination order, the court shall state in its decision the reasons for modification or termination of the joint custody order.

**Comment.** Section 3087 continues subdivision (i) of former Civil Code Section 4600.5 without substantive change. See also Sections 100 ("joint custody" defined), 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3088. Modification to make custody order a joint custody order**

3088. An order for the custody of a minor child of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 3403 and 3414, be modified at any time to an order of joint custody in accordance with this chapter.

**Comment.** Section 3088 is the same as subdivision (j) of former Civil Code Section 4600.5. See also Section 100 ("joint custody" defined).

**§ 3089. Consultation with conciliation court**

3089. In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve a controversy which has arisen in the implementation of a plan for custody.

**Comment.** Section 3089 is the same as subdivision (k) of former Civil Code Section 4600.5.

**CHAPTER 5. VISITATION RIGHTS**

**§ 3100. Visitation rights generally**

**§ 3101. Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding**

**§ 3102. Visitation rights where father or mother of unmarried minor child is deceased**

**§ 3100. Visitation rights generally**

3100. (a) Subject to Chapter 11 (commencing with Section 3155), in making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall order reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) In making an award authorizing visitation pursuant to this section, if an order has been directed to a parent pursuant to subdivision (b), (c), or (d) of Section 1900 during the pendency of the proceeding or pursuant to Section 1910, the court shall consider whether the best interest of the child requires that any visitation granted to that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit the name of a person to the court that he or she deems suitable to be present during visitation.

**Comment.** Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change. Mediation of the custody or visitation issue is required by Chapter 11 (commencing with Section 3155). See also Sections 3022 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

Subdivision (b) is the same as former Civil Code Section 4601.5. See also Section 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child).

**§ 3101. Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding**

3101. (a) In a proceeding under Section 2250 or 2330, the superior court has jurisdiction to award reasonable visitation rights to any of the following persons if visitation by the person is determined to be in the best interest of the minor child:

(1) A person who is a party to the marriage that is the subject of the proceeding with respect to a minor child of the other party to the marriage.

(2) A person who is a grandparent of a minor child of a party to the marriage.

(b) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the parties to the marriage agree that the grandparent should not be awarded visitation rights.

(c) Visitation rights granted to a stepparent or grandparent pursuant to this section shall not conflict with any visitation or custodial right of a natural or adoptive parent who is not a party to the proceeding.

(d) In making an award of visitation pursuant to this section, if a domestic violence prevention order has been directed to a stepparent or grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that any visitation by that stepparent or grandparent should be denied.

**Comment.** Section 3101 continues subdivisions (a), (b), (j), (k), and (l) of former Civil Code Section 4351.5 without substantive change. Mediation of the visitation issue is required by Chapter 11 (commencing with Section 3155). See also Sections 75 ("domestic violence prevention order" defined), 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**§ 3102. Visitation rights where father or mother of unmarried minor child is deceased**

3102. (a) If either the father or mother of an unmarried minor child is deceased, the children, parents, and the grandparents of the deceased father or mother may be granted reasonable visitation rights to the minor child during the child's minority by the superior court upon a finding that the visitation rights would be in the best interest of the minor child.

(b) In granting visitation rights to a person other than the parents of the deceased father or mother, the court shall consider the amount of personal contact between the person and the minor child prior to the application for the order granting the person visitation rights.

(c) This section does not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child automatically terminate upon the adoption of the child by a person other than a stepparent or grandparent.

**Comment.** Section 3102 continues former Civil Code Section 197.5 without substantive change. See also Section 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**CHAPTER 6. CUSTODY INVESTIGATION AND REPORT**

**§ 3110. Custody investigation and report**

**§3110.5.**

Separate meetings where history of domestic violence or domestic violence prevention order

**§ 3111. Repayment of county for investigation or visitation work**

**§ 3112. Recommendation for appointment of counsel for minor child**

**§ 3110. Custody investigation and report**

3110. In a proceeding under the Family Law Act, when so directed by the court, the probation officer or domestic relations investigator shall conduct a custody investigation and file a written confidential report on it. The report may be considered by the court and shall be made available only to the parties or their attorneys at least 10 days before any hearing regarding the custody of a child. The report may be received in evidence upon stipulation of all interested parties.

**Comment.** Section 3110 is the same as the first paragraph of former Civil Code Section 4602. As to the provisions included in the Family Law Act, see Section 85. See also Section 3081 (investigation concerning whether joint custody award would be appropriate). The provisions of this chapter supersede former Code of Civil Procedure Section 263.

**Note:** Should Section 3110 apply to any proceeding "under this code" or, since the report is required only if the court so orders, should the section apply "in any proceeding where custody of a child is an issue"?

**SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3110.**

**§ 3110.5. Separate meetings where history of domestic violence or domestic violence prevention order**

3110.5. Where there has been a history of domestic violence between the parties, or where a domestic violence prevention order is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the probation officer, domestic relations investigator, or court appointed evaluator separately at separate times.

**Comment.** Section 3110.5 continues the second paragraph of former Civil Code Section 4602 (as amended by 1991 Cal. Stat. ch. [AB 162]) without substantive change. See also Sections 70 ("domestic violence" defined), 75 (domestic violence prevention order" defined).

**NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD WHAT IS NOW SECTION 3110.5.**

**§ 3111. Repayment of county for investigation or visitation work**

3111. When the probation officer or domestic relations investigator is directed by the court to conduct a custody investigation or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall make inquiry into the financial condition of the parent, guardian, or other person charged with the support and maintenance of the minor, and if the court finds the parent, guardian, or other person able, in whole or in part, to pay the expense of the investigation, report, and recommendation, the court may make an order requiring that parent, guardian, or other person to repay to the county that part, or all, of the expense of investigation, report, and recommendation as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of these expenses and repayments and shall deposit these collections in the county treasury.

**Comment.** Section 3111 is the same as the second paragraph of former Civil Code Section 4602.

**NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3111.**

**§ 3112. Recommendation for appointment of counsel for minor child**

3112. Nothing in this chapter prohibits the probation officer or domestic relations investigator from recommending to the court that counsel be appointed pursuant to Chapter 10 (commencing with Section 3150) to represent the minor child. In making such a recommendation, the probation officer or domestic relations investigator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

**Comment.** Section 3112 is the same as the last paragraph of former Civil Code Section 4602. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

**NOTE: SECTION 4602 WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ADD "COURT APPOINTED EVALUATOR" TO WHAT IS NOW SECTION 3112.**

## **CHAPTER 7. ACTION FOR EXCLUSIVE CUSTODY**

§ 3120. Independent action for exclusive custody

§ 3120. Independent action for exclusive custody

3120. Without filing a petition for dissolution or legal separation, the husband or wife may bring an action for the exclusive custody of the children of the marriage. The court may, during the pendency of the action, or at the final hearing thereof, or afterwards, make such order regarding the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interest of the children. The order may be modified or revoked at any time thereafter as the natural rights of the parties and the best interests of the children may require.

**Comment.** Section 3120 continues former Civil Code Section 4603 without substantive change. See also Section 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

**Note:** Should the proceeding under this chapter be referred to as a "proceeding" instead of as an "action"? If this change is made, Section 3060 will require revision.

## **CHAPTER 8. LOCATION OF MISSING PARTY OR CHILD**

§ 3130. Action by district attorney to locate missing party and child and to procure compliance with order to appear

§ 3131. Action by district attorney where child taken or detained in violation of custody or visitation order

§ 3132. District attorney acts on behalf of court

§ 3133. Temporary custody order upon request of district attorney

§ 3134. Payment of district attorney's expenses

§ 3130. Action by district attorney to locate missing party and child and to procure compliance with order to appear

3130. If a petition to determine custody of a child has been filed in a court of competent jurisdiction, or if a temporary order pending determination of custody has been entered in accordance with Chapter 3 (commencing with Section 3060), and the whereabouts of a party in possession of the child are not known, or there is reason to believe that the party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 3411, the district attorney shall take all actions necessary to locate the party and the child and to procure compliance with the

order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

**Comment.** Section 3130 is the same as subdivision (a) of former Civil Code Section 4604.

**§ 3131. Action by district attorney where child taken or detained in violation of custody or visitation order**

3131. If a custody or visitation order has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the order, the district attorney shall take all actions necessary to locate and return the child and the person who violated the order and to assist in the enforcement of the custody or visitation order or other order of the court by use of an appropriate civil or criminal proceeding.

**Comment.** Section 3131 continues subdivision (b) of former Civil Code Section 4604 without substantive change.

**§ 3132. District attorney acts on behalf of court**

3132. In performing the functions described in Sections 3130 and 3131, the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings.

**Comment.** Section 3132 is the same as first sentence of subdivision (c) of former Civil Code Section 4604.

**§ 3133. Temporary custody order upon request of district attorney**

3133. If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child who is being detained or concealed in violation of a court order or a parent's right to custody, the court may issue an order, placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interest of the child to place temporary sole physical custody in any of the persons recommended by the district attorney, the court shall appoint a person to take charge of the child and return the child to the jurisdiction of the court.

**Comment.** Section 3133 continues the second and third sentences of subdivision (c) of former Civil Code Section 4604 without substantive change. See also Sections 140 ("sole physical custody" defined), 3022 (factors to be considered in determining best interest of child).

**§ 3134. Payment of district attorney's expenses**

3134. (a) When the district attorney incurs expenses pursuant to this chapter, including expenses incurred in a sister state, payment of the expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the State Controller and paid by the State Treasury according to law.

(b) The court in which the custody proceeding is pending or which has continuing jurisdiction shall, if appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings, and that allocation shall constitute a judgment for the state for the funds advanced pursuant to this section. The county shall take reasonable action to enforce such liability and shall transmit all recovered funds to the state.

**Comment.** Section 3134 is the same as former Civil Code Section 4605.

### **CHAPTER 9. CHECK TO DETERMINE WHETHER CHILD IS MISSING PERSON**

§ 3140. Submission of child's birth certificate to court if parent has not appeared in proceeding; check to determine if child is missing person

**§ 3140. Submission of child's birth certificate to court if parent has not appeared in proceeding; check to determine if child is missing person**

3140. (a) Subject to subdivisions (b) and (c), prior to granting or modifying a custody order in a case in which one or both parents of the child have not appeared either personally or by counsel, the court shall require the parent, petitioner, or other party appearing in the case to submit a certified copy of the child's birth certificate to the court. The court or its designee shall forward the certified copy of the birth certificate to the local police or sheriff's department which shall check with the National Crime Information Center Missing Person System to ascertain whether the child has been reported missing or is the victim of an abduction and shall report the results of the check to the court.

(b) If the custody matter before the court also involves a petition for the dissolution of marriage or the adjudication of paternity rights or duties, this section applies only to a case in which there is no proof of personal service of the petition on the absent parent.

(c) For good cause shown, the court may waive the requirements of this section.

**Comment.** Section 3140 continues former Civil Code Section 4604.5 without substantive change. See also Sections 1703 (Section 3140 applies to proceedings pursuant to Uniform Parentage Act), 3415 (Section 3140 applies to proceedings pursuant to the Uniform Child Custody Jurisdiction Act); Welf. & Inst. Code § 11478.5 (California Parent Locator Service).

### **CHAPTER 10. APPOINTMENT OF COUNSEL TO REPRESENT CHILD**

§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding

§ 3151. Rights and duties of appointed counsel

§ 3152. Release to counsel of reports and files of child protective agency

§ 3153. Compensation of appointed counsel

**§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding**

3150. (a) In an initial or subsequent proceeding under the Family Law Act where there is in issue the custody of or visitation with a minor child, the court may, if it determines it would be in the best interest of the minor child, appoint private counsel to represent the interests of the minor child.

(b) Counsel, upon entering an appearance on behalf of a minor pursuant to this chapter, shall continue to represent that minor unless relieved by the court upon the substitution of other counsel by the court or for cause.

**Comment.** Section 3150 is the same as subdivisions (a) and (b) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1). See Section 85 ("Family Law Act" defined). See also Section 3022 (factors to be considered in determining best interest of child).

**Note:** Should Section 3150 apply in any proceeding "under this code" or in any proceeding involving custody or, or visitation with, a minor child?

**§ 3151. Rights and duties of appointed counsel**

3151. (a) The child's counsel appointed under this chapter is charged with the representation of the child's interests. The counsel's duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain facts relevant to the custody or visitation hearings. Counsel may introduce and examine his or her own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to adequately represent the child.

(b) Counsel shall have the following rights when ordered by the court:

- (1) Reasonable access to the child with adequate notice.
- (2) Notice of any proceeding, including a request for examinations, affecting the child.
- (3) Access to medical and school records for the child.
- (4) The right to veto any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.
- (5) The right to assert on behalf of the child any privilege for discovery purposes.
- (6) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon application to the court.

**Comment.** Section 3151 continues subdivisions (c) and (d) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1) without substantive change.

**Note:** Is the phrase "upon application to the court" in subdivision (b)(6) necessary since the rights listed in the subdivision exist only "when ordered by the court"? See

the introductory portion of subdivision (b). Should counsel have some or all of these rights even though there is no court order granting the right?

**§ 3152. Release to counsel of reports and files of child protective agency**

3152. (a) The child's counsel may, upon noticed motion to all parties and the local child protective services agency, request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency.

(b) The court shall review the reports or files in camera in order to determine whether they are relevant to the pending action and whether and to what extent they should be released to the child's counsel.

(c) Neither the review by the court nor the release to counsel shall constitute a waiver of the confidentiality of the reports and files. Counsel shall not disclose the contents or existence of the reports or files to anyone unless otherwise permitted by law.

**Comment.** Section 3152 is the same as subdivision (e) former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1). The word "reports" has been substituted for "records" in subdivision (c) to conform to subdivisions (a) and (b).

**§ 3153. Compensation of appointed counsel**

3153. (a) If the court appoints counsel under this chapter to represent the child, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Except as provided in subdivision (b), this amount shall be paid by the parties in such proportions as the court deems just.

(b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed pursuant to this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.

**Comment.** Section 3153 continues subdivisions (f) and (g) of former Civil Code Section 4606 (as amended by 1990 Cal. Stat. ch. 754 § 1) without substantive change.

**CHAPTER 11. MEDIATION OF  
CONTESTED VISITATION OR CUSTODY ISSUES**

Article 1. General Provisions

Article 2. Mediation Where Issuance or Modification of Custody or Visitation Order Requested

Article 3. Mediation of Stepparent or Grandparent Visitation

**Article 1. General Provisions**

§ 3155. Mediator to be available; qualifications of mediator

§ 3156. Confidentiality of mediation proceeding

§ 3157. Assessment of needs and interests of child

§ 3158. Exclusion of counsel from mediation proceeding

§ 3159. Recommendations to court

§ 3160. Agreement reached by parties as result of mediation .

§ 3161. Uniform standards of practice for mediation

§ 3162. Local court rules

### **§ 3155. Mediator to be available; qualifications of mediator**

3155. Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 6415.

**Comment.** Section 3155 continues subdivision (b) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) and the last sentence of subdivision (c) of former Civil Code Section 4351.5. See also Section 6416 (continuing instruction programs in domestic violence).

### **§ 3156. Confidentiality of mediation proceeding**

3156. Mediation proceedings under this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this chapter are deemed to be official information within the meaning of Section 1040 of the Evidence Code.

**Comment.** Section 3156 continues subdivision (d) of former Civil Code Section 4351.5 and subdivision (c) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. See also Section 6419 (destruction of records of child custody or visitation mediation).

### **§ 3157. Assessment of needs and interests of child**

3157. In mediation proceedings under this chapter, the mediator has the duty to assess the needs and interests of the child involved in the controversy and is entitled to interview the child when the mediator considers the interview appropriate or necessary.

**Comment.** Section 3157 continues the second sentence of subdivision (e) of former Civil Code Section 4351.5 and second sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

The word "child" is substituted for the phrase "child or children" which was used in former Section 4607. This is not a substantive change. See Section 11 (singular includes the plural).

### **§ 3158. Exclusion of counsel from mediation proceeding**

3158. The mediator has authority to exclude counsel from participation in the mediation proceedings under this chapter where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary.

**Comment.** Section 3158 continues the first sentence of subdivision (e) of former Civil Code Section 4351.5 and first sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

### § 3159. Recommendations to court

3159. (a) The mediator may, consistent with local court rules, submit a recommendation to the court as to the custody or visitation of the child.

(b) The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceedings, recommend to the court that an investigation be conducted, or that other action be taken, to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. If the mediation is pursuant to Article 2 (commencing with Section 3170), the investigation shall be conducted pursuant to Chapter 6 (commencing with Section 3110).

(c) The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determining of the controversy, to protect the well-being of the child involved in the controversy.

**Comment.** Section 3159 continues the first three sentences of subdivision (f) of Civil Code Section 4351.5 and the first three sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change except that the provision of subdivision (b) that the mediator may recommend to the court that "other action be taken" to assist the parties to effect a resolution of the controversy formerly applied only to mediation proceedings under what is now Article 2 (commencing with Section 3170).

**NOTE: AB 162 OF THE 1991-92 REGULAR SESSION WOULD AMEND SECTION 4607 TO DELETE FROM SUBDIVISION (c) OF SECTION 3159 the word "mutual".**

### § 3160. Agreement reached by parties as result of mediation

3160. (a) An agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but prior to its being reported to the court.

(b) No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. The agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement.

**Comment.** Section 3160 continues the fourth, sixth, and seventh sentences of subdivision (f) of former Civil Code Section 4351.5 and the fourth, sixth, and seventh sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1). See also Section 6419 (destruction of records of child custody or visitation mediation).

### § 3161. Uniform standards of practice for mediation

3161. (a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.

(b) The standards of practice shall include, but not be limited to, all of the following:

(1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.

(2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.

(3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.

(d) The Judicial Council shall offer training with respect to the standards to mediators.

**Comment.** Section 3161 continues former Civil Code Section 4607.1 with revisions that recognize that the Judicial Council has adopted the uniform standards of practice. See also Sections 3022 (factors to be considered in determining best interest of child), 6419 (destruction of records of child custody or visitation mediation), 6450 (statewide coordination of family mediation and conciliation services).

**Note:** Should Section 3161 be omitted as obsolete, the rules having been adopted by the Judicial Council? Should the section be revised to take into account mediation of stepparent and grandparent visitation?

### § 3162. Local court rules

3162. Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

**Comment.** Section 3162 is the same as subdivision (g) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1).

## Article 2. Mediation Where Issuance or Modification of Custody or Visitation Order Requested

§ 3170. Mediation required

§ 3171. Mediation of dispute concerning existing order

§ 3172. Purpose of mediation proceeding

§ 3173. Mediation available even where paternity is at issue

§ 3174. Recommendations that counsel be appointed for minor child

§ 3175. Agreements reached by parties as result of mediation

§ 3176. Separate mediation permitted where history of domestic violence

§ 3177. Separate mediation where domestic violence prevention order

### § 3170. Mediation required

3170. In a proceeding where the custody of, or visitation with, a minor child is at issue (including but not limited to a proceeding where a temporary custody order is sought) and it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of the child that either or both these issues are contested, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing.

**Comment.** Section 3170 continues the substance of the first sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) except that the reference in the former provision to cases where the custody or visitation issue or both issues are contested "as provided in Section 4600, 4600.1, or 4601" has been omitted as unnecessary. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural).

#### **§ 3171. Mediation of dispute concerning existing order**

3171. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this chapter for the mediation of a dispute relating to an existing order for custody or visitation. The mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition.

**Comment.** Section 3171 continues the second sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

#### **§ 3172. Purpose of mediation proceeding**

3172. The purpose of the mediation proceeding is to reduce acrimony which may exist between the parties and to develop an agreement assuring the child such close and continuing contact with both parents as is in the best interest of the child. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interest of the child, consistent with the considerations required by Section 3022.

**Comment.** Section 3172 continues the third and fourth sentences of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. The word "child" is substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

#### **§ 3173. Mediation available even where paternity is at issue**

3173. Mediation shall not be denied to the parties on the basis that paternity is an issue in a proceeding before the court.

**Comment.** Section 3173 is the same as the fifth sentence of subdivision (a) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1).

#### **§ 3174. Recommendations that counsel be appointed for minor child**

3174. Nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed pursuant to Chapter 10 (commencing with Section 3150) to represent the minor child. In making such a recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

**Comment.** Section 3174 continues subdivision (f) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. The word "child" is

substituted for the phrase "child or children." This is not a substantive change. See Section 11 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

### § 3175. Agreements reached by parties as result of mediation

3175. (a) An agreement reached by the parties as a result of mediation shall be limited to the resolution of issues relating to parenting plans, custody, or visitation, or a combination thereof.

(b) The custody or visitation agreement may be modified at any time at the discretion of the court, subject to the provisions of Chapter 1 (commencing with Section 3020), Chapter 2 (commencing with Section 3040), Chapter 4 (commencing with Section 3080), and Chapter 5 (commencing with Section 3100).

**Comment.** Section 3175 continues the fifth and eighth sentences of subdivision (e) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change.

**Note:** Should a broader reference be included in subdivision (b) of Section 3175? Should the reference be "to this code"?

### § 3176. Separate mediation permitted where history of domestic violence

3176. The mediator has the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been a history of domestic violence.

**Comment.** Section 3176 continues the third sentence of subdivision (d) of former Civil Code Section 4607 (as amended by 1990 Cal. Stat. ch. 348 § 1) without substantive change. See also Section 70 ("domestic violence" defined).

**NOTE: SECTION 3176 SHOULD BE OMITTED IF SECTION 3177 IS REVISED BY AB 162 OF THE 1991-92 REGULAR SESSION TO ELIMINATE THE NEED FOR SECTION 3176. SEE THE NOTE TO SECTION 3177.**

### § 3177. Separate mediation where domestic violence prevention order

3177. (a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties and a domestic violence prevention order is in effect, at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

(b) Any intake form that an agency charged with providing family court services may require the parties to complete prior to the commencement of mediation shall include a provision which indicates that at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

**Comment.** Section 3177 is the same in substance as former Civil Code Section 4607.2 (as amended by 1990 Cal. Stat. ch. 994 § 2). See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

**Note: Section 3177 remains operative only until January 1, 1992, and as of that date is repealed unless a later enacted statute deletes or extends that expiration date.**

**Compare Section 3177 with Section 3111.5. Note that either a history or domestic violence OR a domestic violence prevention order being in effect is sufficient under Section 3111.5, whereas both are required under Section 3177. Should Section 3177 be revised to conform in this respect to Section 3111.5?**

**NOTE: THIS SECTION (CIVIL CODE SECTION 4607.2) WOULD BE AMENDED BY AB 162 OF THE 1991-92 REGULAR SESSION.**

**Article 3. Mediation of Stepparent or Grandparent Visitation**

**§ 3180. Mediation where stepparent or grandparent visitation order requested in dissolution or nullity proceeding**

**§ 3181. Agreement reached by parties as result of mediation**

**§ 3182. Hearing on visitation rights**

**§ 3183. Notice of mediation or hearing**

**§ 3180. Mediation where stepparent or grandparent visitation order requested in dissolution or nullity proceeding**

3180. (a) If a stepparent or grandparent has petitioned or otherwise applied for an order of reasonable visitation rights pursuant to Section 3101 or 3102, the court shall set the matter of visitation rights for mediation. The purpose of the mediation is to effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

(b) A natural or adoptive parent who is not a party to the proceeding is not required to participate in the mediation proceeding, but failure to participate is a waiver of that parent's right to object to any settlement reached by the other parties during mediation or to require a hearing on the matter.

**Comment.** Subdivision (a) of Section 3180 is the same as the first two sentences of subdivision (c) of former Civil Code Section 4351.5. Subdivision (b) is the same as subdivision (g) of former Civil Code Section 4351.5. See also Section 3022 (factors to be considered in determining best interest of child).

**§ 3181. Agreement reached by parties as result of mediation**

3181. (a) An agreement reached by the parties as a result of mediation shall be limited to the resolution of issues relating to visitation.

(b) The agreement may be modified at any time at the discretion of the court, subject to the provisions of Sections 3101 and 3102.

**Comment.** Section 3181 is the same as the fifth and eighth sentences of subdivision (f) of former Civil Code Section 4351.5.

**§ 3182. Hearing on visitation rights**

3182. If the issue of visitation rights of all parties is not settled by agreement of all parties who participate in mediation, the mediator shall so inform the court in writing and the court shall set the matter of visitation rights for hearing. Each natural or

adoptive parent and the stepparent or grandparent seeking visitation rights shall be given an opportunity to appear and be heard on that issue.

**Comment.** Section 3182 is the same as subdivision (h) of former Civil Code Section 4351.5.

### **§ 3183. Notice of mediation or hearing**

3183. Notice of mediation and of any hearing to be held pursuant to this article shall be given to the stepparent or grandparent seeking visitation rights, to each of the parents of the child, and to each counsel of record of each of the parties to any proceeding under Section 2250 or 2330 with regard to their marriage. The notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address of each of the parents and his or her counsel.

**Comment.** Section 3183 continues subdivision (i) of former Civil Code Section 4351.5 without substantive change.

## **CHAPTER 12. COUNSELING OF PARENTS AND CHILD**

§ 3190. Order requiring counseling

§ 3191. Purpose of counseling

§ 3192. Separate counseling where protective order against domestic violence

### **§ 3190. Order requiring counseling**

3190. (a) In a proceeding under the Family Law Act where custody of, or visitation with, a minor child is at issue, the court may require the parents of the child who are involved in the custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than six months if the court finds both of the following:

(1) The dispute between the parents or between a parent and the child poses a substantial danger to the best interest of the child.

(2) The counseling is in the best interest of the child.

(b) The court shall fix the cost and shall order the entire cost of the services to be borne by the parties in such proportion as the court deems reasonable.

(c) The court, in its finding, shall set forth reasons why it has found both of the following:

(1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.

(2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with the provisions of this chapter.

**Comment.** Section 3190 continues the first paragraph of subdivision (a) of former Civil Code Section 4608.1 without substantive change. See Section 85 ("Family Law Act" defined). See also Section 3022 (factors to be considered in determining best interest of child).

**Note:** Should "under this code" be substituted for "under the Family Law Act" in Section 3190 or should the introductory clause of Section 3190 read: "In any proceeding where custody of, or visitation with, a minor child is at issue,"?

### **§ 3191. Purpose of counseling**

3191. The counseling pursuant to this chapter shall be specifically designed to facilitate communication between the parties regarding their minor child's best interest, to reduce conflict regarding visitation or custody, and to improve the quality of parenting skills of each parent.

**Comment.** Section 3191 is the same as the second paragraph of subdivision (a) of former Civil Code Section 4608.1. See also Section 3022 (factors to be considered in determining best interest of child).

### **§ 3192. Separate counseling where protective order against domestic violence**

3192. In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of domestic violence between the parties and a domestic violence prevention order is in effect, at the request of the party protected by the order the parties shall meet with the mental health professional, or attend other community programs or services, separately at separate times.

**Comment.** Section 3192 continues subdivision (b) of former Civil Code Section 4608.1 without substantive change. See also Sections 70 ("domestic violence" defined), 75 ("domestic violence prevention order" defined).

**Note:** Section 3192 remains operative only until January 1, 1992 unless the expiration provision is deleted or the date extended. AB 162 of the 1991-92 Regular Session would delete the expiration provision.

Compare Section 3192 with Section 3111.5. Note that either a history or domestic violence OR a domestic violence prevention order being in effect is sufficient under Section 3111.5, whereas both are required under Section 3192. Should Section 3192 be revised to conform in this respect to Section 3111.5? See also the Note to Section 3177.

Section 3192 would be revised by AB 162 of the 1991-92 Regular Session.

## **PART 3. FREEDOM FROM PARENTAL CUSTODY AND CONTROL**

Chapter 1. General Provisions

Chapter 2. Circumstances Where Proceeding may be Brought

Chapter 3. Procedure

### **CHAPTER 1. GENERAL PROVISIONS**

§ 3200. Purpose of part

§ 3201. Liberal construction

§ 3202. Proceeding to declare minor free from parental custody and control

§ 3203. Effect of declaration

§ 3204. Appointment of person to act on child's behalf; further notice

§ 3205. Persons entitled to inspect petitions, reports, and records

§ 3206. No filing fee

§ 3207. Nonapplication of certain other statutory provisions in proceeding under this part

§ 3208. Child adjudged to be dependent child after January 1, 1989

**Note:** The proceeding under this part is designated as a "proceeding" rather than as "an action." Under former law, the proceeding was generally referred to as an "action."

The word "child" is used consistently in this part. Formerly, the word "child" and "minor" were used interchangeably. Nevertheless, only a minor child (one under 18 years of age) can be declared free from the custody and control of either or both of his or her parents. See Sections 3202 and 3220.

### § 3200. Purpose of part

3200. The purpose of this part is to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life.

**Comment.** Section 3200 continues the first sentence of former Civil Code Section 232.6 without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

### § 3201. Liberal construction

3201. The provisions of this part shall be liberally construed to serve and protect the interests and welfare of the child.

**Comment.** Section 3201 continues the first sentence of former Civil Code Section 232.5 without substantive change.

### § 3202. Proceeding to declare minor free from parental custody and control

3202. A proceeding may be brought under this part for the purpose of having a minor child declared free from the custody and control of either or both of his or her parents.

**Comment.** Section 3202 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change. See also Section 3220.

### § 3203. Effect of declaration

3203. A declaration of freedom from parental custody and control pursuant to this part terminates all parental rights and responsibilities with regard to the child.

**Comment.** Section 3203 continues the second sentence of former Civil Code Section 232.6 without substantive change.

### § 3204. Appointment of person to act on child's behalf; further notice

3204. In a proceeding under this part, the court may appoint a suitable party to act in behalf of the child and may order such further notice of the proceedings to be given as the court deems proper.

**Comment.** Section 3204 continues the substance of former Civil Code Section 237.

**§ 3205. Persons entitled to inspect petitions, reports, and records**

3205. (a) A petition filed in a superior court proceeding under this part or a report of the probation officer or county department designated by the board of supervisors to administer the public social services program filed in a proceeding under this part may be inspected only by the following persons:

- (1) Court personnel.
- (2) The child who is the subject of the proceeding.
- (3) The parents or guardian of the child.
- (4) The attorneys for the parties.
- (5) Any other person designated by the judge of the superior court.

(b) In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a superior court proceeding under this part, the superior court record and briefs filed by the parties may be inspected only by the following persons:

- (1) Court personnel.
- (2) A party to the proceeding.
- (3) The attorneys for the parties.
- (4) Any other person designated by the presiding judge of the court before which the matter is pending.

(c) Notwithstanding any other provision of law, if it is believed that the welfare of the child will be promoted thereby, the superior court and the probation officer may furnish information, pertaining to a petition under this part, to any of the following:

- (1) The State Department of Social Services.
- (2) A county welfare department.
- (3) A public welfare agency.
- (4) A private welfare agency licensed by the State Department of Social Services.

**Comment.** Subdivisions (a) and (b) of Section 3205 continue former Civil Code Section 233.5 without substantive change. Subdivision (c) continues former Civil Code Section 233.6 without substantive change.

**Note:** Should "if the court determines" be substituted for "if it is believed" in subdivision (c) of Section 3205 to make clear whether a court order is required and who makes the determination to furnish the information?

**§ 3206. No filing fee**

3206. There shall be no filing fee charged for a proceeding brought under this part.

**Comment.** Section 3206 continues the second sentence of former Civil Code Section 233 without substantive change.

**Note:** Does Section 3206 mean that no filing fee is charged for filing any paper in a proceeding under this part or does it mean that no filing fee is charged for filing a petition under this part?

**§ 3207. Nonapplication of certain other statutory provisions in proceeding under this part**

3207. Sections 3020, 3021, 3040 to 3043, inclusive, and 3409 do not apply in a proceeding under this part.

**Comment.** Section 3207 continues subdivision (d) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3208. Child adjudged to be dependent child after January 1, 1989**

3208. This part does not apply to a minor adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, Section 366.26 of the Welfare and Institutions Code and Sections 7604 to 7606, inclusive, and 7700 and Chapter 5 (commencing with Section 1760) of Part 8 of Division 4 of this code provide the exclusive means for the termination of parental rights.

**Comment.** Section 3208 continues subdivision (e) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**CHAPTER 2. CIRCUMSTANCES  
WHERE PROCEEDING MAY BE BROUGHT**

§ 3220. Proceeding to declare minor free from parental custody and control

§ 3221. Clear and convincing evidence

§ 3222. Abandoned child

§ 3223. Neglected or cruelly treated child

§ 3224. Child whose parents under disability because of use of alcohol or controlled substance or being morally depraved

§ 3225. Child whose parent convicted of felony

§ 3226. Child whose parent declared to be developmentally disabled or mentally ill

§ 3227. Child whose parent is mentally disabled

§ 3228. Child in supervised out-of-home placement for one year period

§ 3229. Child found to be dependent child and reunification services not to be provided

**§ 3220. Proceeding to declare minor free from parental custody and control**

3220. A proceeding may be brought under this part for the purpose of having a child under the age of 18 years declared free from the custody and control of either or both of his or her parents if the child comes within any of the descriptions set out in this chapter.

**Comment.** Section 3220 continues a portion of the introductory portion of subdivision (a) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change. This section limits a proceeding under this chapter to case where the child (1) is under the age of 18 and (2) comes within any of the descriptions set out in this chapter.

**§ 3221. Clear and convincing evidence**

3221. A finding pursuant to this chapter shall be supported by clear and convincing evidence.

**Comment.** Section 3221 is the same as a portion of subdivision (c) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5).

**§ 3222. Abandoned child**

3222. (a) A proceeding under this part may be brought where the child has been left without provision for the child's identification by his or her parent or parents or by others or has been left by both of his or her parents or his or her sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child.

(b) The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents.

(c) If the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

**Comment.** Section 3222 continues subdivision (a)(1) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3223. Neglected or cruelly treated child**

3223. (a) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child has been neglected or cruelly treated by either or both parents.

(2) The child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year prior to the filing of a petition pursuant to this part.

(b) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

**Comment.** Section 3223 continues subdivision (a)(2) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3224. Child whose parents under disability because of use of alcohol or controlled substance or being morally depraved**

3224. (a) As used in this section, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child.

(b) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child is one whose parent or parents (i) suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules I to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or (ii) are morally depraved.

(2) The child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child's custody continuously for one year immediately prior to the filing of a petition pursuant to this part.

(c) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

**Comment.** Section 3224 continues subdivision (a)(3) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

### **§ 3225. Child whose parent convicted of felony**

3225. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child is one whose parent or parents are convicted of a felony.

(b) The facts of the crime of which the parent or parents were convicted are of such a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

**Comment.** Section 3225 continues subdivision (a)(4) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

### **§ 3226. Child whose parent declared to be developmentally disabled or mentally ill**

3226. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child is one whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill.

(b) In the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital, if any, of which the parent or parents are inmates or patients, certify that the parent or parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

**Comment.** Section 3226 continues subdivision (a)(5) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3227. Child whose parent is mentally disabled .**

3227. (a) As used in this section, "mentally disabled" means that a parent or parents suffer a mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child.

(b) A proceeding under this part may be brought where the child is one whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future.

(c) Except as provided in subdivision (d), the evidence of any two experts, each of whom shall be either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, is required to support a finding under this section.

(d) If the parent or parents reside in another state or in a foreign country, the evidence required by this section may be supplied by the affidavits of two experts, each of whom shall be either:

(1) A physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine; or

(2) A licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country.

(e) If the rights of a parent are sought to be terminated pursuant to this section, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Article 4 (commencing with Section 3260), whether or not a request for the appointment is made by the parent.

**Comment.** Section 3227 continues subdivision (a)(6) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3228. Child in supervised out-of-home placement for one year period**

3228. (a) A proceeding under this part may be brought where all of the following requirements are satisfied:

(1) The child is one who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period.

(2) The court finds that return of the child to the child's parent or parents would be detrimental to the child and that the parent or parents have failed during the one-year period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child.

(b) If the child has been adjudged a dependent child of the juvenile court and placed in out-of-home placement pursuant to Section 361 of the Welfare and Institutions Code, the one-year period is calculated from the date of the dispositional hearing at which the child was placed in out-of-home placement pursuant to that section.

(c) If the child is in placement under the supervision of a county welfare department or other public or private licensed child-placing agency, pursuant to a voluntary placement, as described in Section 16507.4 of the Welfare and Institutions Code, the one-year period is calculated from the date the child entered out-of-home placement.

(d) Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, does not interrupt the running of the one-year period.

(e) The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid the parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child. The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings. If the child has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code, the court shall review and consider the contents of the juvenile court file in determining if the services offered were reasonable under the circumstances.

**Comment.** Section 3228 continues subdivision (a)(7) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

**§ 3229. Child found to be dependent child and reunification services not to be provided**

3229. A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child has been found to be a dependent child of the juvenile court.

(b) The juvenile court has determined, pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the child's parent or guardian.

**Comment.** Section 3229 continues subdivision (a)(8) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change.

### CHAPTER 3. PROCEDURE

Article 1. Authorized Petitioners

Article 2. Venue

Article 3. Investigation and Report

Article 4. Appointment of Counsel

Article 5. Time for Hearing; Continuance

Article 6. Notice of Proceeding and Attendance at Hearing

Article 7. Hearing and Subsequent Proceedings

### Article 1. Authorized Petitioners

§ 3230. Petition by private or public adoption agency or state or county agency

§ 3231. Right of interested person to file petition

#### § 3230. Petition by private or public adoption agency or state or county agency

3230. (a) A petition may be filed under this part for an order or judgment declaring a child free from the custody and control of either or both of his or her parents by any of the following:

(1) The State Department of Social Services, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department which is planning adoptive placement of the child with a licensed adoption agency.

(2) The State Department of Social Services acting as an adoption agency in counties which are not served by a county adoption agency.

(b) The fact that a child is in a foster care home subject to the requirements of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code does not prevent the filing of a petition under subdivision (a).

(c) The county counsel or, if there is no county counsel, the district attorney of the county specified in Section 3240 shall, in a proper case, institute the proceeding upon the request of any of the state or county agencies mentioned in subdivision (a). The proceeding shall be instituted pursuant to this part within 30 days of the request.

(d) If, at the time of the filing of a verified petition by a department or agency specified in subdivision (a), the child is in the custody of the petitioner, the petitioner may continue to have custody of the child pending the hearing on the petition unless the court, in its discretion, makes such other order regarding custody pending the hearing as it finds will best serve and protect the interest and welfare of the child.

**Comment.** Section 3230 is the same as former Civil Code Section 232.9. See also Section 3231 (any interested person may file petition).

**Note:** Subdivision (d) refers to a "verified" petition. Should there be a general requirement that all petitions under the Family Code be verified?

#### § 3231. Right of interested person to file petition

3231. Any interested person may file a petition under this part for an order or judgment declaring a child free from the custody and control of either or both of his or her parents.

**Comment.** Section 3231 is the same as a portion of the first sentence of former Civil Code Section 233.

### Article 2. Venue

§ 3240. Venue

§ 3240. Venue

3240. The petition shall be filed in the superior court of:

(a) The county in which a minor described in Chapter 2 (commencing with Section 3220) resides or is found; or

(b) The county in which any of the acts which are set forth in Chapter 2 (commencing with Section 3220) are alleged to have occurred.

**Comment.** Section 3240 is the same as a portion of the first sentence of former Civil Code Section 233.

### **Article 3. Investigation and Report**

§ 3250. Investigation of circumstances of child

§ 3251. Report and recommendations to court

#### **§ 3250. Investigation of circumstances of child**

3250. Upon the filing of a petition under Section 3231, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 3220).

**Comment.** Section 3250 continues the third sentence of former Civil Code Section 233 without substantive change. Section 3250 does not require the notice and investigation if the petition is filed under Section 3230 (petition by licensed private or public adoption agency or state or county agency).

**Note:** Under existing practice, is the investigation and report required when the petition is filed by a licensed private or public adoption agency or state or county agency? If so, the introductory clause of Section 3250 should be revised to conform to existing practice.

#### **§ 3251. Report and recommendations to court**

3251. (a) The juvenile probation officer or the county department shall render to the court a written report of the investigation with a recommendation to the court of the proper disposition to be made in the proceeding in the best interest of the child.

(b) The report shall include all of the following:

(1) A statement that the person making the report explained to the child the nature of the proceeding to end parental custody and control.

(2) A statement of the child's feelings and thoughts concerning the pending proceeding.

(3) A statement of the child's attitude towards his or her parent or parents and particularly whether or not the child would prefer living with his or her parent or parents.

(4) A statement that the child was informed of his or her right to attend the hearing on the petition and the child's feelings concerning attending the hearing.

(c) If the age, or the physical, emotional, or other condition of the child precludes the child's meaningful response to the explanations, inquiries, and information

required by subdivision (b), a description of the condition shall satisfy the requirement of that subdivision.

(d) The court shall receive the report in evidence and shall read and consider its contents in rendering the court's judgment.

**Comment.** Section 3251 is the same as the last portion of former Civil Code Section 233. See also Section 3022 (factors to be considered in determining best interest of child).

#### **Article 4. Appointment of Counsel**

§ 3260. Procedure for appointment of counsel

§ 3261. Appointment to protect interests of child

§ 3262. Appointment of counsel for parent

§ 3263. Compensation and expenses of private appointed counsel

§ 3264. Continuance

#### **§ 3260. Procedure for appointment of counsel**

3260. At the beginning of the proceeding on a petition filed pursuant to this part, counsel shall be appointed as provided in this article. The public defender or private counsel may be appointed as counsel pursuant to this article. The same counsel shall not be appointed to represent both the child and his or her parent.

**Comment.** Section 3260 continues the introductory portion, the second sentence of subdivision (b), and the first sentence of subdivision (c) of former Civil Code Section 237.5 without substantive change. See also Sections 3227(e) (mandatory appointment of counsel for mentally disabled parent), 3295 (appointment of counsel for indigent appellant).

#### **§ 3261. Appointment to protect interests of child**

3261. The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child require representation by counsel, the court shall appoint counsel to represent the child, whether or not the child is able to afford counsel. The child shall not be present in court unless the child so requests or the court so orders.

**Comment.** Section 3261 continues subdivision (a) of former Civil Code Section 237.5 without substantive change. The section has been reworded to make it more concise.

#### **§ 3262. Appointment of counsel for parent**

3262. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless such representation is knowingly and intelligently waived.

**Comment.** Section 3262 continues the first sentence of subdivision (b) of former Civil Code Section 237.5 without substantive change.

#### **§ 3263. Compensation and expenses of private appointed counsel**

3263. Private counsel appointed under this article shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount so determined shall be paid by the real parties in interest, other than the

child, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

**Comment.** Section 3263 continues the second, third, and fourth sentences of subdivision (c) of former Civil Code Section 237.5 without substantive change.

#### § 3264. Continuance

3264. The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel and to enable counsel to become acquainted with the case.

**Comment.** Section 3264 continues subdivision (d) of former Civil Code Section 237.5 without substantive change. For a general provision on continuances, see Section 3271.

### Article 5. Time for Hearing; Continuance

§ 3270. Time for hearing; precedence over other matters; continuance

§ 3271. Continuance of hearing

#### § 3270. Time for hearing; precedence over other matters; continuance

3270. (a) It is the public policy of this state that judicial proceedings to declare a child free from parental custody and control shall be fully determined as expeditiously as possible.

(b) Notwithstanding any other provision of law, a proceeding to declare a child free from parental custody and control pursuant to this part shall be set for trial not more than 45 days after filing notification therefor and completion of service thereon in the manner prescribed by law for service of civil process. The matter so set has precedence over all other civil matters on the date set for trial.

(c) The court may continue the proceeding as provided in Section 3264 or Section 3271.

**Comment.** Section 3270 continues subdivisions (a) and (b) of former Civil Code Section 232.3 with the addition of a reference in subdivision (c) to Section 3271.

**Note:** Is there an inconsistency between the requirement of subdivision (b) that service be "in the manner prescribed by law for service of civil process" and the provisions of Article 6 (commencing with Section 3280) which specify the manner of service? What is the meaning of the language in subdivision (b) "after filing notification therefor"? See Section 3281 which supersedes subdivision 9a) of former Civil Code Section 235 which required that specified relatives "shall be notified of the proceedings by service of a citation advising the person or persons that they may appear at the time and place stated in the citation." Should "not more than 45 days after completion of service in compliance with Article 6 (commencing with Section 3280)" be substituted in subdivision (b) of Section 3270 for the language "not more than 45 days after filing notification therefor and completion of service thereon in the manner prescribed by law for service of civil process"?

**§ 3271. Continuance of hearing**

3271. (a) A continuance may be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(b) Unless the court for good cause entertains an oral motion for continuance, written notice of a motion for a continuance of the hearing shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary.

(c) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever a continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

**Comment.** Section 3271 continues subdivision (c) of former Civil Code Section 232.3 without substantive change. See also Section 3264 (continuance for not to exceed 30 days as necessary to appoint counsel and to enable counsel to become acquainted with the case).

**Article 6. Notice of Proceeding and Attendance at Hearing**

§ 3280. Citation requiring attendance at hearing

§ 3281. Service of citation on parents or relatives

§ 3282. Service on parent who cannot be found or whose residence is unknown

§ 3283. Failure to comply with citation as contempt

§ 3284. Admission of public to proceeding

**§ 3280. Citation requiring attendance at hearing**

3280. (a) Upon the filing of the petition, a citation shall issue requiring any person having the custody or control of the child, or the person with whom the child is, to appear at a time and place stated in the citation.

(b) The citation shall also require the person to appear with the child except that, if the child is under the age of 10, appearance with the child is required only upon order of the court after necessity has been shown.

(c) Service of the citation shall be made in the manner prescribed by law for service of civil process at least 10 days before the time stated in the citation for the appearance.

**Comment.** Section 3280 continues the first paragraph of former Civil Code Section 234 without substantive change. The requirement that service "be made in the manner prescribed by law for service of civil process" is drawn from the last portion of subdivision (b) of former Civil Code Section 232.3.

**§ 3281. Service of citation on parents or relatives**

3281. (a) Notice of the proceeding shall be given by service of a citation on the father or mother of the child, if the place of residence of the father or mother is known to the petitioner. If the place of residence of the father or mother is not known to the petitioner, then the citation shall be served on the grandparents and adult brothers,

sisters, uncles, aunts, and first cousins of the child, if there are any and if their residences and relationships to the child are known to the petitioner.

(b) The citation shall advise the person or persons that they may appear at the time and place stated in the citation. The citation shall also advise the person or persons of the rights and procedures set forth in Article 4 (commencing with Section 3260). If the petition is filed for the purpose of freeing the child for placement for adoption, the citation shall so state.

(c) The citation shall be served in the manner provided by law for the service of a summons in a civil action, other than by publication. If one parent has relinquished his or her child for the purpose of adoption, or has signed a consent for adoption as provided in Sections 7700, 7814, or 8003, notice as provided in this section need not be given to the parent who has signed the relinquishment or consent.

(d) Service of the citations required by this section shall be made at least 10 days before the time stated in the citation for the appearance.

**Comment.** Section 3281 continues subdivision (a) of former Civil Code Section 235 (as amended by 1990 Cal. Stat. ch. 1363 § 6) without substantive change.

**§ 3282. Service on parent who cannot be found or whose residence is unknown**

3282. (a) If the father or mother of the child or a person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in Section 3281, or if his or her place of residence is not known to the petitioner, the petitioner or the petitioner's agent or attorney shall make and file an affidavit, which shall state the name of the father or mother or alleged father or mother and his or her place of residence, if known to the petitioner, and the name of the father or mother or alleged father or mother whose place of residence is unknown to the petitioner.

(b) Upon the filing of the affidavit, the court shall make an order that (1) the service shall be made by the publication of a citation requiring the father or mother or alleged father or mother to appear at the time and place stated in the citation and (2) the citation shall be published pursuant to Section 6064 of the Government Code in a newspaper to be named and designated in the order as most likely to give notice to the father or mother or alleged father or mother to be served.

(c) In case of publication where the residence of a parent or alleged parent is known, the court shall also direct a copy of the citation to be forthwith served upon that parent or alleged parent by mail by deposit in the post office properly addressed and with the postage thereon fully prepaid, directed to that parent or alleged parent at his or her place of residence. When publication is ordered, service of a copy of the citation in the manner provided for in Section 3281 is equivalent to publication and deposit in the post office.

(d) If one or both of the parents of the child is unknown or if the name of either or both of the child's parents is uncertain, that fact shall be set forth in the affidavit and the court shall order the citation to be directed to either the father or the mother, or both,

of the child, naming and otherwise describing the child, and to all persons claiming to be the father or mother of the child.

(e) Service is complete at the expiration of the time prescribed by the order for publication or when service is made as provided for in Section 3281, whichever event shall first occur.

**Comment.** Section 3282 continues subdivision (b) of former Civil Code Section 235 (as amended by 1990 Cal. Stat. ch. 1363 § 6) without substantive change.

**Note:** Why does subdivision (b) of Section 3282 REQUIRE the father or mother to appear whereas Section 3281 advises that they MAY appear at the time and place stated in the citation? Compare Section 3280 which requires attendance of a person having custody or control of the minor or of a person with whom the minor is.

### § 3283. Failure to comply with citation as contempt.

3283. If a person personally served with a citation within this state as provided in Section 3280 fails without reasonable cause to appear and abide by the order of the court, or to bring the child before the court if so required in the citation, the failure constitutes a contempt of court.

**Comment.** Section 3283 continues former Civil Code Section 236 without substantive change. A reference to Section 3280 has been added to make clear that the section applies only when a person is served as provided in that section. A person served with a citation under Section 3281 may, but is not required, to attend the hearing.

### § 3284. Admission of public to proceeding

3284. (a) Unless requested by the child concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a proceeding under this part.

(b) Notwithstanding subdivision (a), the judge may admit those persons the judge determines have a direct and legitimate interest in the particular case or in the work of the court.

**Comment.** Section 3284 continues former Civil Code Section 235.5 without substantive change.

## Article 7. Hearing and Subsequent Proceedings

§ 3290. Wishes and best interest of child

§ 3291. Hearing in chambers to determine wishes of child

§ 3292. Testimony of child in chambers

§ 3293. Appointment of guardian or referral for adoption

§ 3294. Conclusiveness of order or judgment

§ 3295. Appointment of counsel for indigent appellant; free copy of transcripts

### § 3290. Wishes and best interest of child

3290. In a proceeding under this part, the court shall consider the wishes of the child, bearing in mind the age of the child, and shall act in the best interest of the child.

**Comment.** Section 3290 continues the substance of the second sentence of former Civil Code Section 232.5 and supersedes the first sentence of subdivision (b) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5). See also Section 3022 (factors to be considered in determining best interest of child).

### **§ 3291. Hearing in chambers to determine wishes of child**

3291. (a) Except as otherwise provided in this section, if the child subject of the petition is 10 years old or older, the child shall be heard by the court in chambers on at least the following matters:

(1) The feelings and thoughts of the child concerning the custody proceeding about to take place.

(2) The feelings and thoughts of the child about his or her parent or parents.

(3) The child's preference as to custody, according to Section 3020 and Chapter 2 (commencing with Section 3040).

(b) The court shall inform the child of his or her right to attend the hearing. However, counsel for the child may waive the in camera hearing by the court.

(c) This section does not apply if the child is confined because of illness or other incapacity to an institution or residence and is therefore unable to attend.

**Comment.** Section 3291 is the same as the second paragraph of former Civil Code Section 234. See also Section 3354 (minor's right to make statement in connection with priorities for foster care placement).

### **§ 3292. Testimony of child in chambers**

3292. (a) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

(b) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in subdivision (a).

(c) A finding pursuant to this section shall be supported by clear and convincing evidence.

(d) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

**Comment.** Subdivisions (a), (b), and (d) of Section 3292 continue the last portion of subdivision (b) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5) without substantive change. Subdivision (c) continues a portion of subdivision (c) of former Civil Code Section 232 (as amended by 1990 Cal. Stat. ch. 1363 § 5).

**§ 3293. Appointment of guardian or referral for adoption**

3293. (a) If the court, by order or judgment, declares a child free from the custody and control of both parents under the provisions of this part, or one parent if the other no longer has custody and control, the court shall at the same time take one of the following actions:

(1) Appoint a guardian for the child.

(2) At the request of the State Department of Social Services or a licensed adoption agency, or where the court finds it is in the child's best interest, refer the child to a licensed adoption agency for adoptive placement by the agency.

(b) When the court refers the child to a licensed adoption agency for adoptive placement by the agency:

(1) The agency is responsible for the care of the child and is entitled to the exclusive custody and control of the child at all times until a petition for adoption has been granted.

(2) After the referral, no petition for guardianship may be filed without the consent of the agency.

(3) No petition for adoption may be heard until the appellate rights of the natural parents have been exhausted.

**Comment.** Section 3293 continues former Civil Code Section 239 without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

**Note:** Are the provisions of section 3293 relating to adoption consistent with the general adoption statute?

**§ 3294. Conclusiveness of order or judgment**

3294. (a) An order and judgment of the court declaring a child free from the custody and control of a parent or parents under the provisions of this part is conclusive and binding upon the child, upon the parent or parents, and upon all other persons who have been served with citation by publication or otherwise as provided in this part.

(b) After making the order and judgment, the court has no power to set aside, change, or modify it.

(c) Nothing in this section limits the right to appeal from the order and judgment.

**Comment.** Section 3294 continues former Civil Code Section 238 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

**§ 3295. Appointment of counsel for indigent appellant; free copy of transcripts**

3295. (a) Upon appeal from a judgment freeing a child who is a dependent child of the juvenile court from parental custody and control, the appellate court shall appoint counsel for the appellant as provided by this section.

(b) Upon motion by the appellant and a finding that the appellant is unable to afford counsel, the appellate court shall appoint counsel for the indigent appellant, and

appellant's counsel shall be provided a free copy of the reporter's and clerk's transcript. All of those costs are a charge against the state.

(c) The reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at state expense and without advance payment of fees. If the appellant is able to afford counsel, the state may seek reimbursement from the appellant for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

**Comment.** Section 3295 continues former Civil Code Section 237.7 without substantive change. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control).

#### **PART 4. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN**

§ 3300. Adoption of compact

§ 3301. Provisions of compact

§ 3302. Financial responsibility for child placed pursuant to compact

§ 3303. "Appropriate public authorities" defined

§ 3304. "Appropriate authority in receiving state" defined

§ 3305. Agreements with party states; approval of financial obligations

§ 3306. Requirements for visitation, inspection, or supervision in another state

§ 3307. Application of law restricting out-of-state placements

§ 3308. Placement of delinquent children in institution in another state

§ 3309. Appointment of compact administrator

§ 3310. Refusal to grant approval of placement in violation of state law

#### **§ 3300. Adoption of compact**

3300. The Interstate Compact on Placement of Children as set forth in Section 3301 is hereby adopted and entered into with all other jurisdictions joining therein.

**Comment.** Section 3300 is the same as former Civil Code Section 264.

#### **§ 3301. Provisions of compact**

3301. The provisions of the interstate compact referred to in Section 3300 are as follows:

#### **INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**

##### **Article 1. Purpose and Policy**

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby

promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

#### Article 2. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

#### Article 3. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other

appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

#### **Article 4. Penalty for Illegal Placement**

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

#### **Article 5. Retention of Jurisdiction**

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

#### **Article 6. Institutional Care of Delinquent Children**

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the

child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction, and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### Article 7. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### Article 8. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

#### Article 9. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

#### Article 10. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance

shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**Comment.** Section 3301 is the same as former Civil Code Section 265. See also Section 3022 (factors to be considered in determining best interest of child).

**§ 3302. Financial responsibility for child placed pursuant to compact**

3302. Financial responsibility for a child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article 5 of the compact in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of other state laws also may be invoked.

**Comment.** Section 3302 is the same as former Civil Code Section 266.

**§ 3303. "Appropriate public authorities" defined**

3303. As used in Article 3 of the Interstate Compact on the Placement of Children, the phrase "appropriate public authorities" means, with reference to this state, the State Department of Social Services, and that department shall receive and act with reference to notices required by Article 3 of the compact.

**Comment.** Section 3303 continues former Civil Code Section 267 without substantive change.

**§ 3304. "Appropriate authority in receiving state" defined**

3304. As used in paragraph (a) of Article 5 of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in receiving state" with reference to this state means the State Department of Social Services.

**Comment.** Section 3304 is the same as former Civil Code Section 268.

**§ 3305. Agreements with party states; approval of financial obligations**

3305. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Controller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

**Comment.** Section 3305 is the same as former Civil Code Section 269.

**§ 3306. Requirements for visitation, inspection, or supervision in another state**

3306. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under the law of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children.

**Comment.** Section 3306 continues former Civil Code Section 270 without substantive change.

**§ 3307. Application of law restricting out-of-state placements**

3307. No provision of law restricting out-of-state placement of children for adoption shall apply to placements made pursuant to the Interstate Compact on the Placement of Children.

**Comment.** Section 3307 is the same as former Civil Code Section 271.

**§ 3308. Placement of delinquent children in institution in another state**

3308. A court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article 6 of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article 5 of the compact.

**Comment.** Section 3308 continues former Civil Code Section 272 without substantive change.

**§ 3309. Appointment of compact administrator**

3309. As used in Article 7 of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. The Governor shall appoint a compact administrator in accordance with the terms of Article 7 of the compact.

**Comment.** Section 3309 continues former Civil Code Section 273 without substantive change.

**§ 3310. Refusal to grant approval of placement in violation of state law**

3310. Approval of an interstate placement of a child for adoption shall not be granted by the compact administrator if the placement is in violation of either Section 7801 of this code or Section 273 of the Penal Code.

**Comment.** Section 3310 is the same as former Civil Code Section 274 (as amended by 1990 Cal. Stat. ch. 1363 § 7).

**PART 5. PRIORITIES FOR FOSTER CARE PLACEMENT**

§ 3350. Order of placement preference

§ 3351. Considerations constituting good cause not to follow rules

§ 3352. Records showing diligent search conducted

§ 3353. Placing child for period not intended to exceed 30 days

§ 3354. Minor's right to make statement

**§ 3350. Order of placement preference**

3350. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a child is being considered for placement in foster care, the following order of placement preference regarding racial or ethnic background shall be used, except where application of these priorities would not be in the best interest of the child:

(1) Placement shall, if possible, be made in the home of a relative. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(2) If a relative is not available after 30 days from the time the child comes under the jurisdiction of the juvenile court, or if placement with available relatives is not in the child's best interest, placement shall be made with a foster parent with the same racial or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(3) If placement cannot be made under the rules set forth in paragraphs (1) and (2), placement shall be made with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement.

(b) Nothing in this section precludes either of the following:

(1) A search for an appropriate relative being conducted simultaneously with a search for a foster family.

(2) The child remaining at the same placement site while the search for an appropriate relative or foster family is being conducted.

**Comment.** Section 3350 continues former Civil Code Section 275 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

**§ 3351. Considerations constituting good cause not to follow rules**

3351. A determination of good cause not to follow the rules set forth in Section 3350 may be based on one or more of the following considerations:

(a) Request of the parent or parents.

(b) The extraordinary physical or emotional needs of the child.

(c) The unavailability of suitable parents for placement after a diligent search has been completed for families meeting the preference criteria.

**Comment.** Section 3351 continues former Civil Code Section 275.1 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

**§ 3352. Records showing diligent search conducted**

3352. (a) Every public or private agency is encouraged to maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of this part, and in accordance with preference of placement criteria established by the State Department of Social Services.

(b) Records of agencies maintained pursuant to this section may be reviewed upon request by the state department.

**Comment.** Section 3352 continues former Civil Code Section 275.2 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

**§ 3353. Placing child for period not intended to exceed 30 days**

3353. This part does not apply in determining the foster care setting in which the child may be placed for a period not intended to exceed 30 days.

**Comment.** Section 3353 continues former Civil Code Section 275.3 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

**§ 3354. Minor's right to make statement**

3354. A minor 10 years of age or older being considered for placement in a foster home has the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor. The minor's right to make a statement is not limited to the initial placement, but continues for any proceedings concerning continued placement or a decision to return to parental custody.

**Comment.** Section 3354 continues former Civil Code Section 275.4 (as added by 1990 Cal. Stat. ch. 1581 § 6) without substantive change.

**PART 6. UNIFORM CHILD CUSTODY JURISDICTION ACT**

§ 3400. Short title

§ 3401. Purposes of act

§ 3402. Definitions

§ 3403. Jurisdictional requirements

§ 3404. Notice and opportunity to be heard

§ 3405. Notice to person outside this state; submission to jurisdiction

§ 3406. Simultaneous proceedings in other states

§ 3407. Inconvenient forum

§ 3408. Jurisdiction declined by reason of conduct

§ 3409. Information to be provided to court

§ 3410. Additional parties

§ 3411. Appearance of parties and child

§ 3412. Binding force and res judicata effect of custody decree

§ 3413. Recognition of out-of-state custody decree

§ 3414. Modification of custody decree of another state

§ 3415. Submission of child's birth certificate to court; check to determine if child is missing person

§ 3416. Filing and enforcement of custody decree of another state

§ 3417. Registry of out-of-state custody decrees and proceedings

- § 3418. Certified copy of custody decree
- § 3419. Taking testimony in another state
- § 3420. Hearings and studies in another state; orders to appear
- § 3421. Assistance to courts of other states
- § 3422. Preservation of records; forwarding to another state
- § 3423. Request for court records of another state
- § 3424. International application
- § 3425. Calendar priority

### § 3400. Short title

3400. This part may be cited as the Uniform Child Custody Jurisdiction Act.

**Comment.** Section 3400 is the same as former Civil Code Section 5174. See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

### § 3401. Purposes of act

3401. (a) The general purposes of this part are to:

(1) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) To make uniform the law of those states which enact it.

(b) This part shall be construed to promote the general purposes stated in this section.

**Comment.** Section 3401 continues former Civil Code Section 5150 without substantive change.

**§ 3402. Definitions**

3402. As used in this part:

(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

(c) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as a proceeding for dissolution of marriage or legal separation, and includes child neglect and dependency proceedings.

(d) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(f) "Initial decree" means the first custody decree concerning a particular child.

(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(h) "Physical custody" means actual possession and control of a child.

(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody.

(j) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

**Comment.** Section 3402 continues former Civil Code Section 5151 without change.

**§ 3403. Jurisdictional requirements**

3403. (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(1) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody of the child or for other reasons, and a parent or person acting as parent continues to live in this state.

(2) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.

(3) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

(4) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), and (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subdivision (a), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the custody of the child.

**Comment.** Section 3403 is the same as former Civil Code Section 5152. See also Section 3022 (factors to be considered in determining best interest of child).

#### **§ 3404. Notice and opportunity to be heard**

3404. Before making a decree under this part, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to Section 3405.

**Comment.** Section 3404 is the same as former Civil Code Section 5153.

#### **§ 3405. Notice to person outside this state; submission to jurisdiction**

3405. (a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(1) By personal delivery outside this state in the manner prescribed for service of process within this state.

(2) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction.

(3) By any form of mail addressed to the person to be served and requesting a receipt.

(4) As directed by the court (including publication, if other means of notification are ineffective).

(b) Notice under this section shall be served, mailed, delivered, or last published at least 10 days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

**Comment.** Section 3405 is the same as former Civil Code Section 5154.

### **§ 3406. Simultaneous proceedings in other states**

3406. (a) A court of this state shall not exercise its jurisdiction under this part if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this part, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under Section 3410 and shall consult the child custody registry established under Section 3417 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 3420 to 3423, inclusive. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

**Comment.** Section 3406 continues former Civil Code Section 5155 without substantive change.

### **§ 3407. Inconvenient forum**

3407. (a) A court which has jurisdiction under this part to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) If another state is or recently was the child's home state.

(2) If another state has a closer connection with the child and the child's family or with the child and one or more of the contestants.

(3) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state.

(4) If the parties have agreed on another forum which is no less appropriate.

(5) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 3401.

(d) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his or her consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this part if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

**Comment.** Section 3407 continues former Civil Code Section 5156 without substantive change.

**§ 3408. Jurisdiction declined by reason of conduct**

3408. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subdivision (a), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with Section 3421. If no such request is made within a reasonable time after such notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction pursuant to Section 3403.

(d) Where the court refuses to assume jurisdiction to modify the custody decree of another state pursuant to subdivision (b) or pursuant to Section 3414, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for such period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to (1) the appropriate court of the other state which has continuing jurisdiction or (2) if that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to Section 3403.

(e) In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state.

**Comment.** Section 3408 is the same as former Civil Code Section 5157.

**§ 3409. Information to be provided to court**

3409. (a) Every party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit, every party shall further declare under oath as to each of the following whether he or she:

(1) Has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state.

(2) Has information of any custody proceeding concerning the child pending in a court of this or any other state.

(3) Knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which the party obtained information during this proceeding.

**Comment.** Section 3409 continues former Civil Code Section 5158 without substantive change. See also Section 3060 (temporary custody order).

**§ 3410. Additional parties**

3410. If the court learns from information furnished by the parties pursuant to Section 3409 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his or her joinder as a party. If the person joined as a party is outside this state, the person shall be served with process or otherwise notified in accordance with Section 3405.

**Comment.** Section 3410 is the same as former Civil Code Section 5159.

**§ 3411. Appearance of parties and child**

3411. (a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he or she appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such party to secure his or her appearance with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 3405 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

**Comment.** Section 3411 is the same as former Civil Code Section 5160.

#### **§ 3412. Binding force and res judicata effect of custody decree**

3412. A custody decree rendered by a court of this state which had jurisdiction under Section 3403 binds all parties who have been served in this state or notified in accordance with Section 3405 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this part.

**Comment.** Section 3412 is the same as former Civil Code Section 5161.

#### **§ 3413. Recognition of out-of-state custody decree**

3413. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this part or which was made under factual circumstances meeting the jurisdictional standards of this part, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this part.

**Comment.** Section 3413 is the same as former Civil Code Section 5162.

#### **§ 3414. Modification of custody decree of another state**

3414. (a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this part or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under subdivision (a) and Section 3408 to modify a custody decree of another state, the court shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with Section 3423.

**Comment.** Section 3414 is the same as former Civil Code Section 5163.

**§ 3415. Submission of child's birth certificate to court; check to determine if child is missing person**

3415. Section 3140 is applicable to proceedings pursuant to this part.

**Comment.** Section 3415 is the same as former Civil Code Section 5163.5.

**Note:** Section 3415 is the same as Section 1703 (Uniform Parentage Act).

**§ 3416. Filing and enforcement of custody decree of another state**

3416. (a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this state. The clerk shall treat the decree in the same manner as a custody decree of the superior court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or that party's witnesses.

**Comment.** Section 3416 is the same as former Civil Code Section 5164.

**§ 3417. Registry of out-of-state custody decrees and proceedings**

3417. The clerk of each superior court shall maintain a registry in which the clerk shall enter all of the following:

(a) Certified copies of custody decrees of other states received for filing.

(b) Communications as to the pendency of custody proceedings in other states.

(c) Communications concerning a finding of inconvenient forum by a court of another state.

(d) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

(e) Any custody agreement for which an order is requested regarding a child who is not the subject of another order. The parties shall submit the affidavit required by Section 3409, on the form developed by the Judicial Council for use with Section 3409.

**Comment.** Section 3417 continues former Civil Code Section 5165 (as amended by 1990 Cal. Stat. ch. 1493 § 28) without substantive change.

**§ 3418. Certified copy of custody decree**

3418. The clerk of a superior court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

**Comment.** Section 3418 is the same as former Civil Code Section 5166.

**§ 3419. Taking testimony in another state**

3419. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

**Comment.** Section 3419 is the same as former Civil Code Section 5167.

**§ 3420. Hearings and studies in another state; orders to appear**

3420. (a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

**Comment.** Section 3420 is the same as former Civil Code Section 5168.

**§ 3421. Assistance to courts of other states**

3421. (a) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue

a warrant of arrest against such person to secure his or her appearance with the child in the other state.

**Comment.** Section 3421 is the same as former Civil Code Section 5169.

**§ 3422. Preservation of records; forwarding to another state**

3422. In any custody proceeding in this state, the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

**Comment.** Section 3422 continues former Civil Code Section 5170 without substantive change.

**§ 3423. Request for court records of another state**

3423. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in Section 3422.

**Comment.** Section 3423 is the same as former Civil Code Section 5171.

**§ 3424. International application**

3424. The general policies of this part extend to the international area. The provisions of this part relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

**Comment.** Section 3424 is the same as former Civil Code Section 5172.

**§ 3425. Calendar priority**

3425. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this part, the case shall be given calendar priority and handled expeditiously.

**Comment.** Section 3425 is the same as former Civil Code Section 5173.

## DIVISION 11. SUPPORT

- Part 1. Definitions and General Provisions
- Part 2. Support of Children
- Part 3. Support of Husband or Wife
- Part 4. Support of Parents
- Part 5. Enforcement of Support Orders

### PART 1. DEFINITIONS AND GENERAL PROVISIONS

- Chapter 1. Definitions
- Chapter 2. General Provisions
- Chapter 3. Support Agreements
- Chapter 4. Spousal and Child Support During Pendency of Proceeding
- Chapter 5. Expedited Child Support Order
- Chapter 6. Modification or Termination of Support
- Chapter 7. Health Insurance
- Chapter 8. Deferred Sale of Home Order

### CHAPTER 1. DEFINITIONS

- § 3500. Application of definitions
- § 3505. Obligee
- § 3510. Obligor
- § 3515. Separate property

#### § 3500. Application of definitions

3500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

**Comment.** Section 3500 is new. This chapter supplements the general definitions in Part 2 (commencing with Section 50) of Division 1 with special definitions that apply only to this division. For general definitions frequently used in this division, see Sections 92 ("family support"), 142 ("spousal support"), 150 ("support"), and 155 ("support order"). See also Section 12 ("As used in the Family Law Act, other than in Division 3 (commencing with Section 300), the terms 'husband' and 'wife' refer to persons who are lawfully married to each other and to persons who were previously lawfully married to each other.").

#### § 3505. Obligee

3505. "Obligee" means a person to whom a duty of support is owed.

**Comment.** Section 3505 continues subdivision (c) of former Civil Code Section 241 without substantive change. See also Section 150 ("support" defined).

#### § 3510. Obligor

3510. "Obligor" means a person who owes a duty of support.

**Comment.** Section 3510 continues subdivision (b) of former Civil Code Section 241 without substantive change. See also Section 150 ("support" defined).

#### § 3515. Separate property

3515. "Separate property" does not include quasi-community property.

**Comment.** Section 3515 continues former Civil Code Section 4804 without substantive change insofar as it applied to support. For a comparable provision applicable to division of property, see Section 2502. See also Section 125 ("quasi-community property" defined). Compare Section 130 ("separate property" defined).

## CHAPTER 2. GENERAL PROVISIONS

§ 3550. Jurisdiction of actions

§ 3551. Presence or residence of obligor in state

§ 3552. Competency of spouse to testify

§ 3553. Tax returns of parties

§ 3554. Notifying other party of address changes

§ 3555. Appeals

§ 3556. Forwarding support paid through designated county officer

§ 3557. Effect of failure to implement custody or visitation rights

### § 3550. Jurisdiction of actions

3550. The superior court shall have jurisdiction of all actions and proceedings brought under this division.

**Comment.** Section 3550 continues former Civil Code Section 245 without substantive change. See also Code Civ. Proc. § 395 (venue in support proceedings).

**Note:** Should there be a general section giving the superior court jurisdiction over all actions and proceedings under the Family Code? See Section 200 of Staff Working Draft (April 1991).

Should Section 3550 be omitted and existing Section 200 of the Staff Working Draft be made subdivision (b) of Section 200 and a new subdivision (a) be added to Section 200 to read in substance:

"(a) The superior court has jurisdiction of [actions and] proceedings under this code."?

Should the reference to "actions" be omitted from Section 3550, the concept being that all actions and proceedings are "proceedings"? Should all proceedings for support be designated as "proceedings" instead of some being designated as "actions"?

### § 3551. Presence or residence of obligor in state

3551. An obligor present or resident in this state has the duty of support as defined in Sections 3900, 3901, 3910, 4300, and 4400, regardless of the presence or residence of the obligee.

**Comment.** Section 3551 continues former Civil Code Section 244 without substantive change. See also Sections 3505 ("obligee" defined), 3510 ("obligor" defined).

**Note:** Should Section 3551 apply to support of an indigent parent by a child? The effect of listing Section 4400 in Section 3551 is to permit an indigent parent in another state to obtain support from a child present or resident in California, even where the child is not liable for support of the parent under the law of the state where the parent is present or resident.

Specifically, should the reference to Section 4400 (liability of child to support indigent parent) be omitted from Section 3551? Assume that the state where the parent is

present or resides imposes no liability on a child for the support of an indigent parent. Should the California law (Section 4400) be applied in this case to impose liability on the child present or resident in California to support the out-of-state parent? In other words, should the child become liable for support of his or her parent merely because the child moves to California?

A redraft of the Uniform Reciprocal Enforcement of Support Act now in progress by the National Conference of Commissioners on Uniform State Law would preclude use of the Uniform Act to enforce liability for support of an indigent parent where the parent resides in one state and the child in another.

#### § 3552. Competency of spouse to testify

3552. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this division. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

**Comment.** Section 3552 continues former Civil Code Section 250 without substantive change. For a similar provision, see Section 4839 (Uniform Reciprocal Enforcement of Support Act).

#### § 3553. Tax returns of parties

3553. (a) In a proceeding involving child support or spousal support, no party to the proceeding may refuse to submit copies of his or her state and federal income tax returns to the court, whether individual or joint.

(b) The tax returns may be examined by the other party and are discoverable by the other party. A party also may be examined by the other party as to the contents of a tax return submitted pursuant to this section.

(c) If the court finds that it is relevant to the case to retain the tax return, the tax return shall be sealed and maintained as a confidential record of the court. If the court finds that the tax return is not relevant to disposition of the case, all copies of the tax return shall be returned to the party who submitted it.

**Comment.** Section 3553 continues former Civil Code Section 4700.7 without substantive change. See also Sections 3629 (tax returns in proceeding for expedited support order), 3665 (tax returns in discovery proceedings for modification or termination of support order), 3689 (tax returns in simplified procedure for modification of support order).

#### § 3554. Notifying other party of address changes

3554. In order to facilitate service of process, each party to an order for support shall provide the other party with his or her current mailing address and any subsequent change of address.

**Comment.** Section 3554 continues the third sentence of subdivision (e) of former Civil Code Section 4700.1 and the third sentence of subdivision (e) of former Civil Code Section 4801.9 without substantive change. See also Section 5237 (designated payee to notify designated county officer of change of address).

**§ 3555. Appeals**

3555. An appeal may be taken from an order or judgment under this division as in other civil actions.

**Comment.** Section 3555 continues former Civil Code Section 249 without substantive change. See also Code Civ. Proc. § 904.1 (appeal may be taken from order made appealable by provisions of Family Code).

**§ 3556. Forwarding support paid through designated county officer**

3556. Where support is ordered to be paid through the county officer designated by the court on behalf of a minor child or other party not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the designated county officer shall forward the support received to the designated payee within the time standards prescribed by federal law and the State Department of Social Services.

**Comment.** Section 3556 continues former Civil Code Section 4390.18 which may have been limited in its application to payments made pursuant to an earnings assignment order. Section 3556, on the other hand, applies to any support paid to a designated county officer, whether or not paid pursuant to an earnings assignment order. See also Sections 3752 (providing district attorney designated as assigned payee with information concerning health insurance coverage for child), 4200-4203 (designation of county officer to be paid child support payments), 4350-4352 (designation of county officer to be paid spousal support payments), 5237 (designated payee to notify designated county officer of change of address).

**§ 3557. Effect of failure to implement custody or visitation rights**

3557. The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child is not affected by a failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court to the noncustodial parent.

**Comment.** Section 3557 continues former Civil Code Section 4382 without substantive change.

**CHAPTER 3. SUPPORT AGREEMENTS**

Article 1. General Provisions

Article 2. Child Support

Article 3. Spousal Support

**Article 1. General Provisions**

§ 3580. Provisions for spousal and child support in separation agreement

§ 3581. Law applicable to agreement made before January 1, 1970

**§ 3580. Provisions for spousal and child support in separation agreement**

3580. Subject to the provisions of this chapter and to Section 3651, a husband and wife may agree, in writing, to an immediate separation, and may provide in the

agreement for the support of either of them and of their children during the separation or upon the dissolution of their marriage. The mutual consent of the parties is sufficient consideration for the agreement.

**Comment.** Section 3580 continues the last portion of former Civil Code Section 4802 without substantive change. See also Sections 1620 (limitation of extent to which contract may alter spouses' legal relations), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4302 (no support for spouse living separate from other spouse by agreement unless support provided for in agreement), 4323 (agreement concerning effect of cohabitation on spousal support).

### **§ 3581. Law applicable to agreement made before January 1, 1970**

3581. Sections 3585, 3586, and 3590 apply only with respect to property settlement agreements entered into on or after January 1, 1970, and do not affect agreements entered into prior to January 1, 1970, as to which the provisions of Chapter 1308 of the Statutes of 1967 shall apply.

**Comment.** Section 3581 continues subdivision (c) of Section 4811 without substantive change insofar as it applied to making child and family support orders.

**Note:** Should the references in Section 3581 to Sections 3585 and 3586 be omitted because they no longer serves a useful purpose, all of the children covered by child support orders issued before January 1, 1970 having reached the age of majority? If these references are omitted, Section 3581 should be deleted and the substance of the remainder of the section be compiled as a part of Section 3590.

## **Article 2. Child Support**

§ 3585. Support order based on agreement between parents

§ 3586. Court order to effectuate family support agreement

§ 3587. Court order to effectuate agreement for support for adult child

### **§ 3585. Support order based on agreement between parents**

3585. The provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions of the agreement relating to property and support of the wife or husband. An order for child support based on the agreement shall be law-imposed and shall be made under the power of the court to make the order.

**Comment.** Section 3585 continues the first two sentences of subdivision (a) of former Civil Code Section 4811 without substantive change. The phrase "based on the agreement" has been added to the second sentence. See also Sections 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3651 (modification or termination of child or family support order based upon an agreement between the parents), 4012 (child support obligation discharged in bankruptcy). For a comparable provision relating to spousal support, see Section 3590. As to property settlements entered into before January 1, 1970, see Section 3581. See also Section 273 (attorney's fees for enforcement of support order).

**§ 3586. Court order to effectuate family support agreement**

3586. If an agreement between the parents combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support, the court is not required to make a separate order for child support.

**Comment.** Section 3586 continues the first sentence of subdivision (d) of former Civil Code Section 4811 without substantive change. See also Sections 92 ("family support" defined), 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4500 (enforcement of support order).

**§ 3587. Court order to effectuate agreement for support for adult child**

3587. Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 and to make a support order to effectuate the agreement.

**Comment.** Section 3587 continues the first sentence of former Civil Code Section 4700.9 without substantive change. The language "and to make a support order to effectuate the agreement" new but was implied by the second sentence of former Section 4700.9, superseded by Section 4500 of the Family Code. See also Sections 273 (attorney's fees for enforcement of support order), 3901 (duty to support high school student), 3910 (duty to support adult incapacitated child), 4500 (enforcement of support order).

**Article 3. Spousal Support**

§ 3590. Support agreement severable and enforceable by court

§ 3591. Authority to modify or terminate spousal support agreement

§ 3592. Agreement discharged in bankruptcy

**§ 3590. Support agreement severable and enforceable by court**

3590. The provisions of an agreement for support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. An order for support of either party based on the agreement shall be law-imposed and shall be made under the power of the court to order spousal support.

**Comment.** Section 3590 continues the substance of the first two sentences of subdivision (b) of former Civil Code Section 4811. For a comparable provision relating to child support, see Section 3585.

Absent a written agreement otherwise, spousal support terminates upon death of either party or upon remarriage of the supported party. See Section 4337. See also Sections 273 (attorney's fees for enforcement of support order), 3592 (obligations under property settlement agreement discharged in bankruptcy), 4302 (no support for spouse living separate from other spouse by agreement unless support provided for in agreement), 4336 (written agreement of parties to termination of spousal support retained jurisdiction), 4323 (agreement

concerning effect of cohabitation on spousal support), 4360(b) agreement that annuity, life insurance, or trust for spousal support may not be modified or terminated).

### **§ 3591. Authority to modify or terminate spousal support agreement**

3591. (a) Except as provided in subdivision (b), and subject to Section 3651, the provisions of an agreement for the support of either party are subject to subsequent modification or revocation by court order.

(b) An agreement for spousal support may not be modified or revoked to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(c) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into prior to January 1, 1970, as to which the provisions of Chapter 1308 of the Statutes of 1967 shall apply.

**Comment.** Subdivisions (a) and (b) of Section 3591 continue a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change insofar as that sentence applied to a spousal support agreement. See also Sections 3592 (obligations under property settlement agreement discharged in bankruptcy), 3651 (modification or termination of order for spousal support).

Subdivision (c) continues subdivision (c) of former Civil Code Section 4811 without substantive change insofar as it applied to the provisions of subdivision (a) and (b).

### **§ 3592. Agreement discharged in bankruptcy**

3592. If an obligation under an agreement for settlement of property to a spouse or for support of a spouse is discharged in bankruptcy, the court may make all proper orders for the support of the spouse, as the court determines are just, having regard for the circumstances of the parties and the amount of the obligations under the agreement that are discharged.

**Comment.** Section 3592 continues the substance of former Civil Code Section 4812. See also Section 4320 (circumstances to be considered in ordering spousal support). Compare Section 4013 (child support obligation discharged in bankruptcy).

## **CHAPTER 4. SPOUSAL AND CHILD SUPPORT DURING PENDENCY OF PROCEEDING**

§ 3600. Order for support during pendency of proceeding

§ 3601. Child support order continues in effect until terminated by court or by operation of law

§ 3602. Order not enforceable where parties are reconciled and living together

§ 3603. Modification or termination of order

§ 3604. Rights with respect to subsequent order not prejudiced

### **§ 3600. Order for support during pendency of proceeding**

3600. During the pendency of any proceeding under Division 8 (commencing with Section 2300) (dissolution of marriage) or Division 10 (commencing with Section

3000) (custody of children) or in any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order (1) the husband or wife to pay any amount that is necessary for the support of the wife or husband, or (2) either or both parents to pay any amount necessary for the support of the child, as the case may be.

**Comment.** Section 3600 continues the first sentence of subdivision (a) of former Civil Code Section 4357 without substantive change. Some of the language of Section 3600 is drawn from the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) with the addition of language to make clear that Section 3600 applies to a child for whom support is authorized under Section 3901. As to the requirement of notice of hearing, see Code Civ. Proc § 527. See also Sections 273 (attorney's fees for enforcement of support order), 2254 (order for support of putative spouse), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act).

The word "support" is substituted for "support and maintenance" with reference to support of the wife or husband. This is not a substantive revision. See also Section 150 (when used with reference to minor child, "support" includes maintenance and education). The reference to the "superior" court is omitted as unnecessary in view of Section 3550.

**Note:** Chapter 5 (commencing with Section 3620) provides an ex parte procedure for obtain an expedited child support order. There is no comparable provision for a spousal support order. Apparently, a spouse support order can be obtained ex parte under Chapter 4 (commencing with Section 3600) under certain circumstances. See Section 527 of the Code of Civil Procedure specifying the cases where an order under Section 4357—to be compiled in Family Code as Chapter 4 (commencing with Section 3600)—may be obtained without notice to the opposing party. See also Sections 240-244 of Staff Draft of Family Code, especially Section 241, which supersedes the provisions of existing Section 527 of the Code of Civil Procedure insofar as those provisions relate to the granting of an order under Chapter 4 (commencing with Section 3600) without notice to the opposite party. Should there be a special, detailed procedure for ex parte spousal support orders?

**§ 3601. Child support order continues in effect until terminated by court or by operation of law**

3601. (a) An order for child support entered pursuant to this chapter continues in effect until the order (1) is terminated by the court or (2) terminates by operation of law pursuant to Sections 3900, 3901, 4007, 4013, and 4101.

(b) Subject to Section 3602, subdivision (a) applies notwithstanding any other provision of law and notwithstanding that the proceeding has not been brought to trial within the time limits specified in Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 of the Code of Civil Procedure.

**Comment.** Section 3601 continues the first sentence of subdivision (b) of former Civil Code Section 4357 without substantive change.

**§ 3602. Order not enforceable where parties are reconciled and living together**

3602. Unless the order specifies otherwise, an order made pursuant to this chapter is not enforceable during any period in which the parties have reconciled and are living together.

**Comment.** Section 3602 continues the second sentence of subdivision (b) of former Civil Code Section 4357 without substantive change.

**§ 3603. Modification or termination of order**

3603. An order made pursuant to this chapter may be modified or terminated at any time except as to an amount that accrued prior to the date of the filing of the notice of motion or order to show cause to modify or terminate.

**Comment.** Section 3603 continues the third sentence of subdivision (a) of former Civil Code Section 4357 without substantive change. For general provisions relating to modification or termination of support orders, see Sections 3650-3694.

**§ 3604. Rights with respect to subsequent order not prejudiced**

3604. An order made pursuant to this chapter does not prejudice the rights of the parties or the child with respect to any subsequent order which may be made.

**Comment.** Section 3604 continues the second sentence of subdivision (a) of former Civil Code Section 4357 without substantive change.

**CHAPTER 5. EXPEDITED CHILD SUPPORT ORDER**

§ 3620. Designation of order as expedited support order

§ 3621. Court order, made without hearing, requiring child support during pendency of action; amount of support

§ 3622. Application for order

§ 3623. Jurisdiction of court on application

§ 3624. Order automatically becomes effective 30 days after required documents served unless response served by obligated parent

§ 3625. Obligated parent's response to application

§ 3626. Setting application for hearing

§ 3627. Giving notice of hearing

§ 3628. Effect of failure to give notice of hearing

§ 3629. Production of tax returns at hearing; effect of failure to produce required documents

§ 3630. Amount of support

§ 3631. Order after hearing

§ 3632. Effective date of order after hearing

§ 3633. Modification of order

§ 3634. Judicial Council to prepare necessary forms

**§ 3620. Designation of order as expedited support order**

3620. An order under this chapter shall be known as an expedited support order.

**Comment.** Section 3620 continues the second sentence of subdivision (a) of former Civil Code Section 4357.5 without substantive change.

**Note:** See Note under Section 3600.

**§ 3621. Court order, made without hearing, requiring child support during pendency of action; amount of support**

3621. In an action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support of his or her minor child or children during the pendency of that action, pursuant to this chapter, in an amount as required by [Civil Code Section 4722] or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.

**Comment.** Section 3621 continues the first sentence of subdivision (a) of former Civil Code Section 4357.5 without substantive change. See also Section 150 ("support" includes maintenance and education).

**Note:** Section 3621 refers to Civil Code Section 4722, a provision that sets forth a formula for determining the amount of family support. Section 4722 is not continued in this Staff Working Draft. See the Note to Sections 4050-4099 [Reserved]. When child support guidelines are developed, a reference to the provisions establishing the guidelines must be substituted for the reference in Section 3621 to Civil Code Section 4722.

Why does Section 3621 refer to "an action for child support"? Should "action or proceeding" or merely "proceeding" be substituted for "action"?

**§ 3622. Application for order**

3622. An expedited support order shall be made by the court upon the filing with the court of all of the following:

- (a) An application for an expedited child support order, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to [Civil Code Section 4722] or pursuant to Section 11452 of the Welfare and Institutions Code.
- (b) An income and expense declaration for both parents completed by the applicant.
- (c) A worksheet setting forth the basis of the amount of support requested.
- (d) A proposed expedited child support order.

**Comment.** Section 3622 continues the first sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**Note:** Section 3622 contains a reference to Civil Code Section 4722. An appropriate reference must be substituted for this reference. See the Note to Section 3621.

Is the filing under Section 3622 to be made in the court in which the support action (or proceeding) is being or has been filed? If so, should Section 3622 be revised to make this clear?

**§ 3623. Jurisdiction of court on application**

3623. (a) An application for the expedited support order confers jurisdiction on the court to hear only the issue of support of the minor child or children.

(b) Nothing in this chapter prevents either party from bringing before the court at the hearing other separately noticed issues otherwise relevant and proper to the action in which the application for the expedited support order has been filed.

**Comment.** Section 3623 continues subdivision (f) of former Civil Code Section 4357.5 without substantive change.

**Note:** Should "proceeding" be substituted for "action" in subdivision (b) of Section 3623?

**§ 3624. Order automatically becomes effective 30 days after required documents served unless response served by obligated parent**

3624. (a) Subject to Section 3625, an expedited support order becomes effective 30 days after service on the obligated parent of all of the following:

- (1) The application for expedited child support order.
- (2) The proposed expedited child support order, which shall include a notice of consequences of failure to file a response.
- (3) The completed income and expense declaration for both parents.
- (4) A worksheet setting forth the basis of the amount of support requested.
- (5) Three blank copies of the income and expense declaration form.
- (5) Three blank copies of the response to application for expedited child support order and notice of hearing form.

(b) Service on the obligated parent of the application and other required documents as set forth in subdivision (a) shall be by personal service or by any method available under Sections 415.10 to 415.40, inclusive, of the Code of Civil Procedure.

(c) Unless there is a response to the application for an expedited support order as provided in Section 3625, the expedited support order shall be effective on the obligated parent without further action by the court.

**Comment.** Subdivision (a) of Section 3624 continues the third sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. The language of the subdivision has been rephrased to adopt language used in the official Judicial Council form. See Application for Expedited Child Support Order (Family Law) (Form Adopted by Rule 12197 Judicial Council of California 1297) (New January 1, 1986). See also Section 95 (Judicial Council form for income and expense declaration).

Subdivision (b) of Section 3624 continues subdivision (c) of former Civil Code Section 4357.5 without substantive change. Subdivision (c) continues the fourth sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change.

**§ 3625. Obligated parent's response to application**

3625. (a) A response to the application for the proposed expedited support order and the obligated parent's income and expense declaration may be filed with the court at any time prior to the effective date of the expedited support order and, on filing, shall be served upon the applicant by any method by which a response to a notice of motion may be served.

(b) The response to the application for an expedited support order shall state the objections of the obligated parent to the proposed expedited support order.

(c) The simultaneous filing of the response to the application for an expedited support order and the obligated parent's income and expense declaration shall stay the effective date of the expedited support order.

(d) No fee shall be charged for, or in connection with, the filing of the response.

**Comment.** Section 3625 continues subdivision (d) of former Civil Code Section 4357.5 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

#### **§ 3626. Setting application for hearing**

3626. The obligated parent shall cause the court clerk to, and the court clerk shall, set a hearing on the application for the expedited support order not less than 20 nor more than 30 days after the filing of the response to the application for the expedited support order and income and expense declaration.

**Comment.** Section 3626 continues the first sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

#### **§ 3627. Giving notice of hearing**

3627. The obligated parent shall give notice of the hearing to the other parties or their counsel by first-class mail no less than 15 days before the hearing.

**Comment.** Section 3627 continues the second sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

#### **§ 3628. Effect of failure to give notice of hearing**

3628. If notice of the hearing is not given as provided in Section 3627, the expedited support order becomes effective as provided in Section 3624, subject to the relief available to the responding party as provided by Section 473 of the Code of Civil Procedure or any other available relief whether in law or in equity.

**Comment.** Section 3628 continues the third sentence of subdivision (e) of former Civil Code Section 4357.5 without substantive change.

#### **§ 3629. Production of tax returns at hearing; effect of failure to produce required documents**

3629. (a) At the hearing on the application for the expedited support order, all parties who are parents of the child or children who are the subject of the action shall produce copies of their most recently filed federal and state income tax returns.

(b) A tax return so submitted may be reviewed by the other parties, and a party also may be examined by the other parties as to the contents of the return.

(c) Except as provided in subdivision (d), a party who fails to submit documents to the court as required by this chapter shall not be granted the relief that he or she has requested.

(d) The court may grant the requested relief if the party submits a declaration under penalty of perjury that (1) no such document exists, or (2) in the case of a tax return, it cannot be produced, but a copy has been requested from the Internal Revenue Service or Franchise Tax Board.

**Comment.** Section 3629 continues the subdivision (g) of former Civil Code Section 4357.5 without substantive change.

**Note:** Should "proceeding" be substituted for "action" in subdivision (a) of Section 3629?

Section 3629 applies only to documents required in connection with an expedited support order. Should the section be expanded to cover any proceeding under the Family Code or perhaps any proceeding under the Family Law Act?

### § 3630. Amount of support

3630. (a) Except as provided in subdivision (b), the amount of the expedited support order shall be the minimum amount the obligated parent is required to pay as set forth in the application.

(b) If a hearing is held on the application, the court shall order an amount of support in accordance with Article 2 (commencing with Section 4050) of Chapter 2 of Part 2.

**Comment.** Subdivision (a) of Section 3630 continues the second sentence of subdivision (b) of former Civil Code Section 4357.5 without substantive change. Subdivision (b) continues the substance of subdivision (h) of former Civil Code Section 4357.5 without substantive change.

**Note:** The article to which reference is made in subdivision (b) of Section 3630 has not yet been drafted. See the Note to Sections 4050-4099 [Reserved].

### § 3631. Order after hearing

3631. When there is a hearing, the resulting order shall be called an order after hearing.

**Comment.** Section 3631 continues the first sentence of subdivision (i) of former Civil Code Section 4357.5 without substantive change.

### § 3632. Effective date of order after hearing

3632. The order after hearing shall become effective no more than 30 days after the filing of the response to the application for the expedited support order and may be given retroactive effect to the date of the filing of the application.

**Comment.** Section 3632 continues the second sentence of subdivision (i) of former Civil Code Section 4357.5 without substantive change.

### § 3633. Modification of order

3633. An order entered under this chapter may be modified or terminated at any time on the same basis as any other order for child support.

**Comment.** Section 3633 continues subdivision (j) of former Civil Code Section 4357.5 with the addition of the words "or terminated." For provisions relating to modification or termination of a support order, see Sections 3650-3694.

### **§ 3634. Judicial Council to prepare necessary forms**

**3634.** The Judicial Council shall prepare all forms necessary to give effect to this chapter.

**Comment.** Section 3634 continues subdivision (k) of former Civil Code Section 4357.5 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**Note:** Can Section 3634 be omitted and its subject matter covered by a more general provision?

## **CHAPTER 6. MODIFICATION OR TERMINATION OF SUPPORT**

Article 1. General Provisions

Article 2. Discovery Before Commencing Modification Proceeding

Article 3. Simplified Procedure for Modification of Support Order

### **Article 1. General Provisions**

§ 3650. "Support order" defined

§ 3651. Authority to modify or terminate

§ 3652. Attorney's fees and court costs

§ 3653. Retroactivity of modification or termination

§ 3654. Statement of decision

§ 3655. Continuation of child support award made before March 4, 1972, beyond age 18

### **§ 3650. "Support order" defined**

**3650.** As used in this chapter, "support order" means a child, family, or spousal support order.

**Comment.** Section 3650 is a new provision designed to facilitate drafting.

### **§ 3651. Authority to modify or terminate**

**3651.** (a) Except as provided in subdivisions (b) and (c) and subject to Article 3 (commencing with Section 3680) and Sections 3553, 3587, and 4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) A support order may not be modified or terminated as to an amount that accrued prior to the date of the filing of the notice of motion or order to show cause to modify or terminate.

(c) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(d) This section applies whether or not the support order is based upon an agreement between the parties.

(e) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into prior to January 1, 1970, as to which the provisions of Chapter 1308 of the Statutes of 1967 shall apply.

**Comment.** Subdivisions (a) and (b) of Section 3651 continue the fifth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6), the third sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801, and a portion of the third sentence of subdivision (a) and a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change, except that the "subject to" clause of subdivision (a) (drawn from former Section 4811 which applied only to orders for child support) is extended to cover spousal support orders. Section 3651 supersedes former Civil Code Section 247. See also Section 3603 (modification or termination of order for child or spousal support during pendency of proceeding), 3653 (retroactivity of modification or termination). For other provisions, see Section 220 (service of notice prerequisite to validity of modification or subsequent order), Article 2 (commencing with Section 3660) (discovery prior to commencement of proceeding for modification of support order), Article 3 (commencing with Section 3680) (simplified method for modification of child support order).

Subdivision (c) continues a portion of the third sentence of subdivision (b) of former Civil Code Section 4811 without substantive change insofar as that sentence applied to a court order. The portion of that sentence of the former section that applied to provisions of a support agreement is continued in Section 3591.

Subdivision (d) continues a portion of the third sentence of subdivision (a) of former Civil Code Section 4811 ("even where there has been an agreement between the parties on the subject of child support") without substantive change except that the provision is extended to include family support orders. See also Section 4300 (order for child support based on the agreement "shall be law-imposed and shall be made under the power of the court to make the order").

Subdivision (e) continues subdivision (c) of former Civil Code Section 4811 without substantive change insofar as it applied to modification or termination of support orders.

Section 3651 applies whether or not the support order is based on an agreement between the parties. See subdivision (d). Accordingly, a child support order based on an agreement between the parties may be modified or terminated at any time as the court determines to be necessary. See subdivision (a). Likewise, a spousal support order based on an agreement between the parties may be modified or terminated at any time as the court determines to be necessary unless the agreement specifically provides that the spousal support is not subject to modification or termination. See subdivisions (a) and (c). See also Section 3591.

**Note:** In subdivision (b) of Section 3651 is the phrase "order to show cause to modify or terminate" properly phrased? See also Sections 4107 and 3653.

**Note that the "subject to" clause in subdivision (a) has been extended to spousal support? See Section 3650 (defining "support order"). Is this extension desirable?**

Note that Section 3651 (by virtue of the definition provided by Section 3650) applies to family support orders, not just child support orders and spousal support orders.

#### § 3652. Attorney's fees and court costs

3652. An order modifying or terminating a child support order may include an award of attorney's fees and court costs to the prevailing party.

Comment. Section 3652 continues the seventh sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) without substantive change. See also Section 273 (attorney's fees for enforcement of support order).

Note: Should Section 3652 be expanded to cover family support orders and spousal support orders?

#### § 3653. Retroactivity of modification or termination

3653. An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)).

Comment. Section 3653 continues without substantive change the sixth sentence of paragraph (1) of subdivision (a) of former Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) insofar as it related to modification or termination of a support order and the last portion of the fifth sentence of the last paragraph of subdivisions (a) of former Civil Code Section 4801. See also Section 4008 (retroactivity of order making child support order), 4333 (retroactivity of order making spousal support order).

Note: Section 3653 has been revised to use the phrase "order to show cause to modify or terminate" to make the section consistent with Section 3651. But see the Note to Section 3651.

The federal law (referred to in Section 3653) should be checked to determine it is relevant and accurately referred to.

#### § 3654. Statement of decision

3654. At the request of either party, an order modifying or terminating a spousal support order shall include a statement of decision.

Comment. Section 3654 continues the first portion of the fifth sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 without substantive change.

Note: Why is Section 3654 limited to spousal support? Should the section be expanded to cover family and child support as well as spousal support?

#### § 3655. Continuation of child support award made before March 4, 1972, beyond age 18

3655. (a) An order made before March 4, 1972, providing for support of a child may be modified by the court having jurisdiction to increase or decrease the amount of the

support award without terminating support at the age of majority based on 18 years of age.

(b) This section does not constitute a change in, but is declaratory of, the existing law.

**Comment.** Section 3655 continues without substantive change former Civil Code Section 4704.

**Note:** Section 3655 will be obsolete on March 4, 1993 because all children in existence on March 4, 1972, will have reached age 21 not later than March 4, 1993. Should Section 3655 be omitted?

## **Article 2. Discovery Before Commencing Modification Proceeding**

§ 3660. Purpose of article

§ 3661. "Support order" defined

§ 3662. Limitation on use of other methods of discovery

§ 3663. Limitation on use of discovery under this article

§ 3664. Request for production of income and expense declaration

§ 3665. Tax returns

§ 3666. Enforcement

§ 3667. Sanctions

§ 3668. Forms

### **§ 3660. Purpose of article**

3660. The purpose of this article is to permit inexpensive discovery of facts prior to the commencement of a proceeding for modification of an order for child, family, or spousal support.

**Comment.** Section 3660 continues subdivision (a) of former Civil Code Section 4700.2 and subdivision (a) of former Civil Code Section 4801.1 without substantive change.

**Note:** Section 3660 refers to a "proceeding" for support modification. We may need general procedural provisions, similar to our general Probate Code hearing procedures.

**Does "modification" include "termination" of support. Should the language of the article be revised to make clear it applies to a proceeding for termination of an order for child or family support or spousal support?**

### **§ 3661. "Support order" defined**

3661. As used in this article, "support order" means an order for child or family support or for spousal support.

**Comment.** Section 3661 is a new provision included to facilitate the drafting of this article. See also Sections 155 ("support order" means a judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered), 3505 ("obligee" defined).

**Note:** Is "order" sufficient or should the phrase "judgment or order" be used?

**§ 3662. Limitation on use of other methods of discovery**

3662. Methods of discovery other than that described in this article may only be used if a motion for modification of the support order is pending.

**Comment.** Section 3662 continues the second sentence of subdivision (b) of former Civil Code Section 4700.2 and the second sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change.

**§ 3663. Limitation on use of discovery under this article**

3663. In the absence of a pending motion for modification of a support order, a request for discovery pursuant to this article may be undertaken no more than once a year.

**Comment.** Subdivision (a) of Section 3663 continues the third sentence of subdivision (b) of former Civil Code Section 4700.2 and the third sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change.

**Note:** If there is a separate spousal support order and a separate child support order, should a request for discovery under this article be allowed once a year for each support order? In other words, should a request be permitted on the spousal support order and then, within the one year period, another request be permitted on the child support order? Since there are now two separate statutes from which this article is drawn, it would appear that under existing law each would be a separate procedure and that a request under one of the statutes would not be limited by the fact that there had been a request under the other statute within the one year period. However, since the information required is the same whether the order is one for child or spousal support, it would appear that two requests in the same year should not be permitted.

**§ 3664. Request for production of income and expense declaration**

3664. (a) At any time following a judgment of dissolution of marriage or legal separation that provides for payment of support, either the party ordered to pay support or the party to whom support was ordered to be paid or that party's assignee, without leave of court, may serve a request for the production of a completed current income and expense declaration in the form adopted by the Judicial Council.

(b) Service of a request for production of an income and expense declaration pursuant to this section shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

**Comment.** Subdivision (a) of Section 3664 continues the first sentence of subdivision (b) of former Civil Code Section 4700.2 and the first sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change. See also Section 3661 ("support" means child or family support or spousal support). See also Section 95 (Judicial Council form for income and expense declaration).

Subdivision (b) of Section 3664 continues subdivision (d) of former Civil Code Section 4700.2 and subdivision (d) of former Civil Code Section 4801.1 without substantive change.

**§ 3665. Tax returns**

3665. (a) A copy of the prior year's federal and state personal income tax returns shall be attached to the income and expense declaration of each party.

(b) A party shall not disclose the contents or provide copies of the other party's tax returns to anyone except the court, his or her attorney, his or her accountant, or other financial consultant assisting with matters relating to the proceeding, or any other person permitted by the court.

(c) The tax returns shall be controlled by the court as provided in Section 3553.

**Comment.** Section 3665 continues subdivision (c) of former Civil Code Section 4700.2 and subdivision (c) of former Civil Code Section 4801.1 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3666. Enforcement**

3666. This article may be enforced in the manner specified in Sections 1991, 1991.1, 1991.2, 1992, and 1993 of the Code of Civil Procedure and in the Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure), and any other statutes applicable to the enforcement of procedures for discovery.

**Comment.** Section 3666 continues the fourth sentence of subdivision (b) of former Civil Code Section 4700.2 and the fourth sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change. See also Section 273 (attorney's fees for enforcement of support order).

**§ 3667. Sanctions**

3667. Upon the subsequent filing of a motion for modification of the support order by the requesting party, if the court finds that the income and expense declaration submitted by the responding party pursuant this article was incomplete, inaccurate, or missing the prior year's federal and state personal income tax returns, or that the declaration was not submitted in good faith, the court may order sanctions against the responding party in the form of payment of all costs of the motion, including the filing fee and the costs of the depositions and subpoenas necessary to be utilized in order to obtain complete and accurate information.

**Comment.** Section 3667 continues subdivision (e) of former Civil Code Section 4700.2 and subdivision (e) of former Civil Code Section 4801.1 without substantive change. See also Section 95 (Judicial Council form for income and expense declaration).

**§ 3668. Forms**

3668. The Judicial Council shall adopt forms which shall be used in the procedure provided by this article.

**Comment.** Section 3668 continues the fifth sentence of subdivision (b) of former Civil Code Section 4700.2 and the fifth sentence of subdivision (b) of former Civil Code Section 4801.1 without substantive change.

**Note: Can a general provision be drafted to make Section 3668 unnecessary?**

### **Article 3. Simplified Procedure for Modification of Support Order**

- § 3680. Purpose of article
- § 3681. "Support order" defined
- § 3682. Limitation on use of procedure under this article
- § 3683. Notice of motion to modify support order
- § 3684. Objection and request for hearing
- § 3685. Lawyers and other nonparties not allowed
- § 3686. Consideration of age increase factor in modification of child support order
- § 3687. Modification without showing of changed circumstances
- § 3688. Modification based on significant decrease in income
- § 3689. Tax returns and other documents
- § 3690. Manner of service of notice
- § 3691. Notice to district attorney
- § 3692. Compliance with federal requirements
- § 3693. Election to be represented by counsel
- § 3694. Judicial council forms

#### **§ 3680. Purpose of article**

3680. The purpose of this article is to provide an additional, simplified method for the modification of child, family, and spousal support orders.

**Comment.** Section 3680 continues subdivision (a) of former Civil Code Section 4700.1 and subdivision (a) of former Civil Code Section 4801.9 without substantive change, except that the article is made applicable to "family support" orders.

#### **§ 3681. "Support order" defined**

3681. As used in this article, "support order" means an order for child, family, or spousal support.

**Comment.** Section 3681 is a new provision included to facilitate the drafting of this article.

#### **§ 3682. Limitation on use of procedure under this article**

3682. Except where the modification is based on a significant decrease in the income of the moving party:

(a) Only one modification of child or family support pursuant to this article may be granted within any 12-month period.

(b) Only one modification of spousal support pursuant to this article may be granted within any one 12-month period.

**Comment.** Section 3682 continues the first sentence of subdivision (d) of former Civil Code Section 4700.1 and the first sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change. Although Section 3682 limits modifications pursuant to this article to one per year, this limitation does not apply to a modification based on a significant decrease in the income of the moving party. See also Section 3688 (modification based on significant decrease in income of the moving party).

**§ 3683. Notice of motion to modify support order**

3683. (a) A notice of motion to modify a support order may be filed under this article at any time subsequent to one year after the entry of the support order to be modified, but this one-year limitation is not applicable if the request for modification is based on a significant decrease in the income of the moving party.

(b) The motion to modify the support order shall include both of the following:

(1) A proposed order for modification of the support order.

(2) A declaration under penalty of perjury that the facts on which the motion is based are true and correct.

(c) The moving party shall cause the notice of motion and the proposed order to be served on the other party to the support order.

**Comment.** Section 3683 continues the first three sentences of subdivision (b) of former Civil Code Section 4700.1 and the first three sentences of subdivision (b) of former Civil Code Section 4801.9 without substantive change. See also Section 3690 (manner of service of notice).

In computing the one-year period under subdivision in the case of a support order previously modified, the one-year period commences to run from the date of entry of the latest modification of the support order, not from the date the original support order was entered.

**§ 3684. Objection and request for hearing**

3684. (a) The responding party may, within 30 days after the date of service of the notice of motion pursuant to Section 3683, file an objection and request for hearing. If the responding party files an objection and request for hearing, the responding party is responsible for requesting a hearing date and giving notice of the hearing to the moving party. The responding party shall file the original proof of service of the notice of the objection and request for hearing at the same time as the filing of the objection and the request for hearing.

(b) If it appears in the response to a request for modification of a child support order pursuant to this article that an issue other than support is contested with respect to the child, the other issue shall be set for mediation under Chapter 11 (commencing with Section 3155) of Division 10. A separate hearing shall be scheduled for the other issue. The pendency of the mediation proceeding shall not delay a hearing on the request for modification of the support order under this article.

**Comment.** Subdivision (a) of Section 3684 continues the fourth, fifth, and sixth sentences of subdivision (b) of former Civil Code Section 4700.1 and the fourth, fifth, and sixth sentences of subdivision (b) of former Civil Code Section 4801.9 without substantive change. See also Section 3690 (manner of service of notice).

Subdivision (b) continues without substantive change subdivision (k) of former Civil Code Section 4700.1.

**Note:** Should subdivision (b) of Section 3684 apply to a "family support order"?

**§ 3685. Lawyers and other nonparties not allowed**

3685. (a) Except as otherwise provided in this section and in Section 3693, no attorney at law or person other than the moving or responding party shall take any part in the filing or prosecution or defense of a proceeding pursuant to this article, unless the attorney is appearing as a party to the proceeding.

(b) Nothing in this article prohibits an attorney from rendering advice to a party to the proceeding, either before or after the commencement of the proceeding.

**Comment.** Section 3685 restates the first two sentences of subdivision (c) of former Civil Code Section 4700.1 and the first two sentences of subdivision (c) of former Civil Code Section 4801.9 without substantive change. See also Section 3693 (election to be represented by counsel in the proceeding).

**§ 3686. Consideration of age increase factor in modification of child support order**

3686. In making a modification based on a request to increase the amount of child support payments pursuant to this article, the court shall take into consideration the age increase factor developed by the Judicial Council pursuant to paragraph (8) of subdivision (a) of Section 4005.

**Comment.** Section 3686 continues former Civil Code Section 4700.3 without substantive change.

**§ 3687. Modification without showing of changed circumstances**

3687. (a) The court may grant a modification of child support, not to exceed an amount equal to 10 percent of the current child support award for each year subsequent to the date on which the current child support award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of the income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) The court may grant an increase of spousal support, not to exceed an amount equal to the increase in the California all consumer price index provided by the federal government for each year subsequent to the date on which the current spousal support award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of income statements (and expense statements, if the court deems them relevant) of the parties.

(c) If the responding party defaults, the court shall order a modification of the support order without requiring the submission of economic evidence by the moving party.

**Comment.** Subdivision (a) of Section 3687 continues the second sentence of subdivision (d) of former Civil Code Section 4700.1 without substantive change. Subdivision (b) continues the second sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change. Subdivision (c) continues the third sentence of subdivision (d) of former

Civil Code Section 4700.1 and the third sentence of subdivision (d) of former Civil Code Section 4801.9 without substantive change.

**Note:** What is the standard for modification of a family support order? Does the standard in subdivision (a) or (b) apply?

### **§ 3688. Modification based on significant decrease in income**

3688. (a) In a case in which the request for modification is based on a significant decrease in the income of the moving party, the moving party shall present evidence of his or her decline in economic circumstances. The amount of the modification shall be based on the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) If the responding party defaults in a case where the request for the modification is based on a significant decrease in the income of the moving party, the court shall order a modification based on the evidence.

(c) If the court considering the request for modification orders support according to guidelines in use within its jurisdiction, the amount of the modification shall be based on the guidelines. If no guidelines are in use, the amount of the modification shall be based on the factors used in determining the existing support award.

**Comment.** Section 3688 continues the third paragraph of subdivision (d) of former Civil Code Section 4700.1 and the third paragraph of subdivision (d) of former Civil Code Section 4801.9 without substantive change.

### **§ 3689. Tax returns and other documents**

3689. (a) In addition to the income statement (and the expense statement, if required by the court), in a contested proceeding, both the moving party and the responding party shall make available to the court at the time of the hearing copies of their federal and state income tax returns for the preceding year. A tax return so submitted may be reviewed by the other party and the party also may be examined by the other party as to contents the return.

(b) No relief shall be granted pursuant to this article to a party who fails to submit such documents as may be required by the court or a declaration under penalty of perjury that no such documents exist, or that, in the case of a tax return, it cannot be produced but a copy has been requested from the Internal Revenue Service or the Franchise Tax Board.

**Comment.** Section 3689 continues the fourth paragraph of subdivision (d) of former Civil Code Section 4700.1 and the fourth paragraph of subdivision (d) of former Civil Code Section 4801.9 without substantive change.

**Note:** To conform to Section 3665, should the following new subdivision be added to Section 3689:

(c) The tax returns shall be controlled by the court as provided in Section 3553.

If this addition is not made, a reference to Section 3689 should be added to the Comment to Section 3553.

**§ 3690. Manner of service of notice**

3690. Notice pursuant to this article shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service. Proof of service shall be filed with the court.

**Comment.** Section 3690 continues the first two sentences of subdivision (e) of former Civil Code Section 4700.1 and the first two sentences of subdivision (e) of former Civil Code Section 4801.9 without substantive change. See also Section 3554 (giving notice of mailing address and changes in address to other party).

**§ 3691. Notice to district attorney**

3691. (a) The party filing a notice of motion to modify child support with the clerk pursuant to this article shall also file a duplicate copy of the notice with the district attorney within five working days after filing.

(b) If the district attorney has previously attempted to enforce the spousal support obligation upon which the motion is based, the party filing a notice of motion to modify spousal support with the clerk pursuant to this article shall also file a duplicate copy of the notice with the district attorney within five working days of filing.

**Comment.** Subdivision (a) of Section 3691 continues subdivision (g) of former Civil Code Section 4700.1 without substantive change. Subdivision (b) continues subdivision (f) of former Civil Code Section 4801.9 without substantive change.

**Note:** Should subdivision (a) of Section 3691 be limited by consolidating it with subdivision (b), thereby adding the requirement for subdivision (a) that notice to the district attorney is required for modification of child support only if the district attorney has previously attempted to enforce the child support obligation upon which the motion is based?

How does one "file" a copy of the notice with the district attorney as required by Section 3691? Does Section 3690 (manner of service of notice) apply?

**§ 3692. Compliance with federal requirements**

3692. Nothing in this article shall be construed to infringe on the duty of the state to comply with any federal rules and regulations pertaining to the establishment, enforcement, and collection of (1) child support payments in cases in which the child is receiving public assistance or (2) spousal support payments.

**Comment.** Section 3692 continues subdivision (h) of former Civil Code Section 4700.1 and subdivision (g) of former Civil Code Section 4801.9 without substantive change.

**Note:** Is there a reason why item (1) of Section 3692 is limited to public assistance cases and item (2) is not so limited?

**§ 3693. Election to be represented by counsel**

3693. (a) A party to a proceeding under this article may elect to be represented by counsel in the proceeding. The party's notice of election to proceed with the benefit of counsel shall be accompanied by the party's declaration under penalty of perjury

stating facts evidencing the intent to proceed with the benefit of counsel in the proceeding.

(b) Upon notice by a party pursuant to subdivision (a) that the party elects to be represented by counsel in the proceeding, the court shall proceed on the motion as in a proceeding under Article 1 (commencing with Section 3650) for modification of a support order.

**Comment.** Section 3693 restates the third sentence of subdivision (c) and subdivision (i) of former Civil Code Section 4700.1 and the third sentence of subdivision (c) and subdivision (h) of former Civil Code Section 4801.9 without substantive change.

#### **§ 3694. Judicial council forms**

3694. The Judicial Council shall adopt forms or notices for the use of the procedure provided in this article. The forms or notices shall include a notice advising of the right of a party to proceed with or without benefit of counsel. The forms or notices shall incorporate, where appropriate, advice as to the availability of the additional, simplified method for the modification of support provided in this article.

**Comment.** Section 3694 continues subdivision (j) of former Civil Code Section 4700.1 and subdivision (i) of former Civil Code Section 4801.9 without substantive change.

**Note:** Should Section 3694 be omitted and its subject matter covered by a general provision?

### **CHAPTER 7. HEALTH INSURANCE**

Article 1. Providing Health Insurance Coverage for Supported Child

Article 2. Health Insurance Coverage Assignment

Article 3. Assignment of Reimbursement Rights Under Health Plan

#### **Article 1. Providing Health Insurance Coverage For Supported Child**

§ 3750. "Health insurance coverage" defined

§ 3751. Health insurance for supported child

§ 3752. District attorney designated as assigned payee; information on policy for custodial parent

§ 3753. Article applicable in all cases

#### **§ 3750. "Health insurance coverage" defined**

3750. As used in this article, "health insurance coverage" includes all of the following:

(a) Vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

(b) Provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to a dependent child of an absent parent.

**Comment.** Section 3750 continues paragraph (3) of subdivision (a) of former Civil Code Section 4726 without substantive change.

**§ 3751. Health insurance for supported child**

3751. (a) The court shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent. The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(b) If the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision that specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to a parent, the parent shall apply for that coverage.

**Comment.** Section 3751 continues paragraphs (1) and (2) of subdivision (a) of former Civil Code Section 4726 without substantive change. See also Sections 1920-1923 (notice to insurance carriers), 4006 (health insurance coverage as factor in determining child support).

**§ 3752. District attorney designated as assigned payee; information on policy for custodial parent**

3752. (a) If the district attorney has been designated as the assigned payee for child support, the court shall order the parent to notify the district attorney upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

(b) The district attorney shall obtain a completed medical form from the parent in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child with information pertaining to the health insurance policy that has been secured for the child.

**Comment.** Section 3752 continues without substantive change subdivisions (b) and (c) of former Civil Code Section 4726.

**§ 3753. Article applicable in all cases**

3753. This article is applicable in all cases, irrespective of whether the child support award made is based on the mandatory minimum award schedule or a higher amount based on a state or county schedule.

**Comment.** Section 3753 continues without substantive change subdivision (d) of former Civil Code Section 4726.

**Note:** Section 3753 should be reviewed in light of the child support guidelines to be adopted under Article 2 (commencing with Section 4050) of Chapter 2 of Part 2.

## Article 2. Health Insurance Coverage Assignment

### § 3760. Definitions

- § 3761. Application and order for health insurance coverage assignment; notice of intent to seek order
- § 3762. Good cause for not making assignment order
- § 3763. Time of making and effect of assignment order; modification of order
- § 3764. Service of assignment order; delivery of copy and information to obligor
- § 3765. Motion to quash assignment
- § 3766. Selection of plans
- § 3767. Notice concerning commencement of coverage; providing evidence of coverage
- § 3768. Liability for failure to comply with assignment
- § 3769. Civil penalty for adverse action against employee
- § 3770. Termination of assignment
- § 3771. Employer providing information to district attorney
- § 3772. Judicial Council forms

### § 3760. Definitions

3760. As used in this article, unless the provision or context otherwise requires:

(a) "Employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(b) "Health insurance," "health insurance plan," "health insurance plan," "health insurance coverage," "health care services," or "health insurance coverage assignment" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

(c) "Health insurance coverage assignment" or "assignment order" means an order made under Section 3761.

**Comment.** Subdivision (a) of Section 3760 continues subdivision (m) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. Subdivision (b) continues subdivision (p) of former Section 4726.1 without substantive change. Subdivision (c) continues the second sentence of paragraph (1) of subdivision (a) of former Section 4726.1 without substantive change.

### § 3761. Application and order for health insurance coverage assignment; notice of intent to seek order

3761. (a) Upon application by a party or district attorney in any proceeding where the court has ordered either or both parents to maintain health insurance coverage under Article 1 (commencing with Section 3750), the court shall order the employer of the obligor parent or other person providing health insurance to the obligor to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the earnings of the obligor unless the court makes a finding of good cause for not making the order.

(b) The application shall state that the party or district attorney seeking the assignment has given the obligor a written notice of the intent to seek a health insurance coverage assignment in the event of a default in instituting coverage required by court order on behalf of the parties' child and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days prior to the date of the filing of the application. The written notice of the intent to seek an assignment required by this subdivision may be given at the time of filing a petition or complaint for support or at any time later, but shall be given at least 15 days before the date of filing the application under this section. The obligor may at any time waive the written notice required by this subdivision.

**Comment.** Subdivision (a) of Section 3761 continues the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. Subdivision (b) continues subdivision (c) of former Section 4726.1 without substantive change. See also Sections 1920-1923 (notice to insurance carriers), 3510 ("obligor" defined).

### **§ 3762. Good cause for not making assignment order**

3762. Good cause for not making a health insurance coverage assignment shall be limited to either of the following:

(a) The court finds that one of the conditions listed in subdivision (a) of Section 3765 or in Section 3770 exists.

(b) The court finds that the health insurance coverage assignment would cause extraordinary hardship to the obligor. The court shall specify the nature of the extraordinary hardship and, whenever possible, a date by which the obligor shall obtain health insurance coverage or be subject to a health insurance coverage assignment.

**Comment.** Section 3762 continues paragraph (2) of subdivision (a) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also Section 3510 ("obligor" defined).

### **§ 3763. Time of making and effect of assignment order; modification of order**

3763. (a) The health insurance coverage assignment may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The order operates as an assignment and is binding on any existing or future employer of the obligor parent, or other person providing health insurance to the obligor, upon whom a copy of the order has been served.

(c) The order of assignment may be modified at any time by the court.

**Comment.** Section 3763 continues subdivision (b) of former Civil Code § 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change, except that the phrase "or other person providing health insurance to the obligor" has been added in the second sentence of subdivision (a) of Section 3763. See also Sections 1920-1923 (notice to insurance carriers), 3510 ("obligor" defined).

**§ 3764. Service of assignment order; delivery of copy and information to obligor**

3764. (a) A health insurance coverage assignment does not become effective until 10 days after service by the applicant of the assignment order on the employer or other person providing health insurance to the obligor.

(b) Within 10 days after service of the order, the employer or other person providing health insurance to the obligor shall deliver a copy of the order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the order.

**Comment.** Section 3764 continues subdivision (d) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also Sections 1920-1923 (notice to insurance carriers), 3510 ("obligor" defined).

**Note:** How is the assignment order to be served on the employer or other person providing health insurance to the obligor?

**§ 3765. Motion to quash assignment**

3765. (a) The obligor may move to quash a health insurance coverage assignment order as provided in this section if the obligor declares under penalty of perjury that there is error on any of the following grounds:

(1) No order to maintain health insurance has been issued under Article 1 (commencing with Section 3750).

(2) The amount to be withheld for premiums is greater than that permissible under Article 1 (commencing with Section 3750) or greater than the amount otherwise ordered by the court.

(3) The amount of the increased premium is unreasonable.

(4) The alleged obligor is not the obligor from whom health insurance coverage is due.

(5) The child is or will be otherwise provided health care coverage.

(6) The employer's choice of coverage is inappropriate.

(b) The motion and notice of motion to quash the assignment order, including the declaration required by subdivision (a), shall be filed with the court issuing the assignment order within 10 days after delivery of a copy of the order to the obligor pursuant to subdivision (b) of Section 3764. The court clerk shall set the motion for hearing not less than 15 days, nor more than 20 days, after receipt of the notice of motion. The clerk shall, within five days after receipt of the notice of motion, deliver a copy of the notice of motion to (1) the district attorney personally or by first-class mail, and (2) the applicant and the employer or other person providing health insurance, at the appropriate addresses contained in the application, by first-class mail.

(c) Upon a finding of error described in subdivision (a), the court shall quash the assignment.

**Comment.** Section 3765 continues subdivision (e) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also 3510 ("obligor" defined).

### **§ 3766. Selection of plans**

**3766. (a)** The employer, or other person providing health insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, 10 days after service of the assignment order upon the obligor under Section 3764 if the employer or other person has not received a notice of motion seeking to quash the order. If the employer or other person providing health insurance receives a notice of motion to quash, the employer or other person shall commence coverage consistent with the assignment order on receipt of the order resolving the motion to quash in favor of the applicant. The employer, or the person providing health insurance, shall commence coverage at the earliest possible time and, if applicable, consistent with the group plan enrollment rules.

**(b)** If the obligor has made a selection of health coverage inconsistent with the court order, the selection shall not be superseded unless the child to be enrolled in the plan will not be provided benefits or coverage where the child resides.

**(c)** If the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer or other person providing health insurance shall enroll the child in the plan that will reasonably provide benefits or coverage where the child resides. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

**(d)** If an assignment order is served on an employer or other person providing health insurance and no coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

**Comment.** Section 3766 continues subdivisions (f) and (j) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change, except that a reference to the other person providing health insurance has been added in the last portion of the second sentence of subdivision (a) and in the first sentence of subdivision (c) of Section 3766. See also Sections 1920-1923 (notice to insurance carriers), 3510 ("obligor" defined).

### **§ 3767. Notice concerning commencement of coverage; providing evidence of coverage**

**3767.** The employer or other person providing health insurance shall do all of the following:

**(a)** Notify the applicant for the assignment order of the commencement date of the coverage of the child.

**(b)** Provide evidence of coverage to both parents or the person having custody of the child and to the district attorney when requested by the district attorney.

(c) Upon request by the parents or person having custody of the child, provide all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

**Comment.** Section 3767 continues subdivisions (h) and (i) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change.

#### **§ 3768. Liability for failure to comply with assignment**

3768. (a) An employer or other person providing health insurance who willfully fails to comply with a valid health insurance coverage assignment entered and served on the employer or other person pursuant to this article is liable to the applicant for the amount incurred in health care services that would otherwise have been covered under the insurance policy but for the conduct of the employer or other person that was contrary to the assignment order.

(b) Willful failure of an employer or other person providing health insurance to comply with a health insurance coverage assignment is punishable as contempt of court under Section 1218 of the Code of Civil Procedure.

**Comment.** Section 3768 continues subdivision (g) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also Sections 273 (attorney's fees for enforcement of support order), 1920-1923 (notice to insurance carriers).

#### **§ 3769. Civil penalty for adverse action against employee**

3769. No employer shall use a health insurance coverage assignment as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who violates this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

**Comment.** Section 3769 continues subdivision (l) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change.

#### **§ 3770. Termination of assignment**

3770. Upon notice of motion by the obligor, the court shall terminate a health insurance coverage assignment if any of the following conditions exists:

(a) A new order has been issued under Article 1 (commencing with Section 3750) that is inconsistent with the existing assignment.

(b) The employer or other person providing health insurance has discontinued that coverage to the obligor.

(c) The court determines that there is good cause, consistent with Section 3762, to terminate the assignment.

(d) The death or emancipation of the child for whom the health insurance has been obtained.

**Comment.** Section 3770 continues subdivision (k) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also Section 3510 ("obligor" defined).

### **§ 3771. Employer providing information to district attorney**

3771. Upon request of the district attorney, the employer shall provide the following information to the district attorney within 30 days:

- (a) The social security number of the absent parent.
- (b) The home address of the absent parent.
- (c) Whether the absent parent has a health insurance policy and, if so, the policy names and numbers, and the names of the persons covered.
- (d) Whether the health insurance policy provides coverage for dependent children of the absent parent who do not reside in his or her home.
- (e) If there is a subsequent lapse in health insurance coverage, the employer shall notify the district attorney, giving the date the coverage ended, the reason for the lapse in coverage and, if the lapse is temporary, the date upon which coverage is expected to resume.

**Comment.** Section 3771 continues subdivision (o) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change.

**Note:** Should the introductory portion of subdivision (e) of Section 3771 be revised to read: "If the district attorney has requested information under this section and there is a subsequent lapse in health insurance coverage, the employer . . ."

Should the scope of Section 3771 be expanded to cover any "other person providing health insurance"?

### **§ 3772. Judicial Council forms**

3772. The Judicial Council shall adopt forms for the health insurance coverage assignment required or authorized by this article, including, but not limited to, the application, the order, the statement of the obligor's rights, and an employer's return form which shall include the information required by Section 3771. The parties and child shall be sufficiently identified on the forms by the inclusion of birth dates, social security numbers, and any other information the Judicial Council determines is necessary.

**Comment.** Section 3772 continues subdivision (n) of former Civil Code Section 4726.1 (as amended by 1990 Cal. Stat. ch. 1395 § 1) without substantive change. See also Section 3510 ("obligor" defined).

## **Article 3. Assignment of Reimbursement Rights Under Health Plan**

§ 3780. "Health plan" defined

§ 3781. Assignment of rights to reimbursement under health plan

§ 3782. Party covered by health plan to provide information and forms

**§ 3780. "Health plan" defined**

3780. For the purposes of this article, a health plan includes, but is not limited to, a disability insurance plan, a nonprofit hospital service plan, a self-insured employee welfare benefit plan, and a health care service plan.

**Comment.** Section 3780 continues the third paragraph of former Civil Code Section 4358.5 without change.

**§ 3781. Assignment of rights to reimbursement under health plan**

3781. (a) Subject to subdivision (b), in a proceeding under the Family Law Act, where there is an order requiring either party to provide coverage under a health plan to a dependent, the court shall order the party covered by a health plan to assign to the other party the rights the covered party has to reimbursement.

(b) The rights assigned pursuant to this section do not include any rights the covered party has to reimbursement for payments actually made by the covered party. The rights assigned are only for reimbursement for payments made by the noncovered party seeking the reimbursement, and reimbursement shall be only for covered health care services received in the manner required by the plan or policy and provided to a dependent.

**Comment.** Section 3781 continues the first paragraph of former Civil Code Section 4358.5 without substantive change. See also Sections 85 ("Family Law Act" defined), 1920-1923 (notice to insurance carriers).

**Note:** Should Section 3781 apply "in any proceeding where there is an order requiring either party to provide coverage under a health plan to a dependent," thereby omitting the restriction of this article to a "proceeding under the Family Law Act"?

**§ 3782. Party covered by health plan to provide information and forms**

3782. (a) The order made pursuant to this article shall also require the party covered by a health plan to provide the appropriate information and forms to enable the party incurring the health care services costs for a dependent to seek reimbursement.

(b) The court shall notify the health plan of the order made pursuant to this article and shall instruct the health plan to assist the party seeking reimbursement by providing information and forms necessary to receive reimbursement.

**Comment.** Section 3782 continues second paragraph of former Civil Code Section 4358.5 without substantive change. See also Sections 1920-1923 (notice to insurance carriers).

**CHAPTER 8. DEFERRED SALE OF HOME ORDER**

§ 3800. Definitions

§ 3801. Determination of economic feasibility

§ 3802. Matters to be considered by court in determining whether to grant order

§ 3803. Contents of order

§ 3804. Recording order

§ 3805. Order as additional child support

• § 3806. Order concerning maintenance and capital improvements

§ 3807. Modification or termination of order

§ 3808. Presumption arising upon remarriage or other change in circumstances

§ 3809. Reservation of jurisdiction by court

§ 3810. Chapter applies to preexisting orders

### § 3800. Definitions

3800. (a) As used in this chapter:

(a) "Custodial parent" means a party awarded physical custody of a child.

(b) "Deferred sale of home order" means an order that temporarily delays the sale and awards the temporary exclusive use and possession of the family home to a custodial parent of a minor child or child for whom support is authorized under Sections 3900 and 3901 or under Section 3910, whether or not the custodial parent has sole or joint custody, in order to minimize the adverse impact of dissolution or legal separation on the welfare of the child.

(c) "Resident parent" means a party who has requested or who has already been awarded a deferred sale of home order.

**Comment.** Section 3800 continues subdivision (a) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

### § 3801. Determination of economic feasibility

3801. (a) If one of the parties has requested a deferred sale of home order pursuant to this chapter, the court shall first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes, insurance for the home during the period the sale of the home is deferred, and the condition of the home comparable to that at the time of trial.

(b) In making this determination, the court shall consider all of the following:

(1) The resident parent's income.

(2) The availability of spousal support, child support, or both spousal and child support.

(3) Any other sources of funds available to make those payments.

(c) It is the intent of the Legislature, by requiring the determination under this section, to do all of the following:

(1) Avoid the likelihood of possible defaults on the payments of notes and resulting foreclosures.

(2) Avoid inadequate insurance coverage.

(3) Prevent deterioration of the condition of the family home.

(4) Prevent any other circumstance which would jeopardize both parents' equity in the home.

**Comment.** Section 3801 continues the first three sentences of subdivision (b) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

**§ 3802. Matters to be considered by court in determining whether to grant order**

3802. (a) If the court determines pursuant to Section 3801 that it is economically feasible to consider ordering a deferred sale of the family home, the court may grant a deferred sale of home order to a custodial parent if the court determines that the order is necessary in order to minimize the adverse impact of dissolution or legal separation on the child.

(b) In exercising its discretion to grant or deny a deferred sale of home order, the court shall consider all of the following:

- (1) The length of time the child has resided in the home.
- (2) The child's placement or grade in school.
- (3) The accessibility and convenience of the home to the child's school and other services or facilities used by and available to the child, including child care.
- (4) Whether the home has been adapted or modified to accommodate any physical disabilities of a child or a resident parent in a manner such that a change in residence may adversely affect the ability of the resident parent to meet the needs of the child.
- (5) The emotional detriment to the child associated with a change in residence.
- (6) The extent to which the location of the home permits the resident parent to continue his or her employment.
- (7) The financial ability of each parent to obtain suitable housing.
- (8) The tax consequences to the parents.
- (9) The economic detriment to the nonresident parent in the event of a deferred sale of home order.
- (10) Any other factors the court deems just and equitable.

**Comment.** Subdivision (a) of Section 3802 continues the introductory clause of the fourth sentence of subdivision (b) and the first sentence of subdivision (c) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change. Subdivision (b) continues the remainder of the fourth sentence of subdivision (b) of former Section 4700.10 without substantive change.

**§ 3803. Contents of order**

3803. The deferred sale of home order shall state the duration of the order and may include the legal description and assessor's parcel number of the real property which is subject to the order.

**Comment.** Section 3803 continues the first portion of the second sentence of subdivision (c) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

**§ 3804. Recording order**

3804. The deferred sale of home order may be recorded in the office of the county recorder of the county in which the real property is located.

**Comment.** Section 3804 continues the last portion of the second sentence of subdivision (c) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

### **§ 3805. Order as additional child support**

3805. The deferred sale of home order may be considered to constitute additional child support pursuant to [Civil Code Section 4728.5].

**Comment.** Section 3805 continues the third sentence of subdivision (c) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change. See also Section 273 (attorney's fees for enforcement of support order).

**Note:** The substance of Civil Code Section 4728.5 is not continued in the staff draft of the Family Code. See the Note to Sections 4050-4099. When Sections 4050-4099 have been drafted and included in the Family Code, an appropriate reference to the provision that supersedes Civil Code Section 4728.5 must be inserted in Section 3805.

### **§ 3806. Order concerning maintenance and capital improvements**

3806. The court may make an order specifying the parties' respective responsibilities for the payment of the costs of routine maintenance and capital improvements.

**Comment.** Section 3806 continues subdivision (d) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

### **§ 3807. Modification or termination of order**

3807. Except as otherwise agreed to by the parties in writing, a deferred sale of home order may be modified or terminated at any time at the discretion of the court.

**Comment.** Section 3807 continues a portion of subdivision (e) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

### **§ 3808. Presumption arising upon remarriage or other change in circumstances**

3808. Except as otherwise agreed to by the parties in writing, if the party awarded the deferred sale of home order remarries, or if there is otherwise a change in circumstances affecting the determinations made pursuant to Section 3801 or 3802 or affecting the economic status of the parties or the children on which the award is based, a rebuttable presumption, affecting the burden of proof, is created that further deferral of the sale is no longer an equitable method of minimizing the adverse impact of the dissolution or legal separation on the children.

**Comment.** Section 3808 continues a portion of subdivision (e) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

### **§ 3809. Reservation of jurisdiction by court**

3809. In making an order pursuant to this chapter, the court shall reserve jurisdiction to determine any issues that arise with respect to the deferred sale of home order including, but not limited to, the maintenance of the home and the tax consequences to each party.

**Comment.** Section 3809 continues subdivision (f) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

**§ 3810. Chapter applies to preexisting orders**

3810. This chapter is applicable regardless of whether the deferred sale of home order is made before or after January 1, 1989.

**Comment.** Section 3810 continues subdivision (g) of former Civil Code Section 4700.10 (as amended by 1990 Cal. Stat. ch. 1493 § 8) without substantive change.

**PART 2. SUPPORT OF CHILDREN**

Chapter 1. Duty of Parent to Support Child

Chapter 2. Court Ordered Child Support

**CHAPTER 1. DUTY OF PARENT TO SUPPORT CHILD**

Article 1. Support of Minor Child

Article 2. Support of Adult Child

Article 3. Support of Grandchild

Article 4. Liability to Others Who Provide Support for Child

**Article 1. Support of Minor Child**

§ 3900. Duty of Parents

§ 3901. Duration of Duty

§ 3902. Support Out of Child's Property

**§ 3900. Duty of parents**

3900. Subject to the provisions of this division, the father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child's circumstances.

**Comment.** Section 3900 continues subdivision (a) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the first sentence of former Civil Code Section 196a with the following revision: The provision of former Section 196 requiring consideration of "the respective earnings or earning capacities of the parents" has been omitted from Section 3900 because this language is superseded by Section 4005, which specifies the factors to be taken into account in determining the amount of support, including but not limited to, the earnings or earning capacities of the parents.

Section 3900 supersedes former Section 242 (Uniform Civil Liability for Support Act) to the extent that section related to the duty to support a child.

The duty provided in Section 3900 is subject to the other provisions of this division, including but not limited to Sections 4005-4006 (factors in determining amount of support) and Article 2 (commencing with Section 4050 of Chapter 3 (child support guidelines) and the limitations of this chapter. The duration of the duty to support a minor child may be extended under Section 3901 (duration of duty). As used in Section 3900, "support" includes maintain and educate. Section 150 (support defined). See also Section 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3357 (effect of failure to implement custody or visitation rights).

For venue in proceedings to enforce the obligation to support a child, see Code Civ. Proc. § 395.

It should also be noted that if a person slays or permanently disables another person in a duel in this state, the slayer must provide for the minor children of the person slain or permanently disabled. Civil Code Section 3347.

**Note: Should Civil Code Section 3347 (referred to in the Comment to Section 3900) be continued or should it be repealed?**

### § 3901. Duration of duty

3901. (a) The duty of support imposed by Section 3900 continues as to an unmarried child who has attained the age of 18, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19, whichever occurs first.

(b) Nothing in this section limits a parent's ability to agree to provide additional support or the court's power to inquire whether such an agreement has been made.

**Comment.** Section 3901 continues the first and fourth sentences of former Civil Code Section 196.5 and the first and fourth sentences of former Civil Code Section 4704.5 without substantive change. The transitional provisions found in the former sections—that the section does not apply to support agreements made or judgments entered before March 4, 1972—have been omitted as unnecessary.

The duty may be enforced in the manner described in Section 4000 (civil action against parent to enforce duty of support) or by any other manner provided in by statute. See Part 5 (commencing with Section 4500). See also Section 4001 (child support in pending proceeding). For provisions governing child support provisions of support agreements see Sections 3580-3587.

**Note: We have omitted the transitional provision included in existing Civil Code Sections 196.5 and 4704.5, since by the time the new code is enacted the transitional provision will have outlasted its usefulness. The transitional provision states:**

**This section does not apply to support agreements made or judgments entered before March 4, 1972.**

It is also not clear whether subdivision (b) of Section 3901 is intended to be of general application or whether it was intended to apply only to the transitional provision. It doesn't seem to hurt anything, so we have left it.

### § 3902. Support out of child's property

3902. The court may direct that an allowance be made to the parent of a minor child out of the child's property for the child's past or future support, on such conditions as are proper, if the direction is for the child's benefit.

**Comment.** Section 3902 continues former Civil Code Section 201 without substantive change, making clear that the provision applies to a minor child. See also Section 150 ("support" includes maintenance and education).

## Article 2. Support of Adult Child

§ 3910. Duty to maintain incapacitated child

**§ 3910. Duty to maintain incapacitated child**

3910. (a) The father and mother have an equal responsibility to maintain, to the extent of their ability, a child who is incapacitated from earning a living and without sufficient means.

(b) Nothing in this section limits the duty of support under Sections 3900 and 3901.

**Comment.** Subdivision (a) of Section 3910 continues without substantive change former Civil Code Section 242 and subdivision (d) of former Civil Code Section 241 insofar as those provisions imposed a duty to support a son or daughter who is incapacitated from earning a living and without sufficient means. Subdivision (a) of Section 3910 also continues the substance of the first sentence of former Civil Code Section 206 to the extent that section applied to the duty to maintain an adult child. Language taken from subdivision (d) of former Civil Code Section 241 (child "who is incapacitated from earning a living and without sufficient means") has been substituted for the language of former Section 206 (child "in need who is unable to maintain himself by work"). The "equal responsibility" language used in Section 3910 is new and is drawn from Section 3900.

The duty imposed by Section 3910 is subject to the other provisions of this division. See also Section 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights).

Section 3587 authorizes the court to approve a stipulated agreement by the parties to pay child support for the support of an adult child or for the continuation of child support after the child attains the age of 18.

Subdivision (b) is new. It makes clear that the duty stated in this section does not supersede or limit the duty of support under Sections 3900 and 3901.

**Article 3. Support of Grandchild**

§ 3930. Support of grandchild

**§ 3930. Support of grandchild**

3930. A parent of a minor child does not have the duty to support a child of the minor child.

**Comment.** Section 3930 continues former Civil Code Section 208.5 without substantive change.

**Article 4. Liability to Others Who Provide Support For Child**

§ 3950. Necessaries provided to child

§ 3951. When reimbursement not required

§ 3952. Support of public charge out of estate of parent

**§ 3950. Necessaries provided to child**

3950. If a parent neglects to provide articles necessary for his or her child who is under the charge of the parent, according to the circumstances of the parent, a third person may in good faith supply the necessaries and recover their reasonable value from the parent.

**Comment.** Section 3950 continues former Civil Code Section 207 without substantive change.

### **§ 3951. When reimbursement not required**

3951. (a) A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his or her child, without an agreement for compensation.

(b) A parent is not bound to compensate a stranger for the support of a child who has abandoned the parent without just cause.

(c) Nothing in this section relieves a parent of the obligation to support a child during any period in which the state, county, or other governmental entity provides support for the child.

**Comment.** Section 3951 continues former Civil Code Section 208 without substantive change.

### **§ 3952. Support of public charge out of estate of parent**

3952. If a parent chargeable with the support of a child dies leaving the child chargeable to the county or leaving the child confined in a state institution to be cared for in whole or in part at the expense of the state, and the parent leaves an estate sufficient for the child's support, the supervisors of the county or the director of the state department having jurisdiction over the institution may claim provision for the child's support from the parent's estate, and for this purpose has the same remedies as a creditor against the estate of the parent and may obtain reimbursement from the successor of the deceased parent to the extent provided in Division 8 (commencing with Section 13000) of the Probate Code.

**Comment.** Section 3952 continues former Civil Code Section 205 with the following revision: A reference to Division 8 (commencing with Section 13000) of the Probate Code (disposition of estate without administration) has been substituted for the reference in the former section to a civil action against the heirs, devisees, and next of kin of the parent. If there is an administration of the deceased parent's estate, a claim may be submitted to the personal representative administering the estate in the manner provided for the submission of claims.

## **CHAPTER 2. COURT ORDERED CHILD SUPPORT**

Article 1. General Provisions

Article 2. Child Support Guidelines

Article 3. Recovery for Cost of Support Provided Before Filing Proceeding

Article 4. Payment to Court Designated County Officer; Enforcement by District Attorney

### **Article 1. General Provisions**

§ 4000. Civil action to enforce parent's duty to support

§ 4001. Order for child support

§ 4002. Enforcement by county on behalf of child

§ 4003. Preference for trial on issue of support

§ 4004. Child receiving public assistance

§ 4005. Factors in determining amount of child support

- § 4006. Medical insurance coverage as factor
- § 4007. Support for contingent period of time
- § 4008. Property available for child support
- § 4009. Retroactivity of order
- § 4010. Notice of modification procedures
- § 4011. Priority of child support payments
- § 4012. Security for payment
- § 4013. Obligation discharged in bankruptcy

#### **§ 4000. Civil action to enforce parent's duty to support**

4000. If a parent has the duty to provide for the support of his or her child and willfully fails to so provide, the other parent, or the child by a guardian ad litem, may bring an action against the parent to enforce the duty.

**Comment.** Section 4000 continues former Civil Code Section 4703 without substantive change. The provision of former Section 4703 that the action be brought "in the superior court" is omitted in view of the general provision to the same effect in Section 3550. See also Section 150 ("support" includes maintain and educate). The county may proceed on behalf of the child to enforce the parent's duty of support. See Section 4002. For a provision authorizing compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights, see Section 3028. See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3357 (effect of failure to implement custody or visitation rights). For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500).

Sections 4000 and 4500 supersede the second sentence of former Civil Code Section 196a, the second sentence of the first paragraph of former Civil Code Section 196.5, the portion of the first sentence of former Civil Code Section 248 insofar as it gave a child the right to enforce the duty of support, the second sentence of former Civil Code Section 4000.9, and the second sentence of the first paragraph of former Civil Code Section 4704.5.

**Note:** Should Section 4000 be revised to use "bring a proceeding" instead of "bring an action" which is used in existing Civil Code Section 4703. In other words, do we want to refer generally to support proceedings, as "proceedings" rather than "actions"?

#### **§ 4001. Order for child support**

4001. In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order either or both parents to pay an amount necessary for the support of the child.

**Comment.** Section 4001 continues the first sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) with a revision to make clear that the section applies to a child for whom support is authorized under Section 3901. See also Section 150 (when used with reference to a minor child, "support" includes maintain and educate). For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500). For a provision authorizing compensation for failure to assume caretaker responsibility or

thwarting other parent attempting to exercise custody or visitation rights, see Section 3028. See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3357 (effect of failure to implement custody or visitation rights), 3600-3603 (support during pendency of proceeding), 3620-3634 (expedited child support order), 3650-3694 (modification or termination of support order), 3750-3782 (health insurance), 3800-3810 (deferred sale of home order), 4600-4641 (deposit of assets to secure future child support payments).

#### **§ 4002. Enforcement by county on behalf of child**

4002. (a) The county may proceed on behalf of a child to enforce the child's right of support against a parent.

(b) If the county furnishes support to a child, the county has the same right as the child to secure reimbursement and obtain continuing support. The right of the county to reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the parent to pay the county reasonable attorney's fees and court costs in a proceeding brought by the county pursuant to this section.

**Comment.** Section 4002 continues former Civil Code Section 248 without substantive change to the extent that the former section related to enforcement by the county of child support. For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500). Compare Section 4303 (enforcement of spouse's right to support). See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3357 (effect of failure to implement custody or visitation rights).

#### **§ 4003. Preference for trial on issue of support**

4003. In any case in which the support of a minor child is at issue, the court may, upon a showing of good cause, order a separate trial on that issue. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date. If the court has also ordered a separate trial on the issue of custody pursuant to Section 3023, the two issues shall be tried together.

**Comment.** Section 4003 continues former Civil Code Section 4707 without substantive change. For general provisions relating to support, see Part 1 (commencing with Section 3500) and Part 5 (commencing with Section 4500).

#### **§ 4004. Child receiving public assistance**

4004. The court shall require the parties in a proceeding where there is at issue the support of a minor child to reveal whether a party is currently receiving, or intends to apply for, public assistance under the Family Economic Security Act of 1982 (Chapter

2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child.

**Comment.** Section 4004 continues former Civil Code Section 4700.5 without substantive change. See also Sections 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act).

#### **§ 4005. Factors in determining amount of child support**

4005. (a) In determining the amount due for child support, the court shall consider the following circumstances of the parents:

- (1) The earnings or earning capacity of each parent.
- (2) The needs of each parent.
- (3) The obligations and assets, including the separate property, of each parent.
- (4) The ability of each parent to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the parent.
- (5) The time required for a parent to acquire appropriate education, training, and employment.
- (6) The age and health of the parents.
- (7) The standard of living of the parents.
- (8) The preservation of the adequacy of the child support award over the length of time during which the parents will be obligated to support a minor child, by utilizing an age increase factor in the standard used for the determination of child support. The Judicial Council shall develop a formula for the determination of that factor for the use of the courts.
- (9) Any other factors the court determines are just and equitable.

(b) At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of the child is based.

**Comment.** Subdivision (a) of Section 4005 continues former Civil Code Section 246 without substantive change to the extent it related to child support. Paragraph (1) of subdivision (a) also continues the provision of former Civil Code Section 196 (amended by 1990 Cal. Stat. ch. 1493 § 1) requiring the court to consider "the respective earnings or earning capacities of the parents." Subdivision (b) generalizes the second sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) (which applied to support of a minor child) to apply to all cases of child support, including support of a child described in Section 3910 (adult child who is incapacitated from earning a living and without sufficient means). See also Sections 273 (attorney's fees for enforcement of support order), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3357 (effect of failure to implement custody or visitation rights), 3805 (deferred sale of home order as child support), 4006 (medical insurance as factor in child support). Compare Section 4320 (circumstances to be considered in ordering spousal support).

**Note:** Should paragraphs (4) and (5) of subdivision (a) be included in Section 4005? Are these considerations relevant to child support?

**§ 4006. Medical insurance coverage as factor**

4006. In a proceeding for child support under this code or under Article 7 (commencing with Section 11475) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, the court shall consider the medical insurance coverage, if any, of the parties to the proceeding.

**Comment.** Section 4006 continues former Civil Code Section 4706 without substantive change except that Section 4006 is extended to apply to any proceeding "under this code" and Section 4006 applies in "a proceeding for child support" whereas the former Civil Code section applied in an "action for support" brought under former Chapter 1 (commencing with Section 4700) of Title 5 of Part 5 of the Civil Code. See also Sections 3750-3782 (medical insurance coverage or assignment for supported child).

**Note:** The reference in Section 4006 to provisions of the Welfare and Institutions Code is to AFDC. Should Section 4006 apply to "any proceeding where there is at issue the support of a child"? If so, should the substance of Section 4006 be included as one of the factors listed in Section 4005 and should the introductory portion of Section 4005 be revised to read: "In determining the amount due for child support in any proceeding where child support is in issue,"?

If Section 4006 is to be retained, should the introductory clause of Section 4006 be revised to add the underscored language: "In determining the amount due for child support in a proceeding for child support under this code or under . . ." This addition would make clear the purpose of the section.

Should "health insurance coverage (as defined in Section 3750)" be substituted for "medical insurance coverage" in Section 4006?

**§ 4007. Support for contingent period of time**

4007. (a) If a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 3901 or 3910, the obligation of the person ordered to pay support terminates on the happening of the contingency. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or the person's attorney of record, of the happening of the contingency.

(b) If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make the payments, or the attorney of record of the person ordered to make the payments, of the happening of the contingency and continues to accept support payments, the person shall refund all moneys received that accrued after the happening of the contingency, except that the overpayments shall first be applied to any support payments that are then in default.

**Comment.** Section 4007 continues subdivision (c) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) without substantive change. For a comparable provision, see Section 4334 (spousal support).

#### **§ 4008. Property available for child support**

4008. The community property, the quasi-community property, and the separate property may be subjected to the support of the children in such proportions as the court determines is just.

**Comment.** Section 4008 continues former Civil Code Section 4807 without substantive change. Compare Section 4338 (spousal support).

**Note:** Should the substance of former Civil Code Section 4810 ("the disposition of community and quasi-community property, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court") be continued insofar as this provision might apply to Section 4008? This would require revision of Section 4008 so that it would pick up the provision of former Civil Code Section 4810. The provision found in Section 4810 is an odd one insofar as it applies to Section 4008 because it applies only to community and quasi-community property, and does not include separate property.

#### **§ 4009. Retroactivity of order**

4009. An order for child support may be made retroactive to the date of filing the notice of motion or order to show cause therefor, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)).

**Comment.** Section 4009 continues the sixth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) without substantive change to the extent that sentence related to the making of the order for child support. See also Article 3 (commencing with Section 4100) (recovery for cost of support provided before filing proceeding), Section 3653 (retroactivity of order modifying or terminating child support order). Compare Section 4333 (spousal support order).

**Note:** The language of Section 4009 appears to assume that the section applies to a case where there is a pending proceeding and the request for a child support order is made in that proceeding. Should the section state this limitation on its application by revising the first portion of the section to read: "An order for child support made in a pending proceeding"?

What is the meaning of the phrase "order to show cause therefor"?

The federal law (referred to in Section 4009) should be checked to determine it is relevant and accurately referred to.

#### **§ 4010. Notice of modification procedures**

4010. In a proceeding in which the court orders a payment for the support of a minor child, the court shall, at the time of providing written notice of the order, provide the parties with a document describing the procedures by which the order may be modified.

**Comment.** Section 4010 continues without substantive change subdivision (f) of former Civil Code Section 4700.1. See also Sections 3650-3694 (modification or termination of support order).

### **§ 4011. Priority of child support payments**

4011. Payment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors.

**Comment.** Section 4011 continues the fourth sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6) without substantive change. See also Section 4501 (enforcement of family support order).

**Note: Should Section 4011 be compiled with the provisions relating to enforcement of support?**

### **§ 4012. Security for payment**

4012. Upon a showing of good cause, the court may order a parent required to make a payment of child support to give reasonable security for the payment.

**Comment.** Section 4012 continues without substantive change the third sentence of paragraph (1) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6). See also Sections 273 (attorney's fees for enforcement of support order), 4600-4641 (deposit of assets to secure future child support payments). Compare Section 4339 (spousal support).

**Note: Should Section 4012 be compiled with the provisions relating to deposit of assets to secure future child support payments (Sections 4600-4641)? Is Section 4012 necessary in view of Sections 4600-4641?**

### **§ 4013. Obligation discharged in bankruptcy**

4013. If obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support of the child that the court determines are just.

**Comment.** Section 4013 continues without substantive change subdivision (d) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6). See also Section 150 ("support" includes maintain and educate). Compare Section 3592 (agreement for property settlement or support of spouse discharged in bankruptcy).

## **Article 2. Child Support Guidelines**

### **[4050-4099 - Reserved]**

**Note: The Agnos Child Support Standards Act of 1984 (Civil Code Sections 4720-4732) is not continued, except for Civil Code Sections 4726 and 4726.1 (relating to health insurance coverage and health insurance coverage assignments), which are continued in Chapter 6 (commencing with Section 3750) of Part 1.**

**Subdivision (b) of Civil Code Section 4720.1 requires that the Judicial Council shall study and submit a report to the Legislature on or before December 1, 1991, which shall include a proposal for legislation, regarding a system of permanent child support**

guidelines to comply with federal law. Article 2 (commencing with Section 4050) is reserved for the legislation enacted upon recommendation of the Judicial Council at the 1992 legislative session or other legislation relating the child support guidelines in effect after January 1, 1993.

### **Article 3. Recovery for Cost of Support Provided Before Filing Proceeding**

§ 4100. Article applies only to child born after December 31, 1988

§ 4101. Order for cost of support before filing proceeding

§ 4102. Use of guidelines and law in effect for each period for which support is sought

§ 4103. Prerequisite in certain cases that information be given to father

§ 4104. Support ordered to be in amount that does not reduce parent's ability to provide support for other child

### **§ 4100. Article applies only to child born after December 31, 1988**

4100. This article applies only to a child born on or after January 1, 1989.

**Comment.** Section 4100 continues without substantive change the last sentence of subdivision (b) and the last sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the last sentence of paragraph (2) and the fifth sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6). For a provision comparable to this article, see Section 1737 (Uniform Parentage Act).

**Note:** This portion of Sections 196 and 4700 remains operative only until January 1, 1993, and as of that date is repealed.

Consideration needs to be given to whether subdivisions (b)-(d) of Section 1737 and Section 1737.5 (set out on pages 121-23 of the Staff Working Draft (April 1991) (Uniform Parentage Act) should be retained or are unnecessary in view of this article. Perhaps a provision should be added to this article to state that the article applies in any proceeding in which the support of a child born on or after January 1, 1989, is an issue and the comparable provisions of the Uniform Parentage Act referred to above not be continued. This omission from the Uniform Parentage Act would require that a provision defining "relevant facts" (Section 1737.5) be included in this article. See subdivision (b) of Section 4101. See also the Note to Section 1737.

### **§ 4101. Order for cost of support before filing proceeding**

4101. (a) A support order may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the proceeding:

(1) Three years.

(2) The date of the mailing the birth certificate or the mailing the written notification by the custodial parent under Section 4101.

(3) The date of separation of the parents until the date of the filing of the proceeding.

(b) In determining whether to make a support order under this section, the court shall consider the diligence on the part of the custodial parent in bringing the proceeding for support.

(c) As used in this section, "relevant facts" has the meaning given in Section 1737.5.

**Comment.** Subdivision (a) of Section 4101 continues without substantive change subdivision (b) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and paragraph (2) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6), except that the provision of the former sections limiting them to cases where the child is born on or after January 1, 1989, is continued in Section 4100.

Subdivision (b) continues without substantive change the second sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the second sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6).

Subdivision (c) continues without substantive change subdivision (d) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the last sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6).

The word "proceeding" is substituted in Section 4101 for "action" which is used in the former Civil Code provisions. This is not a substantive change.

See also Sections 155 ("support order" means a judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered), 3007 (support order to be included in order awarding custody to parent receiving assistance pursuant to Burton-Miller Act), 3028 (compensation for failure to assume caretaker responsibility or thwarting other parent attempting to exercise custody or visitation rights), 3505 ("obligee" defined). For a similar provision, see Section 1737(b) (Uniform Parentage Act).

**Note:** This portion of Sections 196 and 4700 remains operative only until January 1, 1993, and as of that date is repealed. Section 1737.5 (referred to in subdivision (c) of Section 4101) is set out on page 122 of the Staff Working Draft of the Family Code (April 1991) It will require a careful review of these provisions if the operative date of amended Civil Code Sections 196, 4700, and 7010 is continued after January 1, 1993.

#### **§ 4102. Use of guidelines and law in effect for each period for which support is sought**

4102. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested under this article and may apply its guidelines and the child support laws in effect for each period.

**Comment.** Section 4102 continues without substantive change the fourth sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the fourth sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6). The words "under this article" are added after "is being requested" in Section 4102 to make clear that the section applies only where support is being requested under this article. This is not a substantive change.

**Note:** This portion of Sections 196 and 4700 remains operative only until January 1, 1993, and as of that date is repealed.

**§ 4103. Prerequisite in certain cases that information be given to father**

4103. (a) In circumstances where paternity has not been established or the parents were married but separated before the child's date of birth, the court shall not order child support under this article, under any circumstances, unless one of the following requirements is satisfied:

(a) The father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code.

(b) The custodial parent has provided to the father by first-class mail, with return receipt requested, written notification of the father's paternity and the father's duty to support the child.

**Comment.** Section 4103 continues without substantive change the first sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the first sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6).

**Note:** This portion of Sections 196 and 4700 remains operative only until January 1, 1993, and as of that date is repealed.

**§ 4104. Support ordered to be in amount that does not reduce parent's ability to provide support for other child**

4104. Any support ordered under this article shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child the parent has the duty to support if the support is actually being paid.

**Comment.** Section 4104 continues without substantive change the third sentence of subdivision (c) of former Civil Code Section 196 (as amended by 1990 Cal. Stat. ch. 1493 § 1) and the third sentence of paragraph (3) of subdivision (a) of former Civil Code Section 4700 (as amended by 1990 Cal. Stat. ch. 1493 § 6).

**Note:** This portion of Sections 196 and 4700 remains operative only until January 1, 1993, and as of that date is repealed.

**Article 4. Payment to Court Designated  
County Officer; Enforcement by District Attorney**

§ 4200. Child support payable to parent receiving welfare

§ 4201. Child support payable to person having custody of minor child

§ 4202. Custodial parent resides in one county and supporting parent in another

§ 4203. County responsible for expenses and fees

**§ 4200. Child support payable to parent receiving welfare**

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of minor children, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose.

(b) Direct the district attorney to appear on behalf of the welfare recipient in any proceeding to enforce the order.

**Comment.** Section 4200 continues subdivision (a) of former Civil Code Section 4702 without substantive change. See also Sections 3556 (forwarding of support payments paid through county officer), 4600-4641 (deposit of assets to secure future child support payments). For a comparable procedure for spousal support payments, see Sections 4350-4352.

**Note:** Do the provisions of this article apply to a "family support order"?

#### **§ 4201. Child support payable to person having custody of minor child**

4201. (a) In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a minor child of the marriage, the court may do either or both of the following:

(1) Direct that the payments shall be made to the county officer designated by the court for that purpose.

(2) Direct the district attorney to appear on behalf of the minor children in any proceeding to enforce the order.

(b) The court shall include in its order made pursuant to this section any service charge imposed under the authority of Section 279 of the Welfare and Institutions Code.

**Comment.** Section 4201 continues subdivision (b) of former Civil Code Section 4702 without substantive change. See also Sections 3556 (forwarding of support payments paid through county officer), 4600-4641 (deposit of assets to secure future child support payments).

**Note:** Should the words "of the marriage" be omitted from the introductory portion of subdivision (a) of Section 4201, thereby making Section 4201 clearly applicable to a support order under the Uniform Parentage Act (Part 1 (commencing with Section 1700) of Division 5 of the Family Code) in a case where the parents are not married. See Section 1737 of the Family Code.

#### **§ 4202. Custodial parent resides in one county and supporting parent in another**

4202. (a) Notwithstanding any other provision of law, in a proceeding where the custodial parent resides in one county and the parent ordered to pay support resides in another county, the court may direct payment to be made to the county officer designated by the court for those purposes in the county of residence of the custodial parent, and may direct the district attorney of either county to enforce the order.

(b) Civil enforcement by the district attorney of the county of residence of the custodial parent, where the order is in the county of the noncustodial parent or any other county, may be brought in accordance with Section 4848. If the court directs the district attorney of the county of residence of the noncustodial parent to enforce the order, the expenses of the district attorney with respect to the enforcement is a charge upon the county of residence of the noncustodial parent.

**Comment.** Section 4202 continues subdivision (c) of former Civil Code Section 4702 without substantive change. See also Section 3556 (forwarding of support payments paid through county officer).

### **§ 4203. County responsible for expenses and fees**

4203. (a) Except as provided in Section 4202, expenses of the county officer designated by the court, and expenses of the district attorney incurred in the enforcement of an order of the type described in Section 4200 or 4201, are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order of the type described in Section 4200 or 4201 are a charge upon the county where the process is served.

**Comment.** Section 4203 continues subdivision (d) of former Civil Code Section 4702 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

## **PART 3. SUPPORT OF HUSBAND OR WIFE**

Chapter 1. Duty of Support

Chapter 2. Factors to be Considered in Ordering Support

Chapter 3. Spousal Support Upon Dissolution or Legal Separation

Chapter 4. Payment to Court Designated Officer; Enforcement by District Attorney

Chapter 5. Provision for Support After Death of Supporting Party

### **CHAPTER 1. DUTY OF SUPPORT**

§ 4300. Duty to support spouse

§ 4301. Use of separate property for support while living together

§ 4302. Spouse living separate by agreement

§ 4303. Civil action to enforce spouse's right to support

#### **§ 4300. Duty to support spouse**

4300. Subject to the provisions of this division, a person shall support his or her spouse.

**Comment.** Section 4300 is drawn from former Civil Code Section 242. See also Civil Code Section 5100 (husband and wife contract toward each other obligations of mutual respect, fidelity, and support). The duty stated in this section is subject to a number of limitations, including Sections 4301 (use of separate property for support) and 4302 (spouses living separate by agreement). For the factors that enter into the amount of court-ordered support, see Sections 4320-4323.

It should be noted that if a person slays or permanently disables another person in a duel in this state, the slayer must provide for the surviving spouse or spouse of the person slain or permanently disabled. Civil Code Section 3347.

**Note:** Should Civil Code Section 3347 (referred to in last paragraph of Comment to Section 4300) be repealed as obsolete?

**§ 4301. Use of separate property for support while living together**

4301. Subject to Section 914, a person shall support his or her spouse while they are living together out of the separate property of the person when there is no community property or quasi-community property.

**Comment.** Section 4301 continues former Civil Code Section 5132 without substantive change. The second sentence of the former section is omitted in view of the definitions provided by Sections 125 and 3515. See Sections 125 ("quasi-community property" defined), 3515 ("separate property" defined). For background on former Civil Code Section 5132, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984).

Section 4301 is consistent with Section 914(a)(1) and (b), but Section 914(a)(1) and (b) does not require exhaustion of community and quasi-community property before separate property of a nondebtor spouse can be reached by a third-party creditor.

**§ 4302. Spouse living separate by agreement**

4302. A person is not liable for support of his or her spouse when the person is living separate from the spouse by agreement unless support is stipulated in the agreement.

**Comment.** Section 4302 continues former Civil Code Section 5131 without substantive change. See also Section 3580 (provisions for spousal and child support in separation agreement).

**§ 4303. Civil action to enforce spouse's right to support**

4303. (a) The obligee spouse, or the county on behalf of the obligee spouse, may bring an action against the obligor spouse to enforce the duty to support.

(b) If the county furnishes support to a spouse, the county has the same right as the spouse to whom the support was furnished to secure reimbursement and obtain continuing support. The right of the county to reimbursement is subject to any limitation otherwise imposed by the law of this state.

(c) The court may order the obligor to pay the county reasonable attorney's fees and court costs in a proceeding brought by the county under this section.

**Comment.** Section 4303 continues former Civil Code Section 248 without substantive change insofar as it related to enforcement of spousal support. See also Sections 3505 ("obligee" defined), 3510 ("obligor" defined). Compare Section 4002 (enforcement by county of child support obligation).

**Note:** Should subdivision (a) of Section 4303 use the phrase "bring a proceeding" instead of "bring an action"? In other words, should all proceedings to obtain a support order be referred to as "proceedings"?

## CHAPTER 2. FACTORS TO BE CONSIDERED IN ORDERING SUPPORT

§ 4320. Circumstances to be considered in ordering spousal support

§ 4321. Withholding allowance from separate property of other party

§ 4322. No support order where there are no children and other party has sufficient separate estate

§ 4323. Effect of cohabitation on support

**§ 4320. Circumstances to be considered in ordering spousal support**

4320. In ordering spousal support, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) The immediate and specific tax consequences to each party.

(j) Any other factors the court determines are just and equitable.

**Comment.** Section 4320 continues paragraphs (1)-(10) of former Civil Code Section 4801(a) without substantive change. Section 4320 supersedes former Civil Code Section 246 to the extent it related to support of a spouse. It should be noted that the factors enumerated in this section apply in any court order under this part, including Section 4300 (duty to support spouse) and Section 5540 (modification or termination of order) as well as Section 4330 (court ordered support). Concerning the effect of community contributions and reimbursements for education or training on spousal support, see Section 2641(d). See also Sections 273 (attorney's fees for enforcement of support order), 3591 (support order where agreement for settlement of property or for support of spouse discharged in bankruptcy), 4360 (spousal support may include an amount to purchase annuity, life insurance, or trust for support of supported spouse). Compare Section 4005 (child support).

**§ 4321. Withholding allowance from separate property of other party**

4321. In a judgment of dissolution of marriage or legal separation of the parties, the court may deny support to a party out of the separate property of the other party in any of the following circumstances:

(a) The party has either a separate estate, or is earning his or her own livelihood, or there is community property or quasi-community property sufficient to give the party proper support.

(b) The custody of the children has been awarded to the other party, who is supporting them.

**Comment.** Section 4321 continues the first sentence of former Civil Code Section 4806 without substantive change. See also Section 3515 ("separate property" defined).

**Note:** Section 4321 overlaps the factors listed in Section 4320 for determining support.

**§ 4322. No support order where there are no children and other party has sufficient separate estate**

4322. In an original or modification proceeding, where there are no children, and a party has or acquires a separate estate, including income from employment, sufficient for the party's proper support, no support shall be ordered or continued against the other party.

**Comment.** Section 4322 continues the second sentence of former Civil Code Section 4806 without substantive change.

**Note:** The introductory clause ("In an original or modification proceeding,") of Section 4322 should be omitted as unnecessary and inaccurate (proceeding may be for "termination" of support order). This chapter is drafted on the assumption that it applies to modification as well as original proceedings.

**§ 4323. Effect of cohabitation on support**

4323. (a) Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex. Upon a determination that circumstances have changed, the court may modify the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) Nothing in this section precludes later modification of spousal support on proof of change of circumstances.

**Comment.** Section 4323 continues former Civil Code Section 4801.5 without substantive change.

**Note:** Should the second sentence of subdivision (a) of Section 4323 be revised to add "or terminate" following the word "modify"?

Should the words "or termination" be added after "modification" in subdivision (c)?

**CHAPTER 3. SPOUSAL SUPPORT  
UPON DISSOLUTION OR LEGAL SEPARATION**

§ 4330. Order for spousal support in dissolution or legal separation proceeding

§ 4331. Examination by vocational training consultant

- § 4332. Court findings concerning circumstances
- § 4333. Retroactivity of order
- § 4334. Support for contingent period of time
- § 4335. Support for fixed period of time
- § 4336. Retention of jurisdiction
- § 4337. Effect of death or remarriage
- § 4338. Order of resort to property for payment of spousal support
- § 4339. Security for payment

**§ 4330. Order for spousal support in dissolution or legal separation proceeding**

4330. In a judgment of dissolution of marriage or legal separation of the parties, the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances as provided in Chapter 2 (commencing with Section 4320).

**Comment.** Section 4330 continues the first sentence of subdivision (a) of former Civil Code Section 4801 without substantive change. For the factors that enter into the determination of whether to order spousal support and the amount of court-ordered support, see Sections 4320-4323. See also Section 273 (attorney's fees for enforcement of support order).

**§ 4331. Examination by vocational training consultant**

4331. (a) In a proceeding for dissolution of marriage or legal separation, the court may order a party to submit to an examination by a vocational training consultant.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(c) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Section 2032 of the Code of Civil Procedure.

(d) For the purpose of this section, "vocational training consultant" means an individual with sufficient knowledge, skill, experience, training, or education relating to interviewing, the testing and analysis of work skills, the planning of courses of training and study, the formulation of career goals, and the work market to qualify as an expert in vocational training under Section 720 of the Evidence Code.

**Comment.** Subdivisions (a) to (c) of Section 4331 continue subdivision (e) of former Civil Code Section 4801 without substantive change. Subdivision (d) continues subdivision (f) of former Civil Code Section 4801 without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**Note:** Should Section 4331 be limited to marriage dissolution and legal separation proceedings, or should it apply in civil support actions as well? For example, should the provisions of Section 4331 be applicable in a proceeding by the district attorney for reimbursement of public assistance provided to the party sought to be examined?

**§ 4332. Court findings concerning circumstances .**

4332. In a proceeding for dissolution of marriage or legal separation, court shall make specific factual findings with respect to the standard of living during the marriage, and, at the request of either party, the court shall make appropriate factual determinations with respect to other circumstances.

**Comment.** Section 4332 continues the first sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation. For the factors that enter into the amount of court-ordered support, see Sections 4320-4323.

**Note:** Should Section 4332 be limited to marriage dissolution and legal separation proceedings, or should it apply in civil support actions as well?

**§ 4333. Retroactivity of order**

4333. An order for spousal support in a proceeding for dissolution of marriage or legal separation may be made retroactive to the date of filing the notice of motion or order to show cause therefor, or to any subsequent date.

**Comment.** Section 4333 continues the fourth sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**Note:** Notice of motion and order to show cause procedures are referred to in Section 4333, but are not spelled out. Are they somewhere else—in general provisions?

**§ 4334. Support for contingent period of time**

4334. (a) If a court orders spousal support for a contingent period of time, the obligation of the supporting party terminates on the happening of the contingency. The court may, in the order, order the supported party to notify the supporting party, or the supporting party's attorney of record, of the happening of the contingency.

(b) If the supported party fails to notify the supporting party, or the attorney of record of the supporting party, of the happening of the contingency and continues to accept spousal support payments, the supported party shall refund payments received that accrued after the happening of the contingency, except that the overpayments shall first be applied to spousal support payments that are then in default.

**Comment.** Section 4334 continues subdivision (c) of former Civil Code Section 4801 without substantive change. Compare 4007 (child support).

**§ 4335. Support for fixed period of time**

4335. An order for spousal support terminates at the end of the period provided in the order and shall not be extended unless the court retains jurisdiction in the order or under Section 4336.

**Comment.** Section 4335 continues the first sentence of the first paragraph of subdivision (d) of former Civil Code Section 4801.

**§ 4336. Retention of jurisdiction**

4336. (a) Except on written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely in a proceeding for dissolution of marriage or legal separation where the marriage is of long duration.

(b) For the purpose of retaining jurisdiction, there is a presumption affecting the burden of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this subdivision precludes a court from determining that a marriage of less than 10 years is a marriage of long duration.

(c) Nothing in this section limits the court's discretion to terminate spousal support in later proceedings on a showing of changed circumstances.

(d) This section applies to the following:

(1) A proceeding filed on or after January 1, 1988.

(2) A proceeding pending on January 1, 1988, in which the court has not entered a permanent spousal support order or in which the court order is subject to modification.

**Comment.** Section 4336 continues the second sentence of the first paragraph, and the second and third paragraphs, of subdivision (d) of former Civil Code Section 4801 without substantive change. Language is added to make clear that the section applies to a proceeding for dissolution of marriage or legal separation.

**§ 4337. Effect of death or remarriage**

4337. Except as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party.

**Comment.** Section 4337 continues subdivision (b) of former Civil Code Section 4801 without substantive change. See also Sections 4334 (support for contingent period of time), 4335 (support for fixed period to time).

**§ 4338. Order of resort to property for payment of spousal support**

4338. In the enforcement of an order for spousal support, the court shall resort to the property described below in the order indicated:

(a) The earnings, income, or accumulations of either spouse, while living separate and apart from the other spouse, which would have been community property if the spouse had not been living separate and apart from the other spouse.

(b) The community property.

(c) The quasi-community property.

(d) The other separate property of the party required to make the support payments.

**Comment.** Section 4338 continues former Civil Code Section 4805 with the addition of language to make clear that the section is limited to spousal support. See also Section 3515 (for purposes of this section, "separate property" does not include quasi-community property). Compare Section 4008 (property available for child support).

**Note:** Should the rule stated in Section 4338 apply to support during the pendency of the proceeding, without regard to whether or not an order for support has been obtained. Under the existing statutory scheme, for example, the husband can use community property (rather than his earnings after separation) for his support during the pendency of a marriage dissolution proceeding, thereby depriving his wife of her share of the community property which will be divided in the marriage dissolution proceeding. If Section 4338 applied whether or not a support order had been made, the court in dividing the community property could give the wife a credit for the amount of community property the husband used for support in lieu of paying for his support out of his separate property earnings after separation. See Section 2602 (award or offset of amount deliberately misappropriated by a spouse).

#### **§ 4339. Security for payment**

4339. The court may order the supporting party to give reasonable security for payment of spousal support.

**Comment.** Section 4339 continues the second sentence of the last paragraph of subdivision (a) of former Civil Code Section 4801 without substantive change. Compare Section 4012 (security for payment of child support). See also Sections 4600-4641 (deposit of assets to secure future child support payments).

**Note:** The comparable provision relating to child support (Section 4012) requires a showing of good cause before an order to give security may be made. Should the requirement of good cause be added to Section 4339, or should this requirement be deleted from Section 4012?

### **CHAPTER 4. PAYMENT TO COURT DESIGNATED OFFICER; ENFORCEMENT BY DISTRICT ATTORNEY**

§ 4350. Payment of support payments to designated county officer

§ 4351. Referral of enforcement to district attorney

§ 4352. County responsible for expenses and fees

#### **§ 4350. Payment of support payments to designated county officer**

4350. In any proceeding where a court makes or has made an order requiring the payment of spousal support, the court may direct that payment shall be made to the county officer designated by the court for that purpose. The court may include in its order made pursuant to this section any service charge imposed under the authority of Section 279 of the Welfare and Institutions Code.

**Comment.** Section 4350 continues subdivision (a) of former Civil Code Section 4801.7 without substantive change. For a comparable procedure for child support payments, see Sections 4200-4203. See also Section 3556 (forwarding of support payments paid through county officer).

#### **§ 4351. Referral of enforcement to district attorney**

4351. (a) In any proceeding where the court has entered an order pursuant to Section 4350, the court may also refer the matter of enforcement of the spousal support order

to the district attorney. The district attorney may bring such enforcement proceedings as the district attorney in his or her discretion determines to be appropriate.

(b) Notwithstanding subdivision (a), in any case in which the district attorney is required to appear on behalf of a welfare recipient in a proceeding to enforce an order requiring payment of child support, the district attorney shall also enforce any order requiring payment to the welfare recipient of spousal support that is in the arrears.

(c) Nothing in this section shall be construed to prohibit the district attorney from bringing an action or initiating process to enforce or punish the failure to obey an order for spousal support under any provision of law which empowers the district attorney to bring such an action or initiate such a process, whether or not there has been a referral by the court pursuant to this chapter.

**Comment.** Section 4351 continues subdivisions (b) and (c) of former Civil Code Section 4801.7 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

**Note:** Do we want to call all proceedings to obtain a support order as "proceedings" or do we want to continue to call some of them "actions"?

#### **§ 4352. County responsible for expenses and fees**

4352. (a) Insofar as expenses of the county officer designated by the court and expenses of the district attorney incurred in the enforcement of an order referred by the court under this chapter exceed any service charge imposed under Section 279 of the Welfare and Institutions Code, the expenses are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order referred by the court under this chapter are a charge upon the county where the process is served.

**Comment.** Section 4352 continues subdivision (d) of former Civil Code Section 4801.7 without substantive change. See also Sections 273 (attorney's fees for enforcement of support order),

**Note:** Subdivision (a) of Section 4352 is inconsistent with subdivision (a) of Section 4203 (child support)? It appears that the rule stated in subdivision (a) of Section 4203 should apply under Section 4352.

### **CHAPTER 5. PROVISION FOR SUPPORT AFTER DEATH OF SUPPORTING PARTY**

#### **§ 4360. Annuity, life insurance, or trust for support**

#### **§ 4360. Annuity, life insurance, or trust for support**

4360. (a) For the purpose of Section 4320, where it is just and reasonable in view of the circumstances of the parties, the court, in determining the needs of a supported spouse, may include an amount sufficient to purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the payment of support to establish a trust to provide for the support

of the supported spouse, so that the supported spouse will not be left without means of support in the event that the spousal support is terminated by the death of the party required to make the payment of support.

(b) Except as otherwise agreed to by the parties in writing, an order made under this section may be modified or terminated at the discretion of the court at any time before the death of the party required to make the payment of support.

**Comment.** Section 4360 continues former Civil Code Section 4801.4 without substantive change. For background on former Civil Code Section 4801.4, see *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986).

Section 4360 gives the court authority to order the purchase of an annuity for the supported spouse or to order that the support obligor establish a trust to provide for the support of the supported spouse. This authority is given in recognition that in some circumstances the amount of insurance in force, if any, on the life of the support obligor may be insufficient and the support obligor may no longer be insurable or insurance can be obtained only at a prohibitive cost.

If insurance is already in force on the life of the support obligor, Section 4360 authorizes the court to order that the support obligor maintain some or all of the insurance in force and name the supported spouse as the beneficiary of the insurance. And, if the support obligor is insurable, the section authorizes the court to order that the support obligor obtain and maintain insurance and name the supported spouse as beneficiary. The support obligor can change the beneficiary on the insurance if the supported spouse dies before the support obligor. Instead of ordering the support obligor to maintain insurance and name the supported spouse as beneficiary, the court may order the support obligor to purchase an annuity for the supported spouse to provide support in the event that the support obligor dies before the supported spouse. In some cases, this may be less expensive than insurance. In other cases, the establishment of a trust to provide for the support of the supported spouse during that spouse's lifetime may be the best solution. If a trust is used, after the death of the supported spouse, the income or assets of the trust, or both, could be paid to the person designated by the support obligor.

Section 4360 does not change the rule that the support order terminates when the support obligor dies. See Section 4337. The section permits the court where it is just and reasonable to do so in view of the circumstances of the particular case to order (as a part of the support) insurance, an annuity, or establishment of a trust, where necessary so that the supported spouse will not be left without means for support if the support obligor dies. This section supplements Section 4320 which requires the court to consider a number of factors in determining the amount and duration of support.

## **PART 4. SUPPORT OF PARENTS**

Chapter 1. General Provisions

Chapter 2. Relief From Duty to Support Parent Who Abandoned Child

### **CHAPTER 1. GENERAL PROVISIONS**

§ 4400. Duty to support parent in need

§ 4401. Promise to pay for previous support

- § 4402. Duty cumulative
- § 4403. Civil action to enforce parent's right to support
- § 4404. Determination of amount of support
- § 4405. Modification or termination of order

#### **§ 4400. Duty to support parent in need**

4400. Except as otherwise provided by law, an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work.

**Comment.** Section 4400 is drawn from portions of former Civil Code Sections 206 and 242. It continues the substance of the first sentence of former Civil Code Section 206 insofar as that sentence imposed a duty upon a child to support his or her parent. The introductory clause is added to Section 4400 to recognize exceptions such as that found in Welfare and Institutions Code Section 12350 ("No relative shall be held legally liable to support or to contribute to the support of any applicant for or recipient of aid under this chapter [state supplementary program for aged, blind, and disabled]").

The last sentence of former Civil Code Section 206 (which defined a parent who receives aid to the aged as one in need) has been omitted as obsolete in view of the repeal of the aid provisions based on the ability of an adult child to support the parent in this situation. See Welfare and Institutions Code Section 12350.

The duty of support stated in Section 4400 is subject to Chapter 2 (commencing with Section 4410) (relief from duty to support parent on ground of abandonment).

**Note:** There is some case law concerning whether the duty to support a parent when in need is joint or several among the children. The cases have gone back and forth on this issue. It appears to be a matter of court discretion under existing law. We have not attempted to codify any rules in this draft.

#### **§ 4401. Promise to pay for previous support**

4401. The promise of an adult child to pay for necessities previously furnished to a parent described in Section 4400 is binding.

**Comment.** Section 4401 continues the substance of the second sentence of former Civil Code Section 206.

**Note:** Section 4401 could probably be more precisely phrased to state that the promise "is not void for lack of consideration". It is not clear whether this section is intended only to cover reimbursement of merchants and medical care providers who provided necessities (or also to cover reimbursement of other family members who supported the parent). We have not sought to limit it here.

#### **§ 4402. Duty cumulative**

4402. The duty of support under in this part is cumulative and not in substitution for any other duty.

**Comment.** Section 4402 continues the substance of former Civil Code Section 251.

**Note:** Section 4402 probably should be omitted. So far as we know, the duty provided in this part to support one's parent is the only such duty in the law, unless pendente lite

support is considered to be a separate duty. Otherwise, this section appears no longer to serve a useful purpose.

### § 4403. Civil action to enforce parent's right to support

4403. (a) Subject to subdivision (b):

(1) A parent, or the county on behalf of the parent, may bring an action against the child to enforce the duty of support under this part.

(2) If the county furnishes support to a parent, the county has the same right as the parent to whom the support was furnished to secure reimbursement and obtain continuing support.

(b) The right of the county to proceed on behalf of the parent or to obtain reimbursement is subject to any limitation otherwise imposed by the law of this state.

(d) The court may order the child to pay the county reasonable attorney's fees and court costs in a proceeding by the county under this section.

**Comment.** Section 4403 continues former Civil Code Section 248 without substantive change insofar as Section 248 related to enforcement of the duty of a child to support a parent. However, subdivision (b) makes clear that the right of the county to bring an action or to obtain reimbursement is subject to limitations applicable under various aid programs. See, e.g., Welf. & Inst. Code § 12350 (no relative liable under The Burton-Moscone-Bagley Citizens' Security Act for the Aged, Blind and Disabled Californians).

**Note:** We have provisionally continued subdivision (a)(2) of Section 4403 in this draft. However, we believe that all county support programs now by law preclude reimbursement from relatives generally and children specifically. Assuming this can be verified, subdivision (b) no longer serves a function and can be deleted.

### § 4404. Determination of amount of support

4404. In determining the amount to be ordered for support, the court shall consider the following circumstances of each party:

- (a) Earning capacity and needs.
- (b) Obligations and assets.
- (c) Age and health.
- (d) Standard of living.
- (e) Other factors the court deems just and equitable.

**Comment.** Section 4404 is drawn from former Civil Code Section 246.

### § 4405. Modification or termination of order

4405. The court retains jurisdiction to modify or terminate an order for support where justice requires.

**Comment.** Section 4405 continues the substance of former Civil Code Section 247 insofar as it applied to an order for support of a parent.

## CHAPTER 2. RELIEF FROM DUTY TO SUPPORT PARENT WHO ABANDONED CHILD

§ 4410. Proceeding to obtain relief from obligation to support parent

§ 4411. Requirements for order granting relief

§ 4412. Citation and notice of hearing

§ 4413. Notice to district attorney or county counsel

§ 4414. Hearing and order

### § 4410. Proceeding to obtain relief from obligation to support parent

4410. An adult child may file a verified petition in the superior court of the county where a parent of the child resides requesting that the court make an order freeing the petitioner from the obligation otherwise imposed by law to support the parent.

**Comment.** Section 4410 continues a portion of the first sentence of former Civil Code Section 206.5 without substantive change.

**Note:** It is not clear what the correct venue is when the person's parent resides outside the state. Can a petition be filed under this chapter in that situation? Existing Civil Code Section 206.6 implies that a proceeding can be brought under this chapter where the parent is not a resident of this state.

If there is a general provision that all petition filed under the Family Code be verified, the requirement of verification in Section 4410 can be omitted.

If Section 200 of the Family Code is expanded to give the Superior Court jurisdiction over all proceedings under the Family Code, the reference to the Superior Court in Section 4410 can be omitted.

### § 4411. Requirements for order granting relief

4411. The court shall make the order requested pursuant to Section 4410 only if the petition alleges and the court finds all of the following:

(a) The child was abandoned by the parent when the child was a minor.

(b) The abandonment continued for a period of two or more years prior to the time the child reached the age of 18 years.

(c) During the period of abandonment the parent was physically and mentally able to provide support for the child.

**Comment.** Section 4411 restates a portion of the first sentence of former Civil Code Section 206.5.

### § 4412. Citation and notice of hearing

4412. On the filing of a petition under this chapter, the clerk shall set the matter for hearing by the court and shall issue a citation, stating the time and place of the hearing, directed to the parent and to the parent's conservator, if any, or, if the parent is deceased, the personal representative of the parent's estate. At least five days before the date of the hearing, the citation and a copy of the petition shall be personally served on each person to whom it is directed, in the same manner as provided by law for the service of summons.

**Comment.** Section 4412 continues the second and third sentences of former Civil Code Section 206.5 without substantive change.

**Note:** The five day notice of hearing period under Section 4412 is inadequate notice of the hearing. Should the period of notice be increased to 15 or 20 or 30 days? Should there be a general provision governing notice that would apply to notice under this chapter?

#### **§ 4413. Notice to district attorney or county counsel**

4413. If the parent is a resident of this state, the court does not have jurisdiction to make an order under this chapter until 30 days after the county counsel, or the district attorney in a county not having a county counsel, of the county in which the parent resides has been served with notice of the pendency of the proceeding.

**Comment.** Section 4413 restates former Civil Code Section 206.6 without substantive change.

**Note:** Section 4413 probably should be deleted as obsolete. The statutory right of the county to recover for aid provided to a parent has been discontinued. Accordingly, the county will have no interest in a proceeding under this chapter.

Former Civil Code 206.7, which is not continued, applied to the case where the parent was an applicant for or recipient of public aid under certain provisions of the Welfare and Institutions code that were listed in former Section 206.7. Former Section 206.7 required that an application be made to the board of county supervisors for an order relieving the child from the responsibility for supporting the parent and provided that a court proceeding to obtain such an order was authorized if the board denied or failed to act on the request to the board within 30 days. The Welfare and Institutions Code provisions referred to in former Section 206.7 that formerly provided responsibility for parental support have either been repealed or amended to delete the requirement of parental support. Accordingly former Section 206.7 was obsolete and has not been continued in the Family Code.

#### **§ 4414. Hearing and order**

4414. (a) If, upon hearing, the court determines that the requirements of Section 4411 are satisfied, the court shall make an order that the petitioner is relieved from the obligation otherwise imposed by law to support the parent.

(b) An order under this section also releases the petitioner with respect to any state law under which a child is required to do any of the following:

- (1) Pay for the support, care, maintenance, and the like of a parent.
- (2) Reimburse the state or a local public agency for furnishing such support, care, maintenance, or the like.

**Comment.** Section 4414 continues the fourth and fifth sentences of former Section 206.5 without substantive change.

**Note:** Presumably, the court order could excuse past as well as future omissions to support a parent.

As with the other references to reimbursement of public entities in existing law (see Section 4403), subdivision (b) of Section 4414 should be deleted unless it appears that

there remains a state or local aid program in which reimbursement by children is still required. See the Note to Section 4413.

## PART 5. ENFORCEMENT OF SUPPORT ORDERS

- Chapter 1. General Provisions
- Chapter 2. Deposit of Assets to Secure Future Child Support Payments
- Chapter 3. Child Support Delinquency Reporting
- Chapter 4. Uniform Reciprocal Enforcement of Support Act
- Chapter 5. Enforcement by Writ of Execution
- Chapter 6. Earnings Assignment Order
- Chapter 7. Criminal Penalties for Nonsupport

### CHAPTER 1. GENERAL PROVISIONS

- § 4500. Support orders enforceable under this code
- § 4501. Enforcement of family support order
- § 4502. Renewal of judgment for support
- § 4503. Limitation period for recovery of arrearages in child support not affected by child attaining age of 18
- § 4504. Crediting payments made pursuant to Social Security or Railroad Retirement Acts against amount of court ordered support
- § 4505. Deduction from earnings of state employee for court ordered support
- § 4506. Submitting list of places applied for employment where default in support due to unemployment

#### § 4500. Support orders enforceable under this code

4500. A support order for child, spousal, or family support that is made, entered, or enforceable in this state is enforceable under this code, whether or not the judgment, order, or decree was made or entered pursuant to this code.

**Comment.** Section 4500 continues former Civil Code Section 4385 without substantive change except that the references in Section 4500 are to "this code," rather than to only a portion of the code. The reference to "family" support is added to reflect the rule stated in Section 4501. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

Section 4500 makes clear that a support order is enforceable under this code if it is made, entered, or enforceable in this state. The order need not be one that is made or entered pursuant to this division or this code. Accordingly, for example, a foreign support judgment that has been registered in this state under provisions of the Code of Civil Procedure is enforceable under this code. See Code Civ. Proc. § 1699 (registered foreign support order treated in the same manner as a support order issued by a court of this state). For background on former Civil Code Section 4385, see 16 Cal. L. Revision Comm'n Reports 2143 (1982).

Sections 4500 (together with Section 4000) supersede the second sentence of former Civil Code Section 196a, the second sentence of the first paragraph of former Civil Code Section 196.5, the portion of the first sentence of former Civil Code Section 248 insofar as it gave an obligee the right to enforce the duty of support, the second sentence of former Civil Code Section 4700.9, and the second sentence of the first paragraph of former Civil Code Section 4704.5.

**§ 4501. Enforcement of family support order**

4501. A family support order is enforceable in the same manner and to the same extent as a child support order. The underpayment of any sums due for a period specified in the family support order shall first be applied to satisfy that portion of the family support agreement pertaining to child support, and any remainder shall be applied to spousal support.

**Comment.** Section 4501 continues the second and third sentences of subdivision (d) of former Civil Code Section 4811 without substantive change. See also Sections 92 (“family support” defined), 273 (attorney’s fees and costs for enforcement of support order), 4011 (priority of child support payments).

**Note:** How does the second sentence of Section 4501 work? Section 92 defines “family support” to mean “an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support.” Should the second sentence of Section 4501 be limited to the case where an agreement and order for family support specifies an amount to be paid for child support and an amount to be paid for spousal support? How do you know how much is for child support unless the family support order specifies the amount?

Why the reference in the second sentence of Section 4501 to “the agreement”; should not the reference be to the court order?

**§ 4502. Renewal of judgment for support**

4502. A party may renew a judgment for child, family, or spousal support by filing an application for renewal of the judgment in the manner specified in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 683.110 of the Code of Civil Procedure, the judgment shall not be renewed if the application is filed within five years from the time the judgment was previously renewed.

**Comment.** Section 4502 continues former Civil Code Section 4384.5 without substantive change. The reference to “family” support is added to reflect the rule stated in Section 4501. As to the lack of diligence in seeking enforcement of a support order, see Section 291.

The general provisions on renewal of judgments (Code Civ. Proc. §§ 683.110-683.220) do not apply to judgments made, entered, or enforceable under the Family Code. See Code Civ. Proc. § 683.310.

**Note:** Should the “notwithstanding” clause be omitted from the second sentence of Section 4502 as unnecessary? The second sentence of Section 4502 is consistent with the requirement of subdivision (b) of Section 683.110. Moreover, Section 683.110 does not apply to judgments made under the Family Code. See Code Civ. Proc. § 683.310.

**§ 4503. Limitation period for recovery of arrearages in child support not affected by child attaining age of 18**

4503. If a parent has been ordered to make payments for the support of a minor child, an action to recover an arrearage in those payments may be maintained at any time

within the period otherwise specified for the enforcement of such a judgment, notwithstanding the fact that the child has attained the age of 18 years.

**Comment.** Section 4503 continues former Civil Code Section 4708 without substantive change. See also Section 4011 (priority of child support payments).

**§ 4504. Crediting payments made pursuant to Social Security or Railroad Retirement Acts against amount of court ordered support**

4504. If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of the child made by the federal government pursuant to the Social Security Act or Railroad Retirement Act because of the retirement or disability of the noncustodial parent and transmitted to the custodial parent each month shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid by the noncustodial parent.

**Comment.** Section 4504 continues former Civil Code Section 4705 without substantive change.

**§ 4505. Deduction from earnings of state employee for court ordered support**

4505. If a court orders a person to make payment for child, family, or spousal support, the court may order that the obligee make that payment as provided for in Section 1151.5 of the Government Code.

**Comment.** Section 4505 continues subdivision (a) of former Civil Code Section 4701.2. The reference to "family" support is added to reflect the rule stated in Section 4501. See also Section 5210 (defining "employer" for purpose of earnings assignment for support). See also Section 4011 (priority of child support payments).

**Note:** Former Civil Code Section 4701.2 (as well as Government Code Section 1151.5) become inoperative on January 1, 1994, unless a later enacted statute deletes or extends that date.

**§ 4506. Submitting list of places applied for employment where default in support due to unemployment**

4506. A court may require a parent who alleges that his or her default in a child or family support order is due to his or her unemployment to submit to the appropriate child support enforcement agency or any other entity designated by the court, including, but not limited to, the court itself, each two weeks, or at a frequency deemed appropriate by the court, a list of at least five different places he or she has applied for employment.

**Comment.** Section 4506 continues former Civil Code Section 4709 without substantive change except that the section has been expanded to include all child or family support orders. Formerly, the section applied only to orders issued under Title 5 (commencing with Section 4700) of the Family Law Act.

**Note:** Should the scope of Section 4506 be expanded to cover spousal support orders?

## **CHAPTER 2. DEPOSIT OF ASSETS TO SECURE FUTURE CHILD SUPPORT PAYMENTS**

Article 1. General Provisions

Article 2. Order for Deposit of Assets

Article 3. Ex Parte Restraining Orders

Article 4. Use or Sale of Assets to Make Support Payments

Article 5. Return of Assets of Obligor

### **Article 1. General Provisions**

§ 4600. Purpose of chapter

§ 4601. "Deposit holder" defined

§ 4602. Statement of receipts and disbursements

§ 4603. Protection of deposit holder from liability

§ 4604. Reimbursement of deposit holder for fees or costs not otherwise compensated

#### **§ 4600. Purpose of chapter**

4600. The purpose of this chapter is to provide an extraordinary remedy for cases of bad faith failure to pay child support obligations.

**Comment.** Section 4600 continues subdivision (i) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without change. See also Sections 4011 (priority of child support payments), 4012 (security for payment of child support), 4339 (security for payment of spousal support).

#### **§ 4601. "Deposit holder" defined**

4601. As used in this chapter, "deposit holder" means the district attorney, county officer, or trustee designated by the court to receive assets deposited pursuant to this chapter to secure future support payments.

**Comment.** Section 4601 is a new provision included for drafting convenience.

#### **§ 4602. Statement of receipts and disbursements**

4602. If requested by an obligor-parent, the deposit holder shall prepare a statement setting forth disbursements and receipts made under this chapter.

**Comment.** Section 4602 continues subdivision (g) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

#### **§ 4603. Protection of deposit holder from liability**

4603. The deposit holder who is responsible for any money or property and for any disbursements under this chapter is not liable for any action undertaken in good faith and in conformance with this chapter.

**Comment.** Section 4603 continues subdivision (e) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**§ 4604. Reimbursement of deposit holder for fees or costs not otherwise compensated**

4604. (a) If the deposit holder incurs fees or costs under this chapter which are not compensated by the deduction under subdivision (c) of Section 4630 (including, but not limited to, fees or costs incurred in a sale of assets pursuant to this chapter and in the preparation of a statement pursuant to Section 4602), the court shall, after a hearing, order the obligor-parent to pay the reasonable fees and costs incurred by the deposit holder. The hearing shall be held not less than 20 days after the deposit holder serves notice of motion or order to show cause upon the obligor-parent.

(b) Fees and costs ordered to be paid under this section shall be in addition to any deposit made under this chapter but shall not exceed whichever of the following is less:

- (1) Five percent of one year's child support obligation.
- (2) The total amount ordered deposited under Section 4614.

**Comment.** Section 4604 continues subdivision (h) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**Article 2. Order for Deposit of Assets**

§ 4610. Issuance of order for deposit of assets

§ 4611. Presumptions

§ 4612. Grounds for defense to allegation that obligor-parent in arrears

§ 4613. Determination by court of need for deposit order

§ 4614. Determination by court of assets subject to order

§ 4615. Providing bond in lieu of depositing cash or other assets

§ 4616. Order that deposited asset be sold and proceeds deposited with deposit holder

§ 4617. Deposit of real property

**§ 4610. Issuance of order for deposit of assets**

4610. (a) Subject to Sections 4613, 4614, and 4615, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon an order to show cause or notice of motion, application, and declaration signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid stating that the parent or parents so ordered is in arrears in payment in a sum equal to the amount of 60 days of payments, the court shall issue to the parent or parents ordered to pay support, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the deposit holder designated by the court.

(b) In a proceeding under this article, upon request of any party, the court may also issue an ex parte restraining order as specified in Section 4620.

**Comment.** Section 4610 continues the first two sentences of subdivision (a)(1) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**§ 4611. Presumptions**

4611. In a proceeding under this chapter, an obligor-parent must rebut both of the following presumptions:

- (a) The nonpayment of child support was willful, without good faith.
- (b) The obligor had the ability to pay the support.

**Comment.** Section 4611 continues a portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**§ 4612. Grounds for defense to allegation that obligor-parent in arrears**

4612. An obligor-parent alleged to be in arrears may use any of the following grounds as a defense to the motion filed pursuant to this article or as a basis for filing a motion to stop a sale or use of assets under Section 4631:

- (a) Child support payments are not in arrears.
- (b) Laches.
- (c) There has been a change in the custody of the children.
- (d) There is a pending motion for reduction in support due to a reduction in income.
- (e) Illness or disability.
- (f) Unemployment.
- (g) Serious adverse impact on the immediate family of the obligor-parent residing with the obligor-parent that outweighs the impact of denial of the motion or stopping the sale on obligee.
- (h) Serious impairment of the ability of the obligor-parent to generate income.
- (i) Other emergency conditions.

**Comment.** Section 4612 continues the first portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change. See also Sections 4011 (priority of child support payments), 4506 (submitting list of places applied for employment where default in support due to unemployment), 4632 (grounds for motion to stop sale or use of asset).

**§ 4613. Determination by court of need for deposit order**

4613. The court shall not issue an order pursuant to this article unless the court determines that one or more of the following conditions exists:

- (a) The obligor-parent is not receiving salary or wages subject to an assignment pursuant to Chapter 5 (commencing with Section 5200) and there is reason to believe that he or she has earned income from some source of employment.
- (b) An assignment of a portion of salary or wages pursuant to Chapter 5 (commencing with Section 5200) would not be sufficient to meet the amount of the support obligation, for reasons other than a change of circumstances which would qualify for a reduction in the amount of child support ordered.
- (c) The job history of the obligor-parent shows that an assignment of a portion of salary or wages pursuant to Chapter 5 (commencing with Section 5200), would be

difficult to enforce or would not be a practical means for securing the payment of the support obligation, due to circumstances including, but not limited to, multiple concurrent or consecutive employers.

**Comment.** Section 4613 continues subdivision (b) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**Note:** Is "salary or wages" used in Section 4613 intentionally to exclude other forms of earnings which can be subjected to an earnings assignment? Should Section 4613 be revised to recognize that a person may have "earnings" other than from "employment"? Section 4613 needs to be reviewed in connection with the provisions relating to earnings assignment.

#### **§ 4614. Determination by court of assets subject to order**

4614. The designation of assets subject to an order pursuant to this article shall be based upon concern for maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the assets shall include a sum of money up to or equal in value to one year of support payments or six thousand dollars (\$6,000) whichever is less, or any other assets, personal or real, designated by the court which equal in value up to one year of payments for support of the minor child, or six thousand dollars (\$6,000), whichever is less, subject to Section 703.070 of the Code of Civil Procedure.

**Comment.** Section 4614 continues the first sentence of subdivision (c) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

#### **§ 4615. Providing bond in lieu of depositing cash or other assets**

4615. In lieu of depositing cash or other assets as provided in Section 4614, the obligor-parent may, if approved by the court, provide a performance bond secured by real property or other assets of the obligor-parent and equal in value to one year of payments.

**Comment.** Section 4615 continues the second sentence of subdivision (c) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

#### **§ 4616. Order that deposited asset be sold and proceeds deposited with deposit holder**

4616. Upon deposit of an asset which is not readily convertible into money, the court may, after a hearing, order the sale of that asset and the deposit of the proceeds with the deposit holder. Not less than 20 days written notice of the hearing shall be served on the obligor-parent.

**Comment.** Section 4616 continues the third sentence of subdivision (a)(1) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**Note:** Perhaps some type of uniform language to be used in the Family Code should be developed and substituted for the second sentence of Section 4616. Perhaps a general

provision should be drafted and included in the Family Code to prescribe the time and method of giving notice of hearing where notice of hearing is required.

### § 4617. Deposit of real property

4617. (a) If the asset ordered to be deposited is real property, the order shall be certified as an abstract of judgment in accordance with Section 674 of the Code of Civil Procedure.

(b) A deposit of real property is made effective by recordation of the certified abstract with the county recorder.

(c) The deposited real property and the rights, benefits, and liabilities attached to that property shall continue in the possession of the legal owner.

(d) For purposes of Section 701.545 of the Code of Civil Procedure, the date of the issuance of the order to deposit assets shall be construed as the date notice of levy on an interest in real property was served on the judgment debtor.

**Comment.** Section 4617 continues the last portion of paragraph (1) of subdivision (a) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

## Article 3. Ex Parte Restraining Orders

### § 4620. Ex parte restraining orders

#### § 4620. Ex parte restraining orders

4620. (a) During the pendency of a proceeding under this chapter, upon the application of either party in the manner provided by Part 4 (commencing with Section 240) of Division 2, the court may, without a hearing, issue ex parte orders restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring the party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

(b) The matter shall be made returnable not later than 20 days, or if good cause appears to the court, 25 days from the date of the order at which time the ex parte order shall expire.

(c) The court, at the hearing, shall determine for which property the obligor-parent shall be required to report extraordinary expenditures and shall specify what is deemed an extraordinary expenditure for purposes of this subdivision.

(d) An order issued pursuant to this section after the hearing shall state on its face the date of expiration of the order, which shall expire in one year or upon deposit of assets or money pursuant to Article 2 (commencing with Section 4610), whichever first occurs.

**Comment.** Section 4620 continues subdivision (d) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change, except that

Section 4620 makes clear that the rule stated in subdivision (d) applies only to the restraining order issued under Section 4620. The former provision stated that it applied to any order "issued pursuant to this section," thereby literally applying to any order issued under this chapter. The duration of the order that assets be deposited is specified in Section 4640.

**Note:** Existing Civil Code Section 4701.1 provides that what is now subdivision (d) of Section 4620 applies to "any order pursuant to this section," literally applying to an order that a deposit be made and an order for use or sale of assets, as well as an ex parte order under Section 4620. However, it appears that subdivision (d) of Section 4620 was intended to apply only to the order issued after hearing under that section. The duration of the deposit order is governed by Section 4640.

#### **Article 4. Use or Sale of Assets to Make Support Payments**

§ 4630. Use or sale of assets

§ 4631. Motion to stop a sale or use of assets

§ 4632. Grounds for defense to allegation that obligor-parent in arrears

#### **§ 4630. Use or sale of assets**

4630. (a) Upon an obligor-parent's failure, within the time specified by the court, to make reasonable efforts to cure the default in child support payments or to comply with a court-approved payment plan, if payments continue in the arrears, the deposit holder shall, not less than 25 days after providing the obligor-parent or parents with a written notice served personally or with return receipt requested, unless a motion or order to show cause has been filed to stop the use or sale, use the money or sell or otherwise process the deposited assets for an amount sufficient to pay the arrearage and the amount ordered by the court for the support of the minor child currently due.

(b) Assets deposited pursuant to an order issued under Article 2 (commencing with Section 4610) shall be construed as being assets subject to levy pursuant to Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The sale of assets shall be conducted in accordance with Article 6 (commencing with Section 701.510) and Article 7 (commencing with Section 701.810) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) The deposit holder may deduct from the deposited money the sum of one dollar (\$1) for each payment made pursuant to this section.

**Comment.** Section 4630 continues paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change. See also Section 4011 (priority of child support payments).

#### **§ 4631. Motion to stop a sale or use of assets**

4631. (a) An obligor-parent may file a motion to stop the use of the money or the sale of the asset under this article within 15 days after service of notice on him or her pursuant to Section 4630.

(b) The clerk of the court shall set the motion for hearing not less than 20 days after service of the notice of motion and the motion on the person or county officer to whom support has been ordered to have been paid.

**Comment.** Section 4631 continues the last portion of paragraph (4) of subdivision (a) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**§ 4632. Grounds for defense to allegation that obligor-parent in arrears**

4632. An obligor-parent alleged to be in arrears under this article may use any ground set forth in Section 4612 as a basis for filing a motion under Section 4631 to stop a sale or use of assets under this article.

**Comment.** Section 4632 is a new provision included for the convenience of the statute user. See also Section 4011 (priority of child support payments).

**Article 5. Return of Assets of Obligor**

§ 4640. Conditions for return of assets to obligor

§ 4641. Release of real property

**§ 4640. Conditions for return of assets to obligor**

4640. The deposit holder shall return all assets subject to court order under Article 2 (commencing with Section 4610) to the obligor-parent when both of the following occur:

(a) One year has elapsed since the court issued the order described under Article 2 (commencing with Section 4610).

(b) The obligor-parent has made all support payments on time during that one-year period.

**Comment.** Section 4640 continues the first portion of subdivision (f) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change.

**§ 4641. Release of real property**

4641. If the deposited asset is real property and the requirements of Section 4640 have been satisfied, the deposit holder shall do all of the following:

(a) Prepare a release in accordance with Section 697.370 of the Code of Civil Procedure.

(b) Request the clerk of the court where the order to deposit assets was made to certify the release.

(c) Record the certified release in the office of the county recorder where the certified abstract was recorded under Section 4617.

**Comment.** Section 4641 continues the last portion of subdivision (f) of former Civil Code Section 4701.1 (as amended by 1990 Cal. Stat. ch. 1493 § 8.5) without substantive change, except that Section 4641 makes clear that the deposit holder has the duty to record the certified release. The provision of former Section 4701.1 was unclear whether the deposit holder or the court clerk had this duty.

**Note: Section 4641 makes clear that the deposit holder (rather than the court clerk) has the duty to record the certified release. The existing provision is unclear as to who has the duty to record.**

### **CHAPTER 3. CHILD SUPPORT DELINQUENCY REPORTING**

§ 4700. Short title

§ 4701. Child support delinquency reporting

§ 4700. Short title

4700. This chapter shall be known and may be cited as the Child Support Delinquency Reporting Law.

**Comment.** Section 4700 continues former Civil Code Section 4750 in a shortened form.

§ 4701. Child support delinquency reporting

4701. (a) The State Department of Social Services shall administer a statewide automated system for the reporting of court-ordered child support obligations to credit reporting agencies.

(b) The department shall design and develop standards for the system in conjunction with representatives of the California Family Support Council and the credit reporting industry.

(c) The standards for the system shall be consistent with credit reporting industry standards and reporting format and with the department's statewide central automated system for support enforcement.

(d) The standards shall include, but not be limited to, all of the following:

(1) Court-ordered child support obligations and delinquent payments, including amounts owed and by whom. The California district attorneys, on a monthly basis, shall update this information, and then submit it to the department which, in turn, shall consolidate and transmit it to the credit reporting agencies.

(2) Prior to the initial reporting of a court-ordered child support obligation or a delinquent payment, the district attorney shall attempt to notify the obligor parent of the proposed action and give 30 days to contest in writing the accuracy of the information, or to pay the arrearage, if any, in compliance with the due process requirements of the laws of this state.

(e) The department and the district attorneys are responsible for the accuracy of information provided pursuant to this section, and the information shall be based upon the data available at the time the information is provided. Each of these organizations and the credit reporting agencies shall follow reasonable procedures to ensure maximum possible accuracy of the information provided. Neither the department, nor the district attorneys are liable for any consequences of the failure of a parent to contest the accuracy of the information within the time allowed under paragraph (2) of subdivision (d).

**Comment.** Section 4701 continues the substance of former Civil Code Section 4752 with the omission of portions that were of a temporary or transitional nature. Federal law contains

provisions for the program provided for in Section 4701. See Public Law 98-378 (HR 4325) Aug. 16, 1984. See also Section 4011 (priority of child support payments).

## CHAPTER 4. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

- Article 1. General Provisions
- Article 2. Criminal Enforcement
- Article 3. Civil Enforcement

### Article 1. General Provisions

- § 4800. Short title
- § 4801. Purpose
- § 4802. Definitions
- § 4803. Cumulative remedies; attorney's fees
- § 4804. Obligor in this state bound by duty of support, regardless of residence of obligee
- § 4805. Representation by private counsel

**Note:** The National Conference of Commissioners on Uniform State Laws is now engaged in drafting a new Uniform Interstate Support Act that will completely revise and replace the Uniform Reciprocal Enforcement of Support Act. The Conference will consider a draft of the new act this summer at its Annual Meeting. However, it is not anticipated that the new act will be promulgated for adoption by the states before the summer of 1992, a timetable that will coincide with the work of the U.S. Commission on Interstate Child Support.

This chapter continues the existing California version of the Uniform Reciprocal Enforcement of Support Act. Whether the new Uniform Interstate Support Act will be substituted for the existing statute in the Family Code proposed for enactment will depend on whether the new Uniform Act is approved by the National Conference of Commissioners on Uniform State Laws in time to permit its inclusion and whether the new Uniform Act presents policy decisions that require that it be separately considered for enactment.

#### § 4800. Short title

4800. This chapter is known and may be cited as the Uniform Reciprocal Enforcement of Support Act.

**Comment.** Section 4800 continues former Code of Civil Procedure Section 1650 without substantive change, except that "Uniform Reciprocal Enforcement of Support Act" has been substituted for "Revised Reciprocal Enforcement of Support Act of 1968." See also Sections 3 (construction of provision drawn from uniform act), 14 (severability of provisions).

#### § 4801. Purpose

4801. The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

**Comment.** Section 4801 continues former Code of Civil Procedure Section 1652 without change. See also Section 3 (construction of provision drawn from uniform act).

**§ 4802. Definitions**

4802. As used in this chapter, unless the context requires otherwise:

(a) "Court" means the superior court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether interlocutory or final or whether incidental to a proceeding for dissolution of marriage, judgment of nullity, or for legal separation, or to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of Governor or the executive authority of any state covered by this chapter.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means a person owing a duty of support or against whom a proceeding for the enforcement of a duty of support is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Responding state" means a state in which a responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(j) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar law or procedure is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which is extended to this state.

(k) "Support order" means a judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(l) "Register" means to file in the Registry of Foreign Support Orders.

(m) "Registering court" means a court of this state in which a support order of a rendering state is registered.

(n) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(o) "Rendering court" means a court which has issued a support order for which registration is sought.

(p) "Foreign support order" includes a foreign order for the assignment of wages for the satisfaction of a support order.

**Comment.** Section 4802 continues former Code of Civil Procedure Section 1653 without change.

**Note:** The use of the phrase "order for the assignment of wages" in subdivision (p) should be reviewed. Should "earnings assignment order" be used instead of the phrase used or should "earnings assignment order" be added as an alternative to the phrase used?

#### **§ 4803. Cumulative remedies; attorney's fees**

4803. (a) The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

(b) Notwithstanding subdivision (a) or any other provision of law, no party to an action under this chapter, nor assignee of a party of an action under this chapter, is entitled to attorney's fees from the opposing party for prosecuting or defending the action, except where the court finds that the opposing party has not prosecuted or defended the action in good faith.

**Comment.** Section 4803 continues former Code of Civil Procedure Section 1654 without substantive change. See also Section 273 (attorney's fees and costs for enforcement of support order).

#### **§ 4804. Obligor in this state bound by duty of support, regardless of residence of obligee**

4804. Duties of support arising under the law of this state, when applicable under Section 4820, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

**Comment.** Section 4804 continues former Code of Civil Procedure Section 1655 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

#### **§ 4805. Representation by private counsel**

4805. Notwithstanding any other provision of law, privately retained counsel may represent an obligee in any proceeding under this chapter.

**Comment.** Section 4805 continues former Code of Civil Procedure Section 1655.5 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**Article 2. Criminal Enforcement**

§ 4810. Extradition

§ 4811. Prerequisite to demand for surrender by Governor

**§ 4810. Extradition**

4810. (a) The Governor of this state may:

(1) Demand of the Governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person, or

(2) Surrender on demand by the Governor of another state a person found in this state who is charged criminally in another state with failing to provide for the support of any person.

(b) Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom.

(c) The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

**Comment.** Section 4810 continues former Code of Civil Procedure Section 1660 without substantive change.

**§ 4811. Prerequisite to demand for surrender by Governor**

4811. (a) Before making the demand on the Governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of any person, the Governor of this state may require any prosecuting attorney of this state to satisfy the Governor that at least 60 days prior thereto the obligee brought an action for support under this chapter, or that the bringing of an action would be of no avail.

(b) If, under a substantially similar law, the Governor of another state makes a demand upon the Governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to the Governor whether an action for support has been brought or would be effective. If it appears to the Governor that an action for support would be effective but has not been brought, the Governor may delay honoring the demand for a reasonable time to permit the bringing of an action for support.

(c) If an action for support has been brought, and the person demanded has prevailed in that action, the Governor may decline to honor the demand. If the obligee prevailed therein and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

**Comment.** Section 4811 continues former Code of Civil Procedure Section 1661 without change.

**Article 3. Civil Enforcement**

- § 4820. Enforceable duties of support; presumption of presence in responding state
- § 4821. Right of state or political subdivision to bring support action
- § 4822. Enforcement of duty of support by action; defenses based on relationship not available
- § 4823. Jurisdiction
- § 4824. Verification and contents of complaint; identification material; place of filing; transfer of proceeding
- § 4825. Representation of obligee by prosecuting attorney or Attorney General
- § 4826. Complaint by person having custody of minor obligee
- § 4827. Certification to responding state; accompanying papers; transmittal to state information agency
- § 4828. Fees and costs; collection
- § 4829. Arrest of obligor
- § 4830. Attorney General as state information agency; duties
- § 4831. Duties of responding court; representation of obligee by prosecuting attorney
- § 4832. Tracing obligor or obligor's property; forwarding documents; reports to initiating court
- § 4833. Order for support or reimbursement; enforcement of order
- § 4834. Procedure where obligee absent in contested case
- § 4835. Sending copy of support order to initiating court and obligor
- § 4836. Terms and conditions to assure obligor's compliance
- § 4837. Duties of responding court with respect to payments by obligor
- § 4838. Duties of initiating court with respect to payments
- § 4839. Competency of spouse to testify; privileges not applicable
- § 4840. Effect of support order on other support orders
- § 4841. Jurisdiction; other proceedings
- § 4842. Stay of proceedings
- § 4843. Obligor and obligee in different counties of state
- § 4844. Declaration of foreign jurisdiction to be a reciprocating state
- § 4845. Rules of evidence; interference with rights of custody and visitation
- § 4846. Paternity issue
- § 4847. Appeals in public interest by Attorney General
- § 4848. Additional remedies where foreign support order; registration of support order made in this state
- § 4849. Registration of foreign support or assignment order
- § 4850. Registry of foreign support orders
- § 4851. Representation of obligee by prosecuting attorney or Attorney General
- § 4852. Procedure for registration of foreign support order; enforcement of registered order
- § 4853. Effect of registration of foreign support or assignment order; enforcement of registered order
- § 4854. Support orders registered in court of county other than that of rendering court; service of copy by mail

**§ 4820. Enforceable duties of support; presumption of presence in responding state**

4820. Duties of support applicable under this chapter are those imposed under the laws of any state where the obligor was present for the period during which support

is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

**Comment.** Section 4820 continues former Code of Civil Procedure Section 1670 without change.

**§ 4821. Right of state or political subdivision to bring support action**

4821. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate an action under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

**Comment.** Section 4821 continues former Code of Civil Procedure Section 1671 without change.

**§ 4822. Enforcement of duty of support by action; defenses based on relationship not available**

4822. All duties of support, including the duty to pay arrearages, are enforceable by an action under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

**Comment.** Section 4822 continues former Code of Civil Procedure Section 1672 without change.

**§ 4823. Jurisdiction**

4823. Jurisdiction of all proceedings under this chapter is vested in the superior court.

**Comment.** Section 4823 continues former Code of Civil Procedure Section 1672.5 without substantive change.

**§ 4824. Verification and contents of complaint; identification material; place of filing; transfer of proceeding**

4824. (a) The complaint or claim shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. Verification shall be in accordance with the requirements of the initiating state. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on the obligor's person, other names and aliases by which the obligor has been or is known, the name of the obligor's employer, the obligor's fingerprints, and the obligor's social security number.

(b) The complaint may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any

other state where there is pending a proceeding for dissolution of the marriage or for legal separation, or another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody, between the same parties, or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

(c) When the obligee removes his or her residence from the county in which the proceeding was initiated to another county in the state, the court may transfer the proceeding to the new county of residence. The clerk of the court in which the proceeding was initiated shall forward certified copies of all documents necessary for continued prosecution of the proceeding to the county where the proceeding was transferred. The clerk of the court to which the proceeding has been transferred shall inform the court of the responding state that the case has been transferred, and that payment should be made through the appropriate agency of the transferee county. Transfer procedures under this section may be initiated by the obligee or by the court, prosecuting official, or clerk of either county or of the responding state.

**Comment.** Section 4824 continues former Code of Civil Procedure Section 1673 without change.

#### **§ 4825. Representation of obligee by prosecuting attorney or Attorney General**

4825. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court or the obligee, shall represent the obligee in a proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order the prosecuting attorney to comply with the request of the court or may undertake the representation.

**Comment.** Section 4825 continues former Code of Civil Procedure Section 1674 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

#### **§ 4826. Complaint by person having custody of minor obligee**

4826. A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

**Comment.** Section 4826 continues former Code of Civil Procedure Section 1675 without change.

#### **§ 4827. Certification to responding state; accompanying papers; transmittal to state information agency**

4827. If the initiating court or agency finds that the complaint or claim sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or the obligor's property, the court or agency shall so certify and cause three copies of the complaint or claim and its certificate and one copy of this chapter or of the declaration of

reciprocity made pursuant to Section 4844 to be sent to the responding state. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

**Comment.** Section 4827 continues former Code of Civil Procedure Section 1676 without change.

#### **§ 4828. Fees and costs; collection**

4828. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

**Comment.** Section 4828 continues former Code of Civil Procedure Section 1677 without change.

#### **§ 4829. Arrest of obligor**

4829. (a) If the court of this state believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process.

(b) Thereupon it may release the obligor upon the obligor's own recognizance or upon the giving a bond in an amount set by the court to assure the obligor's appearance at the hearing.

**Comment.** Section 4829 continues former Code of Civil Procedure Section 1678 without substantive change.

#### **§ 4830. Attorney General as state information agency; duties**

4830. (a) The Attorney General is hereby designated as the state information agency under this chapter.

(b) The state information agency shall:

(1) Compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of

each session of the Legislature, the Attorney General shall distribute copies of any amendments to this chapter and a statement of their effective dates to all other state information agencies.

(2) Maintain a register of such lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this chapter.

(3) Forward to the court in this state which has jurisdiction over the obligor or the obligor's property petitions, certificates, and copies of the act it receives from courts or information agencies of other states.

(c) If the state information agency does not know the location of the obligor or the obligor's property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(d) Notwithstanding any other provision of law, copies of all documents used to initiate enforcement of any interstate child support obligation shall be sent directly to the state information agency.

**Comment.** Section 4830 continues former Code of Civil Procedure Section 1679 without change.

**§ 4831. Duties of responding court; representation of obligee by prosecuting attorney**

4831. (a) After the responding court receives copies of the complaint, certificate, and act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of that action. Claims received by this state from an initiating agency shall be forwarded to the district attorney for preparation and filing of appropriate pleadings.

(b) The prosecuting attorney shall prosecute the case diligently. The prosecuting attorney shall take all action necessary to enable the court to obtain jurisdiction over the obligor or the obligor's property in accordance with law. The prosecuting attorney shall, upon being notified that the cause has been docketed, either (1) request the court to issue a citation requiring defendant to appear personally at a specified time and place to show cause why an order should not be issued on the basis of the complaint on file and cause a copy of the complaint and of the citation to be served upon the obligor at least 10 days prior to the hearing or (2) request the issuance of a summons and cause a copy of the complaint and summons to be served upon the obligor.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order the prosecuting attorney to represent the obligee or may undertake the representation.

**Comment.** Section 4831 continues former Code of Civil Procedure Section 1680 without change.

**§ 4832. Tracing obligor or obligor's property; forwarding documents; reports to initiating court**

4832. (a) The prosecuting attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or the obligor's property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what the prosecuting attorney has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or the obligor's property is not found in the county, and the prosecuting attorney discovers that the obligor or the obligor's property may be found in another county of this state or in another state, the prosecuting attorney shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, the clerk shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or the obligor's property, the prosecuting attorney shall so inform the initiating court.

**Comment.** Section 4832 continues former Code of Civil Procedure Section 1681 without change.

**§ 4833. Order for support or reimbursement; enforcement of order**

4833. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the county clerk, probate officer, or other officer of the court or county officer designated by the court for such purpose. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the

order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

**Comment.** Section 4833 continues former Code of Civil Procedure Section 1682 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4834. Procedure where obligee absent in contested case**

4834. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence which constitutes a defense, the court, upon request of either party, shall continue the case for further hearing and the submission of evidence by both parties either by deposition or personal appearance. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

**Comment.** Section 4834 continues former Code of Civil Procedure Section 1683 without change.

**§ 4835. Sending copy of support order to initiating court and obligor**

4835. The responding court shall cause a copy of all support orders to be sent to the initiating court or agency and to the obligor.

**Comment.** Section 4835 continues former Code of Civil Procedure Section 1684 without change.

**§ 4836. Terms and conditions to assure obligor's compliance**

4836. In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular may do any one or more of the following:

(a) Require the obligor to furnish a cash deposit or bond of a character and amount to assure payment of any amount due.

(b) Require the obligor to report personally and to make payments at specified intervals to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose.

(c) Punish under the power of contempt the obligor who violates any order of the court.

**Comment.** Section 4836 continues former Code of Civil Procedure Section 1685 without substantive change.

**§ 4837. Duties of responding court with respect to payments by obligor**

4837. A responding court has the following duties which may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose:

(a) To transmit to the initiating court any payment made by the obligor pursuant to an order of the court or otherwise.

(b) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

**Comment.** Section 4837 continues former Code of Civil Procedure Section 1686 without substantive change. See also Section 4011 (priority of child support payments).

#### **§ 4838. Duties of initiating court with respect to payments**

4838. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose.

**Comment.** Section 4838 continues former Code of Civil Procedure Section 1687 without change.

#### **§ 4839. Competency of spouse to testify; privileges not applicable**

4839. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

**Comment.** Section 4839 continues former Civil Code Section 1688 without change. Section 4839 is the same as Section 3552.

#### **§ 4840. Effect of support order on other support orders**

4840. A support order made by a court of this state pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar provision of law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to a support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under a support order made by the court of this state.

**Comment.** Section 4840 continues former Code of Civil Procedure Section 1689 without change. See also Section 4011 (priority of child support payments).

#### **§ 4841. Jurisdiction; other proceedings**

4841. Participation in a proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

**Comment.** Section 4841 continues former Code of Civil Procedure Section 1690 without change.

**§ 4842. Stay of proceedings**

4842. A responding court shall not stay the proceeding or refuse a hearing under this chapter because of a pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

**Comment.** Section 4842 continues former Code of Civil Procedure Section 1691 without change.

**§ 4843. Obligor and obligee in different counties of state**

4843. This chapter applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or the obligor's property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or the obligor's property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

**Comment.** Section 4843 continues former Code of Civil Procedure Section 1692 without change.

**§ 4844. Declaration of foreign jurisdiction to be a reciprocating state**

4844. When the Attorney General is satisfied that reciprocal provisions will be made by a foreign jurisdiction for the enforcement therein of support orders made within this state, the Attorney General may declare the foreign jurisdiction to be a reciprocating state for the purpose of this chapter. Any such declaration may be revoked by the Attorney General. Any such declaration by the Attorney General may be reviewed by the court in an action brought pursuant to this chapter.

**Comment.** Section 4844 continues former Code of Civil Procedure Section 1693 without change.

**§ 4845. Rules of evidence; interference with rights of custody and visitation**

4845. (a) In a hearing for the civil enforcement of this chapter, the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses or modification available to a defendant in a proceeding to enforce a foreign support judgment.

(b) The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

**Comment.** Section 4845 continues former Code of Civil Procedure Section 1694 without change.

**§ 4846. Paternity issue**

4846. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

**Comment.** Section 4846 continues former Code of Civil Procedure Section 1695 without change.

**Note:** Should Section 4846 be made applicable to both parents (mother as well as father) by substituting in the section the phrase "that the obligor is not the parent of the child for whom support is sought" for the existing phrase "that he is not the father of the child for whom support is sought"?

**§ 4847. Appeals in public interest by Attorney General**

4847. (a) If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, the Attorney General may:

(1) If the support order was issued by a court of this state, perfect an appeal to the proper appellate court.

(2) If the support order was issued in another state, cause the appeal to be taken in the other state.

(b) In either case, expenses of appeal may be paid on order of the Attorney General from funds appropriated for his or her office.

**Comment.** Section 4847 continues former Code of Civil Procedure Section 1696 without substantive change.

**§ 4848. Additional remedies where foreign support order; registration of support order made in this state**

4848. (a) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 4849 to 4853, inclusive.

(b) A support order made in this state may also be registered pursuant to Sections 4849 to 4853, inclusive, in any county in which either the obligor or the child who is the subject of the order resides.

**Comment.** Section 4848 continues former Code of Civil Procedure Section 1697 without change.

**§ 4849. Registration of foreign support or assignment order**

4849. The obligee may register a foreign support order or a foreign order for the assignment of wages for support in a court of this state in the manner, with the effect, and for the purposes provided in this article.

**Comment.** Section 4849 continues former Code of Civil Procedure Section 1698 without change.

**Note:** Should "earnings assignment for support" be substituted for "assignment of wages for support"?

**§ 4850. Registry of foreign support orders**

4850. The clerk of the court shall maintain a registry of foreign support orders in which the clerk shall file foreign support orders.

**Comment.** Section 4850 continues former Code of Civil Procedure Section 1698.1 without change.

**§ 4851. Representation of obligee by prosecuting attorney or Attorney General**

4851. If this state is acting either as a rendering or a registering state, the prosecuting attorney shall represent the obligee in proceedings under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order the prosecuting attorney to represent the obligee or may undertake the representation.

**Comment.** Section 4851 continues former Code of Civil Procedure Section 1698.2 without change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4803 (limitation on recovery of attorney's fees from the opposing party for prosecuting or defending action).

**§ 4852. Procedure for registration of foreign support order; enforcement of registered order**

4852. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court all of the following:

(1) Three certified copies of the order with all modifications thereof.

(2) One copy of the reciprocal enforcement of support act of the state in which the order was made.

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(b) Upon receipt of the documents described in subdivision (a), the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this article.

(c) Promptly upon registration, the clerk of the court shall send, by any form of mail requiring a return receipt from the addressee only, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. Proof shall be made to the satisfaction of the court that the obligor personally received the notice of registration by mail or other method of service. A return receipt signed by the obligor shall be satisfactory evidence of such personal receipt. The court clerk shall also docket the case and notify the prosecuting attorney of that action. The prosecuting attorney shall proceed diligently to enforce the order.

**Comment.** Section 4852 continues former Code of Civil Procedure Section 1698.3 without substantive change.

#### **§ 4853. Effect of registration of foreign support or assignment order; enforcement of registered order**

4853. (a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner. Upon registration, a foreign order for the assignment of wages for support shall be treated for all purposes in the same manner as an earnings assignment order for support entered pursuant to Chapter 5 (commencing with Section 5200).

(b) The obligor has 20 days after the mailing or other service of notice of the registration in which to petition the court to vacate the registration or for other relief. If the obligor does not so petition, the registered order is confirmed.

(c) At the hearing to enforce the registered order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate

period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

**Comment.** Section 4853 continues former Code of Civil Procedure Section 1699 (as amended by 1990 Cal. Stat. ch. 411 § 7) without substantive change.

**§ 4854. Support orders registered in court of county other than that of rendering court; service of copy by mail**

4854. If a support order issued by a court of this state is registered in the court of a county other than that of the rendering court, the obligee shall serve a copy of any subsequent modification of the order on the rendering court, by mail.

**Comment.** Section 4854 continues former Code of Civil Procedure Section 1699.4 without change.

**CHAPTER 5. ENFORCEMENT BY WRIT OF EXECUTION**

§ 5100. Enforcement of child or family support without prior court approval

§ 5101. Enforcement of spousal support without prior court approval

§ 5102. Period for enforcement of installment payments

§ 5103. Enforcement of support against employee pension benefit plan

§ 5104. Application for writ

**§ 5100. Enforcement of child or family support without prior court approval**

5100. Notwithstanding Section 290, a child or family support order may be enforced by a writ of execution without prior court approval until five years after the child reaches the age of majority and, thereafter, for amounts that are not more than 10 years overdue on the date of the application for the writ.

**Comment.** Section 5100 continues the first sentence of subdivision (a) of former Civil Code Section 4383 without substantive change. As to spousal support, see Section 5101.

Section 5100 permits enforcement of child and family support orders by execution without the necessity of obtaining prior court approval under Section 290, so long as the amounts sought to be collected are not more than 10 years overdue. See Sections 5100, 5103, 290, 291 (court approval required before amounts due more than 10 years may be enforced). See also Sections 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments), 4500 (support orders enforceable under this code).

For background on former Civil Code Section 4383, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2616 (1980).

**Note:** Can the judgment be enforced for five years after the child reaches the age of majority even though the amounts are more than 10 years overdue on the date of the application for the writ? See also the Note to Section 5103. See also the definition of "support" in Section 150 (support with reference to minor child includes maintenance and education).

**§ 5101. Enforcement of spousal support without prior court approval**

5101. Notwithstanding Section 290, a spousal support order may be enforced by a writ of execution without prior court approval for amounts that are not more than 10 years overdue on the date of the application for the writ.

**Comment.** Section 5101 continues the second sentence of subdivision (a) of former Civil Code Section 4383 without substantive change. A reference to Section 290 is added, to conform to the scheme used in Section 5100. See also Sections 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

**§ 5102. Period for enforcement of installment payments**

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

**Comment.** Section 5102 continues without substantive change the second sentence of former Civil Code Section 4384 insofar as that provision applied to support orders payable in installments.

**§ 5103. Enforcement of support against employee pension benefit plan**

5103. (a) Notwithstanding Section 201, an order for the payment of child, family, or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee pension benefit plan to enforce an order for the payment of child, family or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee pension benefit plan under an order for the payment of child support or family support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

**Comment.** Subdivisions (a) and (b) of Section 5103 continue the third and fourth sentences of subdivision (a) of former Civil Code Section 4383 without substantive change except (1) "the proceeding in which the support order was obtained" has been substituted for "a proceeding under this part [the Family Law Act]" which was used in the former provision and (2) a reference to "family" support has been added to subdivisions (a) and (b). The addition of the reference to "family" support reflects the rule stated in Section 4501. Subdivision (c) continues subdivision (c) of former Civil Code Section 4383 without substantive change. See also Sections 80 ("employee pension benefit plan" defined), 273 (attorney's fees and costs for enforcement of support order), 4011 (priority of child support payments).

**Note:** Subdivision (b) of Section 5103 states the duration of an execution lien for an order for the payment of child, family, or spousal support, whereas subdivision (c) refers only to an order for payment of "child support or family support" (omitting spousal support) and refers to the date the execution lien expires "under subdivision (b). Should subdivision (c) be revised to apply to "child, family, or spousal support"?"

#### **§ 5104. Application for writ**

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

(c) The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

**Comment.** Section 5104 continues subdivision (b) of former Civil Code Section 4383 without substantive change. Section 5104 provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected. If no interest is sought on the amount due and unpaid, the affidavit need state only the total amount. If interest is sought, the affidavit need state only the total amount of interest and also state the amount of each unpaid installment and the date it became due so that the judgment debtor can verify that the interest was accurately computed. See also Section 273 (attorney's fees and costs for enforcement of support order).

**Note:** Subdivision (b) of Section 5104 requires that the affidavit be filed "in the action"? Would "in the proceeding" be more precise? Should some proceedings under the Family Code be designated as "actions" and others as "proceedings"?

### **CHAPTER 6. EARNINGS ASSIGNMENT ORDER**

Article 1. Definitions

Article 2. General Provisions

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

Article 4. Stay of Service of Assignment Order

Article 5. Motion to Quash Assignment Order

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#### **Article 1. Definitions**

§ 5200. Application of definitions

§ 5202. "Assignment order"

§ 5204. "Due date of support payments"

- § 5206. "Earnings"
- § 5208. "Earnings assignment order for support"
- § 5210. "Employer"
- § 5212. "IV-D Case"
- § 5214. "Obligee"; "assigned obligee"
- § 5216. "Obligor"
- § 5218. "Support"
- § 5220. "Timely payment"

#### § 5200. Application of definitions

5200. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 5200 continues the introductory clause of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

#### § 5202. "Assignment order"

5202. "Assignment order" has the same meaning as "earnings assignment order for support."

**Comment.** Section 5202 supersedes subdivision (a) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change. See also Section 5208 (defining "earnings assignment order for support").

**Note:** All provisions, including those in the Code of Civil Procedure, will need to be conformed to use the language "earnings assignment order for support" rather than "wage assignment order" or similar language.

#### § 5204. "Due date of support payments"

5204. "Due date of support payments" is the date specifically stated in the order of support or, if no date is stated in the support order, the last day of the month in which the support payment is to be paid.

**Comment.** Section 5204 continues subdivision (b) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

#### § 5206. "Earnings"

5206. "Earnings," to the extent that these earnings are subject to an earnings assignment order for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, includes:

- (a) Wages, salary, bonus, money, and benefits described in Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.
- (b) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.
- (c) Payments of credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) Any other payments or credits due or becoming due as a result of an enforceable obligation.

**Comment.** Section 5206 continues subdivision (c) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

**Note:** All provisions, including those in the Code of Civil Procedure, will need to be conformed to use the language “earnings assignment order for support” rather than “wage assignment order” or similar language. See CCP § 706.011(g) (“wage assignment for support” defined).

**§ 5208. “Earnings assignment order for support”**

5208. “Earnings assignment order for support” means an order that assigns to an obligee a portion of the earnings of a support obligor due or to become due in the future.

**Comment.** Section 5208 is a new provision.

**§ 5210. “Employer”**

5210. “Employer” includes all of the following:

(a) A person for whom an individual performs services as an employee, as defined in Section 706.011 of the Code of Civil Procedure.

(b) The United States government and any public entity as defined in Section 811.2 of the Government Code.

(c) Any person or entity paying earnings as defined under Section 5206.

**Comment.** Section 5210 continues subdivision (d) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change. See also Section 4505 (deduction from earnings of state employee for court ordered support).

**§ 5212. “IV-D Case”**

5212. “IV-D Case” means any case being established, modified, or enforced by the district attorney pursuant to Section 654 of Title 42 of the United States Code (Section 454 of the Social Security Act).

**Comment.** Section 5212 continues subdivision (e) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

**§ 5214. “Obligee”; “assigned obligee”**

5214. “Obligee” or “assigned obligee” means either the person to whom support has been ordered to be paid, the district attorney, or other person designated by the court to receive the payment. The district attorney is the obligee for all IV-D Cases as defined under Section 5212 or in which an application for services has been filed under Part D (commencing with Section 651) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D or IV-E of the Social Security Act).

**Comment.** Section 5214 continues subdivision (f) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

**§ 5216. "Obligor"**

5216. "Obligor" means a person owing a duty of support.

**Comment.** Section 5216 continues subdivision (g) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change.

**§ 5218. "Support"**

5218. "Support" refers to an obligation owing on behalf of a child, spouse, or family, and where appropriate also refers to past due support or arrearage.

**Comment.** Section 5218 continues subdivision (h) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without substantive change. See also Section 4011 (priority of child support payments).

**§ 5220. "Timely payment"**

5220. "Timely payment" means receipt of support payments by the obligee or assigned obligee within five days of the due date.

**Comment.** Section 5220 continues subdivision (i) of former Civil Code Section 4390 (as amended by 1990 Cal. Stat. ch. 411 § 1) without change.

**Article 2. General Provisions**

§ 5230. Support order must include earnings assignment order

§ 5231. Order binds existing and future employers

§ 5232. Manner of service on employer

§ 5233. Commencement of withholding by employer

§ 5234. Delivery of copy of order and statement of rights to obligor

§ 5235. Employer to withhold and forward support

§ 5236. Consolidated check by employer

§ 5237. Obligee's notice of change of address

§ 5238. Priorities where order includes both current support and arrearages

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§ 5240. Termination of order

§ 5241. Penalty for employer failing to comply with order

§ 5242. Service of order creates lien

§ 5243. Priority of order over attachment, execution, or other assignment

§ 5244. Application of chapter to district attorney

§ 5245. Use of other civil and criminal remedies not limited

**§ 5230. Support order must include earnings assignment order**

5230. (a) When the court orders a party to pay an amount for support or orders a modification of the amount of support to be paid, the court shall include in its order an earnings assignment order for support that orders the employer of the obligor pay to the obligee that portion of the obligor's earnings due or to become due in the future as will be sufficient to pay the amount ordered by the court for support.

(b) Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee may request the court to issue an earnings

assignment order for support to enforce an support order made or modified before July 1, 1990.

**Comment.** Section 5230 continues subdivision (a) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) without substantive change except that the third sentence of subdivision (a) of former Section 4390.3 (now subdivision (b) of Section 5230) has been limited to enforcement of a support order made or modified before July 1, 1990. See also Section 5251 (procedure for obtaining assignment order where support order first issued or modified before July 1, 1990). The introductory clause of the first sentence of former Section 4390.3 which made the provision now found in subdivision (a) of Section 5230 applicable on and after July 1, 1990, has been omitted as unnecessary.

#### **§ 5231. Order binds existing and future employers**

5231. Unless stayed pursuant to Article 4 (commencing with Section 5260), an assignment order is effective and binding upon any existing or future employer of the obligor upon whom a copy of the order is served in compliance with Sections 5232 and 5233.

**Comment.** Section 5231 continues the substance of subdivision (b) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) and subdivision (c) of former Civil Code Section 4390.7.

#### **§ 5232. Manner of service on employer**

5232. Service on an employer of an assignment order may be made by first-class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure.

**Comment.** Section 5232 continues the third sentence of subdivision (a) of former Civil Code Section 4390.8 without substantive change.

#### **§ 5233. Commencement of withholding by employer**

5233. Unless the order states a later date, beginning as soon as possible after service of the order on the employer but not later than 10 days after service of the order on the employer, the employer shall commence withholding pursuant to the assignment order from all earnings payable to the employee.

**Comment.** Section 5233 continues the first two sentences of subdivision (a) of former Civil Code Section 4390.8 without substantive change. The language that the "employer shall commence withholding pursuant to the assignment order from all earnings of the employee payable for any pay period of that employee which ends after the assignment becomes effective" has been omitted, since the section provides that the assignment order becomes effective as soon as possible but not later than 10 days after service of the order on an employer and requires withholding from all earnings payable to the employee after the order becomes effective. The introductory clause is new and recognizes that the order itself may provide for a later effective date.

**§ 5234. Delivery of copy of order and statement of rights to obligor**

5234. Within 10 days of service of an assignment order on an employer, the employer shall deliver both of the following to the obligor:

(a) A copy of the assignment order.

(b) A written statement of the obligor's rights under the law to move to quash the assignment order.

**Comment.** Section 5234 continues subdivision (b) of former Civil Code Section 4390.8 without substantive change. See also Section 5295 (Judicial Council to prepare form for written statement of the obligor's rights).

**Note:** The written statement of the obligor's rights under the law to move to quash the assignment order is included in the Judicial Council form for the assignment order. In recognition of this fact, Section 5234 could be simplified by revising it to read: "The employer shall deliver a copy of the assignment order to the obligor within 10 days of service of the assignment order on the employer." See also Section 5295 (forms to be prepared by Judicial Council).

**§ 5235. Employer to withhold and forward support**

5235. The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid. The employer may deduct from the earnings of the employee the sum of one dollar (\$1) for each payment made pursuant to the order.

**Comment.** Section 5235 continues subdivision (a) of former Civil Code Section 4390.10 without substantive change. See also Section 3556 (forwarding support payments paid through designated county officer).

**§ 5236. Consolidated check by employer**

5236. The state agency or the local agency, designated to enforce support obligations as required by federal law, shall allow employers to simplify the process of assignment order withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one order in a consolidated check, accompanied by an itemized accounting providing names, social security number or other identifying number, and the amount attributable to each obligor.

**Comment.** Section 5236 continues subdivision (b) of former Civil Code Section 4390.16 without substantive change.

**§ 5237. Obligee's notice of change of address**

5237. (a) Except as provided in subdivision (b), the obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county

officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the employer or designated county officer is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or designated county officer of a change of address, the employer or designated county officer shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

**Comment.** Section 5237 continues former Civil Code Section 4390.13 without substantive change. See also Section 3556 (forwarding support payments paid through designated county officer).

### **§ 5238. Priorities where order includes both current support and arrearages**

5238. Where an assignment order or assignment orders include both current support and payments towards the liquidation of arrearages, priority shall be given first to the current child support obligation, then the current spousal support obligation, and thereafter to the liquidation of child and then spousal support arrearages.

**Comment.** Section 5238 continues subdivision (a) of former Civil Code Section 4390.12 without substantive change.

### **§ 5239. Manner of computing arrearages of support payments**

5239. Arrearages of support payments shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the assignment order as required by Section 5234.

**Comment.** Section 5239 continues former Civil Code Section 4390.2 without substantive change.

**Note:** What is the purpose of Section 5239? It is not clear how Section 5239 applies to Section 5238. Is Section 5239 directed toward the duty of the employer to withhold or is it directed toward the court? Why is the date the obligor has been given notice of the assignment order selected as the controlling date?

### **§ 5240. Termination of order**

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exists:

(a) With regards to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regards to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

**Comment.** Section 5240 continues former Civil Code Section 4390.14 (as amended by 1990 Cal. Stat. ch. 411 § 4) without substantive change.

**Note:** What is the meaning of the second sentence of subdivision (c) of Section 5240?

#### **§ 5241. Penalty for employer failing to comply with order**

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the

amount of support not withheld, forwarded, or otherwise paid to the obligee.

(b) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

**Comment.** Section 5241 continues subdivision (b) of former Civil Code Section 4390.10 without substantive change. See also Sections 273 (attorney's fees and costs for enforcement of support order), 5290 (civil penalty for using an assignment order as grounds for refusing to hire or for discharging or taking disciplinary action against employee).

#### **§ 5242. Service of order creates lien**

5242. Service of the assignment order creates a lien on the earnings of the employee and the property of the employer to the same extent as the service of an earnings withholding order as provided in Section 706.029 of the Code of Civil Procedure.

**Comment.** Section 5242 continues subdivision (c) of former Civil Code Section 4390.10 without substantive change.

#### **§ 5243. Priority of order over attachment, execution, or other assignment**

5243. Unless otherwise ordered by the court, an assignment order has priority as against any attachment, execution, or other assignment.

**Comment.** Section 5243 continues subdivision (b) of former Civil Code Section 4390.12 without substantive change.

#### **§ 5244. Application of chapter to district attorney**

5244. A reference to the district attorney in this chapter applies only when the district attorney is otherwise ordered or required to act pursuant to law. Nothing in this chapter shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those otherwise imposed by law.

**Comment.** Section 5244 continues former Civil Code Section 4390.1 without substantive change. The reference to "existing" law has been omitted, so that this chapter will apply to all enforcement or collection duties otherwise imposed on the district attorney by law.

**§ 5245. Use of other civil and criminal remedies not limited**

5245. Nothing in this chapter limits the authority of the district attorney to utilize any other civil and criminal remedies to enforce support obligations, regardless of whether or not the minor child or the obligee who is the parent, guardian, or other person entitled to receive payment is the recipient of welfare moneys.

**Comment.** Section 5245 continues former Civil Code Section 4390.19 without substantive change. For a provision relating to withholding from earnings of a state employee, see Section 4505.

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

§ 5250. Article applies to support orders first issued or modified before July 1, 1990

§ 5251. Procedures available for obtaining assignment order

§ 5252. Application for order under this article

§ 5253. Issuance of assignment order

**§ 5250. Article applies to support orders first issued or modified before July 1, 1990**

5250. For a support order first issued or modified before July 1, 1990, this article provides a procedure for obtaining an earnings assignment order for support when the court in ordering support or modification of support did not issue an assignment order.

**Comment.** Section 5250 continues the first sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change.

**§ 5251. Procedures available for obtaining assignment order**

5251. The obligee seeking issuance of an assignment order to enforce a support order described in Section 5250 may use the procedure set forth in this article by filing an application under Section 5252, or by notice of motion or order to show cause, or pursuant to subdivision (b) of Section 5230.

**Comment.** Section 5251 continues the second sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change.

**§ 5252. Application for order under this article**

5252. (a) An assignment order under this article may be issued only upon an application signed under penalty of perjury by the obligee that the obligor is in default in support payments in a sum equal to the amount of support payable for one month, for any other occurrence specified by the court in the support order, or earlier by court order if requested by the district attorney or the obligor.

(b) If the order for support does not contain a provision for an earnings assignment order for support, the application shall state that the obligee has given the obligor a written notice of the obligor's intent to seek an assignment order if there is a default in support payments and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days prior to the date of the filing of the application. The written notice of the intent to seek an assignment order may be given

at any time, including at the time of filing a petition or complaint in which support is requested or at any time subsequent thereto. The obligor may at any time waive the written notice required by this subdivision.

(c) In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration or notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

**Comment.** Subdivision (a) of Section 5252 continues the third sentence of subdivision (a) of former Civil Code Section 4390.5 without substantive change. Subdivision (b) continues subdivisions (d) and (e) of former Civil Code Section 4390.5 without substantive change. Subdivision (c) continues subdivision (b) of former Civil Code Section 4390.5 without substantive change.

**Note:** The meaning of subdivision (a) is unclear. Is issuance of an order under this article limited to the case where the obligor is in default for one month? This is a requirement in the form developed by the Judicial Council. See *Ex Parte Application for Wage Assignment For Support Ordered Before July 1, 1990 (Family Law) Form Adopted by Rule 1285.65 Judicial Council of California 1285.65 (Rev. July 1, 1990)*. If so, what effect does the additional language ("for any other occurrence specified by the court in the support order, or earlier by court order if requested by the district attorney or the obligor" have? Note that the assignment order is issued *ex parte* (Section 5253). Note that service of the assignment order on the employer can be stayed if the obligee "has a history of uninterrupted, full, and timely payment of previously ordered support in the preceding 12 months." Does subdivision (b) of Section 5230 permit the issuance of an assignment order when the obligor is not in default for one month? It appears that the phrase "for any other occurrence specified by the court in the support order, or earlier by court order if requested by the district attorney or the obligor" should be deleted from subdivision (a) of Section 5252 and the procedure in this article should be limited to cases where the obligor is at least one month in default. If it is desired to issue assignment orders in cases other than where the obligor is at least one month in default, the cases should be identified and provided for in provisions apart from this article.

### § 5253. Issuance of assignment order

5253. Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment order requiring the employer of the obligor to pay to the obligee that portion of the earnings of the obligor due or to become due in the future as will be sufficient to pay the amount ordered by the court for support.

**Comment.** Section 5253 continues subdivision (c) of former Civil Code Section 4390.5 without substantive change. The last sentence of subdivision (c) of former Section 4390.5 is omitted as unnecessary. The requirement of subdivision (c) of former Section 4390.5 that the order be one "requiring the obligor to assign to the obligee" has been omitted and Section 5253 is based on the concept that the assignment order itself operates without any need for the obligor to make an assignment to the obligee. There was no actual requirement in former law that the obligor make an assignment to the obligee.

**Note:** Other provisions, including those in the Code of Civil Procedure, will need to be revised to reflect the concept that the assignment order itself operates to require the

**employer to withhold earnings for support without the need for the obligor to make an assignment to the obligee.**

#### **Article 4. Stay of Service of Assignment Order**

§ 5260. Finding of good cause required to stay order

§ 5261. Termination of stay

#### **§ 5260. Finding of good cause required to stay order**

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause to stay service of the order.

(b) Good cause to stay service of the assignment order is limited to any of the following:

(1) The obligor has a history of uninterrupted, full, and timely payment of previously ordered support during the preceding 12 months. If the obligor has not been subject to an order of support for 12 months prior to the issuance of the assignment order, the obligor may qualify for good cause under this paragraph if the obligor posts with the clerk of the court a cash bond or cash in an amount equal to three months' support. The court may not find good cause to stay service of the assignment order under this paragraph if the obligor owes an arrearage for prior support.

(2) The obligor proves and the court finds, by clear and convincing evidence, that service of the assignment order would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that the stay ordered under this paragraph will automatically terminate.

(3) The parties sign a written agreement which provides for an alternative arrangement to ensure payment of the support obligation as ordered other than through the immediate service of an assignment order. The written agreement may include an agreement relating to the staying of the service of an assignment order. In a case where support is ordered to be paid through a county officer designated for that purpose, an agreement between the parties which includes the staying of the service of an assignment order shall include the agreement of the district attorney. The signing of an agreement pursuant to this paragraph does not preclude the party from seeking an assignment order in accordance with the procedures set forth in Section 5261 upon violation of the agreement.

(4) The employer or district attorney has been unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or district attorney of a change of address.

**Comment.** Section 5260 continues subdivision (c) of former Civil Code Section 4390.3 (as amended by 1990 Cal. Stat. ch. 411 § 2) without substantive change.

#### **§ 5261. Termination of stay**

5261. (a) If service of the assignment order has been ordered stayed, the stay shall terminate pursuant to subdivision (b) upon the obligor's failure to make timely support payments or earlier by court order if requested by the district attorney or by the obligor.

The stay shall terminate earlier by court order if requested by any other obligee who can establish that good cause, as defined in Section 5260, no longer exists.

(b) To terminate a stay of the service of the assignment order, the obligee shall file a declaration signed under penalty of perjury by the obligee that the obligor is in arrears in payment of any portion of the support. At the time of filing the declaration, the stay shall terminate by operation of law without notice to the obligor.

(c) In addition to any other penalty provided by law, the filing of a declaration under subdivision (b) with knowledge of the falsity of its contents is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

**Comment.** Section 5261 continues former Civil Code Section 4390.4 without substantive change.

### **Article 5. Motion to Quash Assignment Order**

§ 5270. Grounds for motion to quash

§ 5271. Filing motion and notice of motion to quash; setting for hearing; service on obligor

§ 5272. Modification of order to reflect correct or allowable amount

#### **§ 5270. Grounds for motion to quash**

5270. (a) An obligor may move to quash an assignment order on any of the following grounds:

(1) The assignment order does not correctly state the amount of current or overdue support ordered by the courts.

(2) The alleged obligor is not the obligor from whom support is due.

(3) The amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code.

(b) If an assignment order is sought under Article 3 (commencing with Section 5250), the party ordered to pay support may also move to quash the service of the order based upon Section 5260.

(c) The obligor shall state under oath the ground on which the motion to quash is made.

(d) If an assignment order which has been issued and served on a prior employer is served on the obligor's new employer, the obligor does not have the right to move to quash the assignment order on any grounds which the obligor previously raised when the assignment order was served on the prior employer or on any grounds which the obligor could have raised when the assignment order was served on the prior employer but failed to raise.

**Comment.** Section 5270 continues subdivisions (a), (b) and (c) of former Civil Code Section 4390.9 (as amended by 1990 Cal. Stat. ch. 411 § 3) without substantive change. The reference to the time for making the motion which appeared in subdivision (a) of former Civil Code Section 4390.9 has been omitted as unnecessary, because this provision duplicated a provision of former Civil Code Section 4390.11, now Family Code Section 5271.

**§ 5271. Filing motion and notice of motion to quash; setting for hearing; service on obligor**

5271. (a) The motion and notice of motion to quash the assignment order shall be filed with the court issuing the order within 10 days after delivery of the copy of the assignment order to the obligor by the employer.

(b) The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion.

(c) The obligor shall serve personally or by first-class mail, postage prepaid, a copy of the motion and notice of motion on the obligee named in the assignment order no less than 10 days prior to the date of the hearing.

**Comment.** Section 5271 continues former Civil Code Section 4390.11 without substantive change. In subdivision (a), the phrase "service on the obligor of notice of the order" which was used in the former provision has been replaced by "delivery of the copy of the assignment order to the obligor." This revision makes subdivision (a) consistent with Section 5234 (delivery of copy of assignment order to obligor).

**§ 5272. Modification of order to reflect correct or allowable amount**

5272. A finding of error in the amount of the current support or arrearage or that the amount exceeds federal or state limits is not grounds to vacate the assignment order. The court shall modify the order to reflect the correct or allowable amount of support or arrearages. The fact that the obligor may have subsequently paid the arrearages does not relieve the court of its duty to enter the assignment order.

**Comment.** Section 5272 continues subdivision (d) of former Civil Code Section 4390.9 (as amended by 1990 Cal. Stat. ch. 411 § 3) without substantive change.

**Article 6. Information Concerning Address and Employment of Obligor**

§ 5280. Use of California parent locator service

§ 5281. Obligor to inform obligee of change of employment

§ 5282. Employer to notify obligee when obligor leaves employment

§ 5283. Employer to provide information to district attorney

**§ 5280. Use of California parent locator service**

5280. If the obligee making the application under this chapter also states that the whereabouts of the obligor or the identity of the obligor's employer is unknown to the party to whom support has been ordered to be paid, the district attorney shall do both of the following:

(a) Contact the California parent locator service maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code.

(b) Upon receiving the requested information, notify the court of the last known address of the obligor and the name and address of the obligor's last known employer.

**Comment.** Section 5280 continues former Civil Code Section 4390.6 without substantive change.

**§ 5281. Obligor to inform obligee of change of employment**

5281. An assignment order required or authorized by this chapter shall include a requirement that the obligor notify the obligee of any change of employment and of the name and address of the obligor's new employer within 10 days of obtaining new employment.

**Comment.** Section 5281 continues subdivision (a) of former Civil Code Section 4390.7 without substantive change.

**§ 5282. Employer to notify obligee when obligor leaves employment**

5282. After the obligor has left employment with the employer, the employer, at the time the next payment is due on the assignment order, shall notify the obligee designated in the assignment order that the obligor has left employment by first-class mail, postage prepaid, to the last known address of the obligee.

**Comment.** Section 5282 continues subdivision (b) of former Civil Code Section 4390.7 without substantive change. The phrase "designated in the assignment order" has been added to make clear that the notice is to be given to the district attorney or other person designated in the order to receive the payment. See also Section 5214 ("obligee" defined).

**§ 5283. Employer to provide information to district attorney**

5283. The employer shall cooperate with and provide relevant employment and income information to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. The employer shall incur no liability for providing this information to the district attorney.

**Comment.** Section 5283 continues subdivision (a) of former Civil Code Section 4390.16 without substantive change.

**Article 7. Prohibited Practices**

**§ 5290. Assignment not grounds for refusal to hire, discharge, or disciplinary action**

**§ 5290. Assignment not grounds for refusal to hire, discharge, or disciplinary action**

5290. No employer shall use an assignment order authorized by this chapter as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

**Comment.** Section 5290 continues former Civil Code Section 4390.17 without substantive change. See also Section 5241 (penalty for employer failing to comply with order).

**Note:** Is a separate action necessary to collect the civil penalty provided for in Section 5290 or may the penalty be collected in a contempt proceeding under Section 5241?

**Article 8. Judicial Council Forms**

§ 5295. Forms to implement statute

**§ 5295. Forms to implement statute**

5295. The Judicial Council shall prescribe forms necessary to carry out the requirements of this chapter, including the following:

- (a) The written statement of the obligor's rights.
- (b) The earnings assignment order for support.
- (c) The instruction guide for obligees and obligors.
- (d) The application forms required under Sections 5230, 5252, and 5261.
- (e) The notice form required under Section 5252.
- (f) Revised judgment and assignment order forms as necessary.

**Comment.** Section 5295 continues former Civil Code Section 4390.15 without substantive change.

**CHAPTER 7. CRIMINAL PENALTIES FOR NONSUPPORT**

**Note:** The Penal Code contains extensive provisions dealing with the use of criminal penalties to enforce support obligations. The staff draft retains these provisions unchanged in the Penal Code where they are now found. Comments from interested persons are sought concerning whether these Penal Code provisions should be compiled in the Family Code.

**DIVISION 12. PREVENTION OF DOMESTIC VIOLENCE**

- Part 1. Definitions
- Part 2. General Provisions
- Part 3. Temporary Restraining Orders
- Part 4. Emergency Protective Orders
- Part 5. Orders Issuable After Notice and Hearing
- Part 6. Registration and Enforcement of Orders

**PART 1. DEFINITIONS**

- § 5500. Application of definitions
- § 5505. "Protective order"

**§ 5500. Application of definitions**

5500. The definitions in this part govern the construction of this division.

**Comment.** Section 5500 continues the introductory clause of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change. For additional definitions of words and phrases used in this division, see, e.g., Sections 55 ("abuse"), 60 ("cohabitant; former cohabitant"), 70 ("domestic violence"); 90 ("family or household member").

**§ 5505. "Protective order"**

5505. "Protective order" means an order issued by the court to the restrained party not to do any of the following: (1) contact, (2) molest, (3) attack, (4) strike, (5) threaten, (6) sexually assault, (7) batter, (8) telephone, or (9) disturb the peace of the person described in Section 70.

**Comment.** Section 5505 continues subdivision (d) of former Code of Civil Procedure Section 542 (as amended by 1990 Cal. Stat. ch. 752 § 2) without substantive change.

**Note:** The "person described in Section 70" has been substituted for "person described in this part" in Section 5505? Should "person protected by the order" be substituted for "person described in Section 70"?

**PART 2. GENERAL PROVISIONS**

- § 5510. Short title
- § 5511. Purposes of this division
- § 5512. Fees
- § 5513. Order limiting visitation to situations in which third person is present
- § 5514. Requirement for mutual restraining order
- § 5515. Required statement and notice on order
- § 5516. Explicit statement of address not required
- § 5517. Remedies in addition to other remedies
- § 5518. Support person for victim of domestic violence
- § 5519. Judicial Council forms and instructions

**§ 5510. Short title**

5510. This division may be cited as the Domestic Violence Prevention Law.

**Comment.** Section 5510 continues former Code of Civil Procedure Section 541 with the substitution of "Law" for "Act."

### § 5511. Purposes of this division

5511. The purposes of this division are to prevent the recurrence of acts of violence and sexual abuse against a spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a child or has had a dating or engagement relationship, and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.

**Comment.** Section 5511 continues former Code of Civil Procedure Section 540 (as amended by 1990 Cal. Stat. ch. 752 § 1) without substantive change. See also Sections 55 ("abuse" defined), 57 ("affinity" defined), 60 ("cohabitant" and "former cohabitant" defined), 70 ("domestic violence" defined).

### § 5512. Fees

5512. (a) There is no filing fee for a petition or response relating to a protective order, restraining order, or a permanent injunction restraining violence or threats of violence in an action brought pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order obtained under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceedings in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner shall not be subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 5519.

(d) In conjunction with a hearing pursuant to this division, the court may issue an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order obtained under this section.

**Comment.** Section 5512 continues former Code of Civil Procedure Section 546.5 (as amended by 1990 Cal. Stat. ch. 752 § 4) without substantive change.

**Note:** Should "in a proceeding under this division" be substituted in subdivision (a) of Section 5512 for "in an action brought pursuant to this division"?

Should "order obtained under this division" be substituted for "order obtained under this section" in subdivisions (b) and (d) of Section 5512?

**§ 5513. Order limiting visitation to situations in which third person is present**

5513. In making an award of temporary custody of a child pursuant to this division, if an order described in paragraph (1), (2), or (3) of subdivision (a) of Section 5550 has been directed to a parent of the child, the court shall consider whether the best interest of the child require that the visitation granted to that parent with respect to the child shall be limited to situations in which a third person, specified by the court, is present. A parent may submit to the court the name of a person that the parent considers suitable to be present during visitation. The determination of the best interest of the child pursuant to this section shall include the considerations specified in Section 3022. The court shall also consider in its deliberations the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order.

**Comment.** Section 5513 continues former Code of Civil Procedure Section 547.5 without substantive change.

**§ 5514. Requirement for mutual restraining order**

5514. A mutual restraining order enjoining the parties from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court upon a showing of good cause, other named persons described in subdivision (a) of Section 70, may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence.

**Comment.** Section 5514 continues former Code of Civil Procedure Section 545.5 (as added by 1990 Cal. Stat. ch. 935 § 4) without substantive change. The word "telephoning" has been added to conform to Section 5505. The reference to "other named persons described in subdivision (a) of Section 70" has been substituted for "other named family and household members" to conform to the revision of former Code of Civil Procedure Section 542 by 1990 Cal. Stat. ch. 752 § 2, which eliminated the use of the phrase "family and household members" in the former Domestic Violence Prevention Act and replaced it with the listing of the persons described in subdivision (a) of Section 70. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 1801, 1901.

**§ 5515. Required statement and notice in order**

5515. An order issued pursuant to this division shall state on its face the date of expiration of the order and a notice in substantially the following form:

"NOTICE: These orders shall be enforced by all law enforcement officers in the State of California."

**Comment.** Section 5515 continues former Code of Civil Procedure Section 552 without substantive change.

**Note:** Should the information required by Section 1902 be included in an order issued pursuant to this division? Should Section 5515 be limited to a "protective" order? See Section 5505 ("protective order" defined).

**§ 5516. Explicit statement of address not required**

5516. The petition, the temporary order, and the order after the hearing is valid and enforceable without explicitly stating the address of the applicant or the applicant's place of residence, school, employment, the place where the applicant's child is provided child care services, or the child's school.

**Comment.** Section 5516 continues the last sentence of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without change.

**§ 5517. Remedies in addition to other remedies**

5517. The remedies provided in this division are in addition to any other remedies, either civil or criminal, which may be available to the petitioner.

**Comment.** Section 5517 continues former Code of Civil Procedure Section 549 without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752.

**§ 5518. Support person for victim of domestic violence**

5518. (a) It is the function of a support person to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence in the proceedings specified in this section.

(b) The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other person must be present in close proximity. The support person is not present as a legal advisor and shall not give legal advice.

(c) A support person may accompany either party to any proceeding to obtain a domestic violence prevention order. Where the party is not represented by an attorney, the support person may sit with the party at the table that is generally reserved for the party and his or her attorney.

(d) Notwithstanding any other provision of law to the contrary, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the domestic violence prevention order during a mediation session held pursuant to an action or proceeding under this code. The agency charged with providing family court services shall advise the party protected by the order of the right to have a support person during mediation. A mediator may exclude a support person from a mediation session if the support person participates in the mediation session, acts as an advocate, or the presence of a particular support person is disruptive or disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the mediation, and the support person is bound by the confidentiality of the mediation.

(e) A support person may accompany a party in a proceeding subject to this section in court where there are allegations or threats of domestic violence and, where the

party is not represented by an attorney, may set with the party at the table that is generally reserved for the party and his or her attorney.

(f) Nothing in this section precludes a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the party protected by the order.

**Comment.** Section 5518 continues former Civil Code Section 4351.6 (added by 1990 Cal. Stat. ch. 994 § 1) with the changes noted below. See also Section 70 ("domestic violence" defined).

Section 5518 applies in any case where a domestic violence prevention order has been issued. See Section 75 (defining "domestic violence prevention order"). Former Section 4351.6 included a listing of statutory provisions that may have been less inclusive than those listed in Section 75.

Under subdivision (d) of Section 5518, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the order during a mediation session held pursuant to an action or proceeding under this code. The former Civil Code section applied only to a mediation session held pursuant to an action or proceeding under the Family Law Act.

Subdivision (e) of former Section 4351.6 has been omitted from Section 5518 because that subdivision merely duplicated a provision which is continued in subdivision (b) of Section 5518.

Insofar as former Section 4351.6 applied to Section 527.6 of the Code of Civil Procedure, the substance of the former section is continued in substance in new subdivision (f) of Section 527.6.

**Note:** Subdivision (e) of Section 5518 authorizes a support person to accompany a party "in a proceeding subject to this section." Should "in any proceeding under this code" be substituted for this phrase? Does this provision apply only to a proceeding to obtain a domestic violence protective order?

**Note:** Is there a need for the second sentence of subdivision (b) of Section 5518 in view of subdivision (e) of Section 5518?

### § 5519. Judicial Council forms and instructions

5519. The Judicial Council shall prescribe the form of the orders and any other documents required by this division and shall promulgate instructions for applications for orders under this division.

**Comment.** Section 5519 continues without substantive change former Code of Civil Procedure Section 543 and provisions of subdivisions (b) and (c) of Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) that required the Judicial Council to prescribe forms.

**Note:** Is Section 5519 necessary in view of Section 210 (general provision that Judicial Council may provide by rule for the practice and procedure under the Family Law Act (which should be expanded to cover entire Family Code)? Note that Section 5519 is mandatory ("shall prescribe")? Also compare language of Section 5519 with the language used in a comparable provision (Section 1908). Note that Section 5519 is referred to in Section 5512(c)(2).

### PART 3. TEMPORARY RESTRAINING ORDERS

Chapter 1. General Provisions

Chapter 2. Orders Issuable Ex Parte

#### CHAPTER 1. GENERAL PROVISIONS

§ 5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse

§ 5531. Persons who may be granted temporary restraining order

**§ 5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse**

5530. A temporary restraining order may be granted pursuant to this division with or without notice to restrain any person upon an affidavit which, to the satisfaction of the court, shows reasonable proof of a past act or acts of abuse for the purpose of preventing a recurrence of domestic violence and assuring a period of separation of the persons involved. The order may be granted in the manner provided in Sections 240 to 244, inclusive.

**Comment.** Section 5530 continues the first and fourth sentences of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without substantive change. For general provisions relating to the granting of a temporary restraining order, see Sections 240-244. See also Sections 70 ("domestic violence" defined), 55 ("abuse" defined).

If the temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of the order. The court may on motion of the party who obtained the order or upon its own motion shorten the time for service on the opposing party. See Section 242. As to the reissuing of a temporary restraining order that has been dissolved by the court for failure to serve the opposing party on time, see Section 245.

**§ 5531. Persons who may be granted temporary restraining order**

5531. (a) A temporary restraining order may be granted pursuant to this division to any person described in Section 70.

(b) The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for legal separation, nullity of marriage, or dissolution of marriage has not been filed.

**Comment.** Section 5531 continues the second and third sentences of former Code of Civil Procedure Section 545 (as amended by 1990 Cal. Stat. ch. 752 § 3) without substantive change. See also Section 55 ("abuse" defined).

#### CHAPTER 2. ORDERS ISSUABLE EX PARTE

§ 5550. Types of orders that may be issued ex parte

§ 5551. Requirement for issuance of order excluding party from residence or dwelling

**§ 5550. Types of orders that may be issued ex parte**

5550. (a) Subject to subdivision (b), upon application, the court may, in the manner provided in Part 4 (commencing with Section 240) of Division 2, issue ex parte orders under this division doing any one or more of the following:

(1) Enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court, upon a showing of good cause, other named family and household members.

(2) Excluding one party from the family dwelling or from the dwelling of the other for the period of time and upon the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling, upon a showing, as provided in Section 753, of both of the following:

(A) The party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or a minor child of the parties or of the other party.

(B) Physical or emotional harm would otherwise result to the other party or a person under the care, custody, or control of the other party, or to a minor child of the parties or of the other party.

(3) Enjoining a party from specified behavior which the court determines is necessary to effectuate orders under paragraphs (1) or (2).

(4) Determining the temporary custody of any minor children of the marriage, and the right of a party to visit the minor children upon such conditions as the court may determine.

(5) Determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the pendency of the order.

(b) In the case of a nonmarital relationship between the petitioner and the respondent, the court may issue ex parte any of the orders set forth in paragraphs (1), (2), and (3) of subdivision (a), and where there is a minor child of the petitioner and the respondent an order determining the temporary custody of the child.

**Comment.** Section 5550 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) with the changes noted below. For general provisions relating to temporary restraining orders, see Sections 240-244. As to when notice to the other party is required, see Code Civ. Proc. § 527. See also Section 90 ("family or household member" defined).

Section 5550 sets out in detail the orders that were incorporated by the reference in former Section 546 to the orders set forth in "subdivision (a) of Section 4359 of the Civil Code" except that Section 5550 omits the order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 (order "restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party,

requiring him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures"). The order set forth in paragraph (1) of the first paragraph of subdivision (a) of former Civil Code Section 4359 has been omitted because the order does not relate to abuse or domestic violence. See Sections 55 ("abuse" defined), 70 ("domestic violence" defined).

After notice and hearing, an order described in paragraph (2) of subdivision (a) of Section 5550 may be obtained upon a lesser showing that is required by that paragraph. See Section 5751 (requirement for issuance of order, after notice and hearing, excluding party from dwelling).

Section 5550 adds a specific reference to "telephoning" in subdivision (a)(1) to conform to Section 5505. The terms "petitioner" and "respondent" are used in Section 5550 to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752.

**Note:** Should the language in the introductory portion of subdivision (a)(2) "as provided in Section 753" be omitted as unnecessary?

### **§ 5551. Requirement for issuance of order excluding party from residence or dwelling**

5551. The court may issue an ex parte order pursuant to Section 5550 excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the petitioner has a right under color of law to possession of the premises or that the order is one authorized under subdivision (b) of Section 753.

**Comment.** Section 5551 continues the fifth sentence of subdivision (a) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. The reference to Section 753(b) has been added. See Section 753(b) (order in marriage dissolution or nullity proceeding for temporary exclusion of either party from family dwelling or from dwelling of the other party).

## **PART 4. EMERGENCY PROTECTIVE ORDERS**

Chapter 1. General Provisions

Chapter 2. Emergency Protective Order Where Danger of Domestic Violence

Chapter 3. Emergency Protective Order Where Child in Danger of Abuse

### **CHAPTER 1. GENERAL PROVISIONS**

§ 5600. Application of provisions of this chapter

§ 5601. Designation of judge or court officer to orally issue ex parte emergency protective order when court is not in session

§ 5602. Reducing order to writing and signing order

§ 5603. Expiration of order

§ 5604. Officer to carry copies of order

§ 5605. Service, filing, and delivery of copy of order

§ 5606. Enforcement of order

**§ 5600. Application of provisions of this chapter**

5600. Except to the extent otherwise provided, the provisions of this chapter apply to emergency protective orders issued under this part.

**Comment.** Section 5600 is a new provision that is included for drafting convenience. See also Section 5505 (defining "protective order").

**§ 5601. Designation of judge or court officer to orally issue ex parte emergency protective order when court is not in session**

5601. The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session.

**Comment.** Section 5601 continues the first sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without change.

**§ 5602. Reducing order to writing and signing order**

5602. The officer requesting the emergency protective order shall reduce it to writing and shall sign the order.

**Comment.** Section 5602 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

**§ 5603. Expiration of order**

5603. An emergency protective order expires not later than the close of judicial business on the second day of judicial business following the day of its issue.

**Comment.** Section 5603 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

**§ 5604. Officer to carry copies of order**

5604. The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

**Comment.** Section 5604 continues provisions of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

**§ 5605. Service, filing, and delivery of copy of order**

5605. (a) The officer who requested the emergency protective order shall do both of the following:

(1) Serve the order upon the restrained party if the restrained party can reasonably be located.

(2) File a copy of the order with the court as soon as practicable after issuance.

(b) If the emergency protective order is issued under Chapter 2 (commencing with Section 5650), the officer who requested the order shall give a copy of the order to the protected party.

(c) If the emergency protective order is issued under Chapter 3 (commencing with Section 5700), the officer who requested the order shall give a copy of the order to a parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to a person having temporary custody of the endangered child.

**Comment.** Subdivision (a) of Section 5605 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546. Subdivision (c) continues the substance of a requirement of subdivision (c) of former Code of Civil Procedure Section 546.

### § 5606. Enforcement of order

5606. (a) A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to Chapter 2 (commencing with Section 5650) or Chapter 3 (commencing with Section 5700).

(b) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to Chapter 2 (commencing with Section 5650).

(c) An officer acting in good faith to enforce an emergency protective order under this section is not civilly or criminally liable.

**Comment.** Subdivision (a) of Section 5606 continues the substance of a requirement of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5). Subdivision (b) continues the substance of a requirement of subdivision (b) of former Code of Civil Procedure Section 546. Subdivision (c) continues the substance of a provision of subdivision (b) and subdivision (c) of former Code of Civil Procedure Section 546.

## CHAPTER 2. EMERGENCY PROTECTIVE ORDER WHERE DANGER OF DOMESTIC VIOLENCE

§ 5650. Issuance of ex parte emergency protective order where danger of domestic violence

§ 5651. Finding required to issue order

§ 5652. Contents of order

### § 5650. Issuance of ex parte emergency protective order where danger of domestic violence

5650. (a) A judge, commissioner, or referee designated pursuant to Section 5601 may issue an ex parte emergency protective order under this chapter when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation, as

defined in subdivision (g) of Section 830.2 of the Penal Code, asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence, based upon the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) The order issued under this chapter may consist of any of the orders set forth in paragraphs (1), (2), and (3) of subdivision (a) of Section 5550, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought.

(c) An order under this chapter shall be issued without prejudice to any party.

**Comment.** Section 5650 continues the second, third, and fourth sentences of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. The language of former Section 546 has been revised to omit the reference to "family or household member," since the former definition of "family or household member" was deleted by the 1990 amendment to former Code of Civil Procedure Section 542 (amended by 1990 Cal. Stat. ch. 752 § 2). See Sections 55 ("abuse" defined), 70 ("domestic violence" defined), 5505 ("protective order" defined).

#### § 5651. Finding required to issue order

5651. An order may be issued under this chapter only upon a finding by the judge, commissioner, or referee that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The availability of an order under this chapter is not affected by the fact that the endangered person has vacated the household to avoid abuse.

**Comment.** The first sentence of Section 5651 continues the fifth sentence of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. The second sentence continues a provision of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. See also Sections 70 ("domestic violence" defined), 5505 ("protective order" defined).

#### § 5652. Contents of order

5652. (a) An order issued under this chapter shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement, which shall be printed in English and Spanish: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney

should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

(b) The temporary restraining order shall set forth on its face a notice in substantially the following form:

"NOTICE TO RESTRAINED PARTY: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

**Comment.** Section 5652 continues the fourth sentence of subdivision (a) and portions of subdivision (b) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. "Restrained party" has been substituted for "defendant."

### **CHAPTER 3. EMERGENCY PROTECTIVE ORDER WHERE CHILD IN DANGER OF ABUSE**

§ 5700. Issuance of ex parte order where child in danger of abuse

§ 5701. Finding required to issue order

§ 5702. Contents of order

§ 5703. Application for more permanent restraining order

#### **§ 5700. Issuance of ex parte order where child in danger of abuse**

5700. (a) A judge, commissioner, or referee designated pursuant to Section 5601 may issue an ex parte emergency protective order under this chapter when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat of abuse by that family or household member.

(b) The order issued under this chapter may consist of any of the orders authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party.

(c) An order under this chapter shall be issued without prejudice to any party.

**Comment.** Subdivision (a) of Section 5700 continues the first sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. Subdivision (b) continues the second sentence of the first paragraph of subdivision (c) of former Section 546 without substantive change. Subdivision (c) continues the last sentence of the first paragraph of subdivision (c) of former Section 546 without substantive change. See also Sections 55 ("abuse" defined), 90 ("family or household member" defined).

**Note:** Is the new definition of "family or household member" in Section 90 adequate? Should the new definition be retained or should family or household member as used in subdivision (a) Section 5700 be undefined? See the Note to Section 90. Note that the term "family or household" used in subdivision (b) of Section 5700 is undefined.

### § 5701. Finding required to issue order

5701. An order may be issued under this chapter only upon a finding by the judge, commissioner, or referee that reasonable grounds have been asserted to believe that a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. The availability of an order under this chapter is not affected by the endangered child's leaving the household to avoid abuse.

**Comment.** Section 5701 continues the first sentence of the second paragraph and the second to last paragraph of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change. See also Section 55 ("abuse" defined).

**Note:** Note that the word "household" used in Section 5701 is not defined.

### § 5702. Contents of order

5702. An order issued under this chapter shall include all of the following:

- (a) A statement of the grounds asserted for the order.
- (b) The date and time the order expires.
- (c) The address of the superior court for the district or county in which the endangered child resides.
- (d) The following statement, which shall be printed in English and Spanish: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the application for a more permanent restraining order."

**Comment.** Section 5702 continues portions of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

### § 5703. Application for more permanent restraining order

5703. The parent or legal guardian of the endangered child who is not a restrained party, or a person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

**Comment.** Section 5703 continues a portion of subdivision (c) of former Code of Civil Procedure Section 546 (as amended by 1990 Cal. Stat. ch. 935 § 5) without substantive change.

**PART 5. ORDERS ISSUABLE AFTER NOTICE AND HEARING**

- § 5750. Order issuable under Section 5550
- § 5751. Order excluding party from dwelling
- § 5752. Order that presumed natural father pay child support
- § 5753. Order for restitution for loss of earnings and out-of-pocket expenses
- § 5754. Order to participate in counseling
- § 5755. Order for payment of attorney's fees and costs
- § 5756. Duration of restraining order granted after notice and hearing

**§ 5750. Order issuable under Section 5550**

5750. (a) Subject to subdivision (b), the court may issue, after notice and a hearing, any of the orders set forth in subdivision (a) of Section 5550.

(b) In the case of a nonmarital relationship between the petitioner and the respondent, the court may issue, after notice and a hearing, any of the orders set forth in paragraphs (1), (2), (3) and (5) of subdivision (a) of Section 5550 and where there is a minor child of the petitioner and the respondent an order determining the temporary custody of the child.

**Comment.** Section 5750 continues the first sentence of subdivision (a)(1) and the first sentence of subdivision (a)(2) of former Code of Civil Procedure 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change except that subdivision (a) of Section 5750 makes clear that the court may issue, after notice and a hearing, an order set forth in paragraph (3) of subdivision (a) of Section 5550. See also Section 5751 (required finding for issuance, after notice and a hearing, of an order excluding one party from dwelling).

**§ 5751. Order excluding party from dwelling**

5751. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the other party on a finding only that physical or emotional harm would otherwise result to the other party or a person under the care, custody, or control of the other party or to a minor child of the parties or of the other party.

**Comment.** Section 5751 continues the second sentence of subdivision (a)(1) and the second sentence of subdivision (a)(2) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. If an order excluding a party from the dwelling is issued ex parte, an additional finding is required. See Section 5550(a)(2)(A).

**§ 5752. Order that presumed natural father pay child support**

5752. (a) Where there exists a presumption that the respondent is the natural father of a minor child, pursuant to Section 1711, and the child is in the custody of the petitioner, the court, after notice and a hearing, may order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to Part 1 (commencing with Section 1700) of Division 5.

(b) An order made pursuant to this section shall be without prejudice in an action brought pursuant to Part 1 (commencing with Section 1700) of Division 5.

**Comment.** Section 5752 continues subdivision (b) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. "Petitioner" has been substituted for "plaintiff" to conform to the revisions of the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752.

#### § 5753. Order for restitution for loss of earnings and out-of-pocket expenses

5753. The court may issue, after notice and a hearing, any of the following orders:

(a) An order that restitution be paid to the family or household member for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained therefrom.

(b) An order that restitution be paid by petitioner for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order.

(c) An order requiring that the respondent shall pay any public or private agency for the reasonable cost of providing services to a family or household member required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained therefrom.

**Comment.** Section 5753 continues subdivision (c) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752. See also Sections 55 ("abuse" defined), 90 ("family or household member" defined).

#### § 5754. Order to participate in counseling

5754. (a) Subject to subdivision (d), the court may issue, after notice and a hearing, an order requiring any party to participate in counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous instances of domestic violence. The court may also order a restrained party to participate in batterer's treatment counseling.

(b) Where there has been a history of domestic violence between the parties and a protective order is in effect, at the request of the party protected by the order, the parties shall participate in counseling separately and at separate times.

(c) The court shall fix the costs and shall order the entire cost of the services to be borne by the parties in the proportion as the court deems reasonable.

(d) Prior to issuing the court order requiring counseling, the court shall find that the financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

**Comment.** Section 5754 continues subdivision (d) of former Code of Civil Procedure Section 547 with the revisions that were made by the amendment of Section 547 made by 1990 Cal. Stat. ch. 752 § 5. The amendment to subdivision (d) of former Section 547 made by 1990 Cal. Stat. ch. 752 § 5, was chaptered out by later enacted 1990 Cal. Stat. ch. 1180 § 1, which did not include the revisions made to subdivision (d) by 1990 Cal. Stat. ch. 752 § 5. The reference in former Section 547 to the statutory provision defining "domestic violence" has been omitted as unnecessary in view of the definition of that term, for the purposes of this division, in Section 70. See also Section 70 ("domestic violence" defined).

#### **§ 5755. Order for payment of attorney's fees and costs**

5755. The court may issue, after notice and a hearing, an order for the payment of attorney's fees and costs of the prevailing party.

**Comment.** Section 5755 continues subdivision (e) of former Code of Civil Procedure Section 547 (as amended by 1990 Cal. Stat. ch. 1180 § 1) without substantive change. See also Sections 270-275 (general provisions for attorney's fees and costs).

#### **§ 5756. Duration of restraining order granted after notice and hearing**

5756. A restraining order granted after notice and a hearing pursuant to this division, in the discretion of the court, shall have a duration of not more than three years, unless otherwise terminated or extended by further order of the court either on written stipulation filed with the court or on the motion of any party.

**Comment.** Section 5756 continues former Code of Civil Procedure Section 548 without substantive change.

### **PART 6. REGISTRATION AND ENFORCEMENT OF ORDERS**

§ 5800. Transmittal to local law enforcement agency

§ 5801. Law enforcement agency to make information concerning order available to law enforcement officers

§ 5802. Service of restraining order against domestic violence by law enforcement officer

§ 5803. When personal service not required

§ 5804. Notice to Department of Justice

§ 5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner's attorney's fees and costs

§ 5806. Clerk to provide party with copies of order

§ 5807. Criminal penalty for violation of order

#### **§ 5800. Transmittal to local law enforcement agency**

5800. The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order, or extension, modification, or termination thereof granted pursuant to this division, by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the petitioner or

the attorney for the petitioner having jurisdiction over the residence of the petitioner and such other locations where the court determines that acts of domestic violence against the petitioner are likely to occur.

**Comment.** Section 5800 continues the first sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. The word "petitioner" is substituted for "plaintiff" to conform to the revisions made to the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 1830 and 1903.

**§ 5801. Law enforcement agency to make information concerning order available to law enforcement officers**

5801. Each appropriate law enforcement agency shall make available to any law enforcement officer responding to the scene of reported domestic violence, through an existing system for verification, information as to the existence, terms, and current status of an order issued pursuant to this division.

**Comment.** Section 5801 continues the second sentence of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. For comparable provisions, see Sections 1831 and 1904. See also Section 70 ("domestic violence" defined).

**§ 5802. Service of restraining order against domestic violence by law enforcement officer**

5802. (a) A restraining order against domestic violence issued pursuant to this division may, upon request of the petitioner, be served upon the respondent by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(b) The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

(c) It shall be a rebuttable presumption that the proof of service was signed on the date of service.

**Comment.** Subdivisions (a) and (b) of Section 5802 continue the third and fourth sentences of subdivision (a) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 1180 § 2) without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made in the Domestic Violence Prevention Act by 1990 Cal. Stat. ch. 752. Subdivision (c) is a new provision that is the same as subdivision (g) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 752 § 6). The addition of subdivision (g) to former Section 550 by 1990 Cal. Stat. ch. 752 was chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180. For comparable provisions, see Sections 1832 and 1906. See also Section 70 ("domestic violence" defined).

**§ 5803. When personal service not required**

5803. (a) If a person named in an order issued pursuant to this division has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of that order from the court, no additional proof of service is required for enforcement of that order.

(b) The judicial forms for temporary orders and orders after hearing shall contain a statement in substantially the following form:

**"NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES ARE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED."**

**Comment.** Section 5803 is a new provision that is the same in substance as subdivisions (e) and (f) of former Code of Civil Procedure Section 550 which were added to Section 550 by 1990 Cal. Stat. ch. 752 § 6. However, these new subdivisions were chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180 § 2. The phrase "order issued pursuant to this division" has been substituted for "order issued pursuant to this section" (used in 1990 Cal. Stat. ch. 752) to make the scope of Section 5803 clear.

**§ 5804. Notice to Department of Justice**

5804. (a) Upon receipt of an order predicated on paragraph (1), (2), or (3) of subdivision (a) of Section 5550 and the subsequent proof of service thereof, the local law enforcement agency having jurisdiction over the residence of the plaintiff shall immediately notify the Department of Justice regarding the name, race, and date of birth of the person who is restrained, the date of the issuance of the order, and the duration of the order or its expiration date.

(b) Failure to provide the Department of Justice with the race and date of birth of the person who is restrained, or to include the race and date of birth of the person who is restrained in the order, does not invalidate the order.

(c) If a modification, extension, or termination of the order described in subdivision (a) is issued, the court shall immediately notify the Department of Justice.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, an employee of a local law enforcement agency or the Department of Justice, acting within the scope of his or her employment, if a person described in subdivision (g) of Section 12021 of the Penal Code unlawfully obtains, receives, purchases, or otherwise acquires a firearm and a person is injured by that firearm or a person who is otherwise entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the notification provided for in this section.

**Comment.** Section 5804 continues subdivisions (b), (c), and (d) of former Code of Civil Procedure Section 550 (as amended by Cal. Stat. 1990 ch. 1180 § 2) without substantive change. Subdivision (a) has been revised to make clear that it applies to an order predicated on paragraph (3) of subdivision (a) of Section 5550. This conforms subdivision (a) of Section 5804 to Sections 5805 and 5807. See also Penal Code § 12021(g) (criminal penalty for person

who acquires firearm knowing that he or she is subject to restraining order against domestic violence).

**Note:** The immunity under subdivision (d) of Section 5804 does not extend to a failure of the local law enforcement agency employee to notify the Department of Justice. Should immunity be provided in this case?

**§ 5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner's attorney's fees and costs**

5805. (a) The court may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of an order issued pursuant to this division in accordance with the terms of paragraph (1), (2) or (3) of subdivision (a) of Section 5550.

(b) In a proceeding in which private counsel was appointed by the court pursuant to subdivision (a), the court may order the respondent to pay reasonable attorney's fees and costs incurred by the petitioner.

**Comment.** Section 5805 continues former Code of Civil Procedure Section 553 without substantive change. "Petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to the revisions made to the Domestic Violence Prevention Act made by 1990 Cal. Stat. ch. 752. See also Sections 270-275 (general provisions for attorney's fees and costs).

**§ 5806. Clerk to provide party with copies of order**

5806. The court shall order the county clerk to provide, without cost, to a party five certified, stamped, and endorsed copies of any order, extension, modification, or termination thereof granted pursuant to this division.

**Comment.** Section 5806 is a new provision that continues subdivision (b) of former Code of Civil Procedure Section 550 (as amended by 1990 Cal. Stat. ch. 752 § 6) without substantive change. However, this new provision was chaptered out by the amendment to Section 550 made by 1990 Cal. Stat. ch. 1180 § 2.

**Note:** Should Section 5806 be added to existing law?

**§ 5807. Criminal penalty for violation of order**

5807. A willful and knowing violation of an order authorized in this division granted in accordance with the terms of paragraph (1), (2) or (3) of subdivision (a) of Section 5550 is a crime punishable under Section 273.6 of the Penal Code.

**Comment.** Section 5807 continues former Code of Civil Procedure Section 551 (as amended by 1990 Cal. Stat. ch. 752 § 7) without substantive change. For comparable provisions, see Sections 1833 and 1907.



DIVISION 13. [RESERVED FOR EXPANSION]

*[Reserved for future use]*

**(§§ 6000 - 6399)**



## DIVISION 14. CONCILIATION PROCEEDINGS

Part 1. Conciliation Court Law

Part 2. Statewide Coordination of Family Mediation and Conciliation Services

### PART 1. CONCILIATION COURT LAW

Chapter 1. General Provisions

Chapter 2. Family Conciliation Courts

Chapter 3. Proceedings for Conciliation

### CHAPTER 1. GENERAL PROVISIONS

§ 6400. Short title

§ 6401. Purposes of part

§ 6402. Applicability of part

#### § 6400. Short title

6400. This part may be cited as the Family Conciliation Court Law.

**Comment.** Section 6400 continues former Code of Civil Procedure Section 1731 without substantive change.

#### § 6401. Purposes of part

6401. The purposes of this part are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

**Comment.** Section 6401 continues former Code of Civil Procedure Section 1730 without substantive change.

#### § 6402. Applicability of part

6402. (a) This part applies only in counties in which the superior court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures provided in this part necessary to the full and proper consideration of those cases and the effectuation of the purposes of this part.

(b) The determination under subdivision (a) shall be made annually in the month of January by:

(1) The judge of the superior court in counties having only one superior court judge.

(2) A majority of the judges of the superior court in counties having more than one superior court judge.

**Comment.** Section 6402 continues former Code of Civil Procedure Section 1733 without substantive change.

### CHAPTER 2. FAMILY CONCILIATION COURTS

§ 6410. Jurisdiction; court to be known as "family conciliation court"

§ 6411. Assignment of judges; number of sessions

§ 6412. Transfer of cases

§ 6413. Substitute judge

§ 6414. Appointment of supervising counselor, secretary, and other assistants

§ 6415. Qualifications of supervising and associate counselors

§ 6416. Continuing instruction programs

§ 6417. Probation officers; duties

§ 6418. Confidentiality of hearings, conferences, and papers

§ 6419. Destruction of records

§ 6420. Agreement between counties for joint family conciliation court services

**§ 6410. Jurisdiction; court to be known as "family conciliation court"**

6410. Each superior court shall exercise the jurisdiction conferred by this part. While sitting in the exercise of this jurisdiction, the court shall be known and referred to as the "family conciliation court."

**Comment.** Section 6410 continues former Code of Civil Procedure Section 1740 without substantive change.

**§ 6411. Assignment of judges; number of sessions**

6411. In counties having more than one judge of the superior court, the presiding judge of the superior court shall annually, in the month of January, designate at least one judge to hear all cases under this part. The judge or judges so designated shall hold as many sessions of the family conciliation court in each week as are necessary for the prompt disposition of the business before the court.

**Comment.** Section 6411 continues former Code of Civil Procedure Section 1741 without substantive change.

**§ 6412. Transfer of cases**

6412. (a) The judge of the family conciliation court may transfer any case before the family conciliation court pursuant to this part to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family conciliation court the transfer is necessary to expedite the business of the family conciliation court or to insure the prompt consideration of the case.

(b) When a case is transferred pursuant to subdivision (a), the judge to whom it is transferred shall act as the judge of the family conciliation court in the matter.

**Comment.** Section 6412 continues former Code of Civil Procedure Section 1742 without substantive change.

**§ 6413. Substitute judge**

6413. (a) The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the family conciliation court to act as judge of the family conciliation court during any period when the judge of the family conciliation court is on vacation, absent, or for any reason unable to perform the duties as judge of the family conciliation court.

(b) The judge appointed under subdivision (a) has all of the powers and authority of a judge of the family conciliation court in cases under this part.

**Comment.** Section 6413 continues former Code of Civil Procedure Section 1743 without substantive change.

**§ 6414. Appointment of supervising counselor, secretary, and other assistants**

6414. (a) In each county in which a family conciliation court is established, the superior court may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions. In counties which have by contract established joint family conciliation court services, the superior courts in contracting counties jointly may make the appointments under this subdivision.

(b) The supervising counselor of conciliation has the power to do all of the following:

(1) Hold conciliation conferences with parties to, and hearings in, proceedings under this part, and make recommendations concerning the proceedings to the judge of the family conciliation court.

(2) Provide such supervision in connection with the exercise of his or her jurisdiction as the judge of the family conciliation court may direct.

(3) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the family conciliation court may direct.

(4) Hold such hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make such investigations as may be required by the court to carry out the intent of this part.

(5) Make recommendations relating to preage marriages.

(6) Make investigations, reports, and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in that code.

(7) Act as domestic relations cases investigator.

(8) Conduct mediation of child custody and visitation disputes.

(c) The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, such associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. The associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

(d) The classification and salaries of persons appointed under this section shall be determined by:

(1) The board of supervisors of the county in which a noncontracting family conciliation court operates.

(2) The board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service.

**Comment.** Section 6414 continues former Code of Civil Procedure Section 1744 without substantive change.

**§ 6415. Qualifications of supervising and associate counselors**

6415. (a) A person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have all of the following minimum qualifications:

(1) A masters degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years' experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community to which clients can be referred for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) This section does not apply to any supervising counselor of conciliation who was in office on March 27, 1980.

**Comment.** Section 6415 continues former Code of Civil Procedure Section 1745 without substantive change. The provision of subdivision (c) of former Section 1745 that provided that the provisions of the section must be met by all counselors of conciliation not later than January 1, 1984, has been omitted as obsolete.

**§ 6416. Continuing instruction programs**

6416. (a) Supervising and associate counselors and mediators described in Section 3155 shall participate in such programs of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to them. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(b) Areas of instruction shall include, but are not limited to, the following:

(1) The effects of domestic violence on children.

(2) The nature and extent of domestic violence.

(3) The social and family dynamics of domestic violence.

- (4) Techniques for identifying and assisting families affected by domestic violence.
  - (5) Interviewing, documentation, and appropriate recommendations for families affected by domestic violence.
  - (6) The legal rights of, and remedies available to, victims.
  - (7) Availability of community and legal domestic violence resources.
- (c) The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence and shall seek to develop a training program that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

**Comment.** Section 6416 continues former Code of Civil Procedure Section 1745.5 without substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined).

**§ 6417. Probation officers; duties**

6417. The probation officer in every county shall do all of the following:

- (a) Give such assistance to the family conciliation court as the court may request to carry out the purposes of this part, and to that end shall, upon request, make investigations and reports as requested.
- (b) In cases pursuant to this part, exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

**Comment.** Section 6417 continues former Code of Civil Procedure Section 1746 without substantive change.

**§ 6418. Confidentiality of hearings, conferences, and papers**

6418. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge, commissioner, or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(b) The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement, and any court order made in the matter may be opened to inspection by a party or the party's counsel upon the written authority of the judge of the family conciliation court.

**Comment.** Section 6418 continues former Code of Civil Procedure Section 1747 without substantive change. The reference to Section 124 of the Code of Civil Procedure which appeared in former Section 1747 has been omitted as unnecessary.

**§ 6419. Destruction of records**

6419. (a) Except as provided in subdivision (b), upon order of the judge of the family conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old.

(b) Records described in subdivision (a) of child custody or visitation mediation may be destroyed when the minor or minors involved are 18 years of age.

(c) In his or her discretion, the judge of the family conciliation court may order the microfilming of any record, paper, or document described in subdivision (a) or (b).

**Comment.** Section 6419 continues former Code of Civil Procedure Section 1748 without substantive change.

**§ 6420. Agreement between counties for joint family conciliation court services**

6420. (a) A county may contract with any other county or counties to provide joint family conciliation court services.

(b) An agreement between two or more counties for the operation of a joint family conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of the joint services, and that the treasurer may make payments from the moneys upon audit of the appropriate auditing officer or body of the county for which he or she is treasurer.

(c) An agreement between two or more counties for the operation of a joint family conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the family conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the family conciliation court including the supervising counselor, but excluding the judges of the family conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For such other matters as are necessary or proper to effectuate the purposes of the Family Conciliation Court Law.

(d) The provisions of this part relating to family conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint family conciliation court services.

**Comment.** Section 6420 continues former Code of Civil Procedure Section 1749 without substantive change.

**CHAPTER 3. PROCEEDINGS FOR CONCILIATION**

§ 6430. Jurisdiction of family conciliation court

§ 6431. Petition; right to file; purpose

- § 6432. Caption of petition
- § 6433. Contents of petition
- § 6434. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction in instances of domestic violence
- § 6435. Fees
- § 6436. Hearing; time; place; notice; citation; witnesses
- § 6437. Time and place of hearings
- § 6438. Informal hearings; aid of specialists or experts
- § 6439. Orders; duration; reconciliation agreement; temporary support
- § 6440. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding
- § 6441. Other pending proceeding involving minor child; transfer to family conciliation court
- § 6442. Transfer where no minor child involved in other proceedings

### § 6430. Jurisdiction of family conciliation court

6430. (a) When a controversy exists between spouses, or when a controversy relating to child custody or visitation exists between parents regardless of their marital status, and the controversy may, unless a reconciliation is achieved, result in dissolution of marriage, legal separation, or a judgment of nullity of the marriage or in the disruption of the household, and there is a minor child of the spouses or parents or of either of them whose welfare might be affected thereby, the family conciliation court has jurisdiction as provided in this part over the controversy and over the parties to the controversy and over all persons having any relation to the controversy.

(b) The family conciliation court also has jurisdiction over the controversy, whether or not there is a minor child of the parties or either of them, where the controversy involves domestic violence.

**Comment.** Section 6430 continues former Code of Civil Procedure Section 1760 without substantive change. The reference to "legal separation" is added to conform to Section 6431. See also Sections 70 ("domestic violence" defined), 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

### § 6431. Petition; right to file; purpose

6431. Prior to the filing of a proceeding for determination of custody or visitation rights, dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, either spouse or parent, or both, may file in the family conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses or parents, so as to avoid further litigation over the issue involved.

**Comment.** Section 6431 continues former Code of Civil Procedure Section 1761 without change. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).



(c) All public officers in each county shall refer to the family conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the family conciliation court.

(d) The jurisdiction of the family conciliation court in respect to controversies arising out of an instance of domestic violence is not exclusive but is coextensive with any other remedies either civil or criminal in nature that may be available.

**Comment.** Section 6434 continues former Code of Civil Procedure Section 1764 without substantive change. See also Section 70 ("domestic violence" defined).

**§ 6435. Fees**

6435. No fee shall be charged by any officer for filing the petition.

**Comment.** Section 6435 continues former Code of Civil Procedure Section 1765 without change.

**§ 6436. Hearing; time; place; notice; citation; witnesses**

6436. (a) The court shall fix a reasonable time and place for hearing on the petition. The court shall cause such notice to be given to the respondents of the filing of the petition and of the time and place of the hearing as the court deems necessary.

(b) The court may, when it deems it necessary, issue a citation to a respondent requiring the respondent to appear at the time and place stated in the citation. The court may require the attendance of witnesses as in other civil cases.

**Comment.** Section 6436 continues former Code of Civil Procedure Section 1766 without substantive change.

**§ 6437. Time and place of hearings**

6437. (a) Except as provided in subdivision (b), for the purpose of conducting hearings pursuant to this part, the family conciliation court may be convened at any time and place within the county, and the hearing may be had in chambers or otherwise.

(b) The time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

**Comment.** Section 6437 continues former Code of Civil Procedure Section 1767 without substantive change.

**§ 6438. Informal hearings; aid of specialists or experts**

6438. (a) The hearing shall be conducted informally as a conference or a series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues in controversy.

(b) To facilitate and promote the purposes of this part, the court may, with the consent of both parties to the proceeding, recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Aid under this subdivision shall not

be at the expense of the court or of the county unless the board of supervisors of the county specifically provides and authorizes the aid.

**Comment.** Section 6438 continues former Code of Civil Procedure Section 1768 without substantive change.

**§ 6439. Orders; duration; reconciliation agreement; temporary support**

6439. (a) At or after the hearing, the court may make such orders in respect to the conduct of the spouses or parents and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses. No such order shall be effective for more than 30 days from the hearing of the petition unless the parties mutually consent to a continuation of the time the order remains effective.

(b) A reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully with the agreement.

(c) During the pendency of a proceeding under this part, the superior court may order the husband or wife, or father or mother, as the case may be, to pay an amount necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the minor children, as the case may be. In determining the amount, the superior court may take into consideration the recommendations of a financial referee if one is available to the court. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. An order made pursuant to this subdivision may be modified or revoked at any time except as to an amount that accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

**Comment.** Section 6439 continues former Code of Civil Procedure Section 1769 without substantive change.

**§ 6440. Stay of right to file other proceeding; effect of pendency of other proceeding on conciliation proceeding**

6440. (a) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file a petition for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage.

(b) After the expiration of the period under subdivision (a), if the controversy between the spouses, or the parents, has not been terminated, either spouse may institute a proceeding for dissolution of marriage, legal separation, or a judgment of nullity of a voidable marriage, or a proceeding to determine custody or visitation of the minor child or children.

(c) The pendency of a proceeding for dissolution of marriage, legal separation, or declaration of nullity, or a proceeding to determine custody or visitation of the minor

child or children, does not operate as a bar to the instituting of proceedings for conciliation under this part.

**Comment.** Section 6440 continues former Code of Civil Procedure Section 1770 without substantive change. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

**§ 6441. Other pending proceeding involving minor child; transfer to family conciliation court**

6441. If a petition for dissolution of marriage, legal separation, or declaration of nullity of a voidable marriage is filed in the superior court, the case may be transferred at any time during the pendency of the proceeding to the family conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with the provisions of this part if both of the following appear to the court:

(a) There is a minor child of the spouses, or of either of them, whose welfare may be adversely affected by the dissolution of the marriage or the disruption of the household or a controversy involving child custody.

(b) There is some reasonable possibility of a reconciliation being effected.

**Comment.** Section 6441 continues former Code of Civil Procedure Section 1771 without substantive change.

**§ 6442. Transfer where no minor child involved in other proceedings**

6442. (a) If an application is made to the family conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested proceeding for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of.

(b) If the court accepts the case under subdivision (a), the court has the same jurisdiction over the controversy and the parties to the controversy and those having a relation to the controversy that it has under this part in similar cases involving the welfare of children.

**Comment.** Section 6442 continues former Code of Civil Procedure Section 1772 without substantive change.

**PART 2. STATEWIDE COORDINATION  
OF FAMILY MEDIATION AND CONCILIATION SERVICES**

§ 6450. Judicial Council duties

§ 6451. Advisory committee

§ 6452. Funds

**§ 6450. Judicial Council duties**

6450. The Judicial Council shall do all of the following:

(a) Assist counties in implementing mediation and conciliation proceedings under this code.

(b) Establish and implement a uniform statistical reporting system relating to actions brought pursuant to the Family Law Act, including, but not limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:

(1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.

(2) The establishment of criteria to insure that a child support order is adequate.

(3) The development of methods to insure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 6452. The training shall include, but not be limited to, the order of preference for custody of minor children set forth in Chapter 2 (commencing with Section 3040) of Part 2 of Division 10 and the meaning of the custody arrangements described in Section 3020 and in Chapter 2 (commencing with Section 3040) and Chapter 4 (commencing with Section 3080) of Part 2 of Division 10.

**Comment.** Section 6450 continues former Civil Code Section 5181 without substantive change except subdivision (a) has been expanded to cover all mediation and conciliation proceedings under this code. See also Sections 3155-3183 (mediation of contested visitation or custody issues), 3190-3192 (counseling of parents and child).

**Note:** Should subdivision (b) of Section 6450 be revised to provide for a uniform statistical reporting system relating to "actions and proceedings brought pursuant to this code"?

**§ 6451. Advisory committee**

6451. The Judicial Council shall establish an advisory committee of persons representing a broad spectrum of interest in and knowledge about family law. The committee shall recommend criteria for determining grant recipients pursuant to subdivision (c) of Section 6450, which shall include proposal evaluation guidelines and procedures for submission of the results to the Legislature, the Governor, and family law courts. In accordance with established criteria, the committee shall receive grant proposals and shall recommend the priority of submitted proposals.

**Comment.** Section 6451 continues former Civil Code Section 5182 without substantive change.

**§ 6452. Funds**

6452. Funds collected by the state pursuant to subdivision (c) of Section 10605 of the Health and Safety Code, subdivision (a) of Section 26832 of the Government Code, and grants, gifts, or devises made to the state from private sources to be used for the purposes of this part shall be deposited into the General Fund and shall only be used for the purposes of this part. No funds other than those so deposited shall be used for those purposes. That money shall be appropriated to the Judicial Council for the support of the programs authorized by this part as provided by the Legislature in the annual Budget Act. The Judicial Council may utilize funds to provide staffing as may be necessary to carry out the purposes of this part. In order to defray the costs of collection of these funds, the local registrar, county clerk, or county recorder may retain a percentage of the funds collected, not to exceed 10 percent of the fee payable to the state pursuant to subdivision (c) of Section 10605 of the Health and Safety Code.

**Comment.** Section 6452 continues former Civil Code Section 5183 without substantive change.



**DIVISION 15. MINORS**

- Part 1. Age of Majority
- Part 2. Rights and Liabilities; Civil Actions and Proceedings
- Part 3. Contracts
- Part 4. Medical Treatment
- Part 5. Enlistment in Armed Forces
- Part 6. Emancipation of Minors Law

**PART 1. AGE OF MAJORITY**

- § 6500. Minor
- § 6501. Adult
- § 6502. Transitional provision

**§ 6500. Minor**

6500. A minor is an individual who is under 18 years of age. The period of minority is calculated from the first minute of the day on which the individual is born to the same minute of the corresponding day completing the period of minority.

**Comment.** The first sentence of Section 6500 continues former Civil Code Section 25 without substantive change. The second sentence continues former Civil Code Section 26 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered over age of majority).

**§ 6501. Adult**

6501. An adult is an individual who is 18 years of age or older.

**Comment.** Section 6501 continues former Civil Code Section 27 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered over age of majority).

**§ 6502. Transitional provision**

6502. (a) The use of or reference to the words "age of majority," "age of minority," "adult," "minor," or words of similar intent in any instrument, order, transfer, or governmental communication whatsoever made in this state:

(1) Before March 4, 1972, makes reference to individuals 21 years of age and older, or younger than 21 years of age.

(2) On or after March 4, 1972, makes reference to individuals 18 years of age and older, or younger than 18 years of age.

(b) Nothing in subdivision (a) or in Chapter 1748 of the Statutes of 1971 prevents amendment of any court order, will, trust, contract, transfer, or instrument to refer to the 18-year-old age of majority if the court order, will, trust, contract, transfer, or instrument satisfies all of the following conditions:

(1) It was in existence on March 4, 1972.

(2) It is subject to amendment by law, and amendment is allowable or not prohibited by its terms.

(3) It is otherwise subject to the laws of this state.

**Comment.** Section 6502 continues former Civil Code Section 25.1 without substantive change. The word "individual" is substituted for "persons." This is not a substantive change.

**Note:** While Section 6502 would appear to have limited useful life (any child born before March 4, 1972, will have attained the age of 21 by March 4, 1993), the section is continued in the new Family Code because the section could affect instruments executed before the change in law that apply to children born after the change in law.

## **PART 2. RIGHTS AND LIABILITIES; CIVIL ACTIONS AND PROCEEDINGS**

§ 6600. Civil liability of minor

§ 6601. Enforcement of minor's rights by civil proceeding

§ 6602. Child conceived but not yet born; action for injuries before or during birth

§ 6603. Minor's attorney's fees

### **§ 6600. Civil liability of minor**

6600. A minor is civilly liable for a wrong done by the minor, but is not liable in exemplary damages unless at the time of the act the minor was capable of knowing that the act was wrongful.

**Comment.** Section 6600 continues without substantive change the portion of former Civil Code Section 41 that related to minors.

### **§ 6601. Enforcement of minor's rights by civil proceeding**

6601. A minor may enforce his or her rights by civil action or other legal proceedings in the same manner as a person of the age of majority, except that a guardian must conduct the proceedings.

**Comment.** Section 6601 continues former Civil Code Section 42 without substantive change. See Code Civ. Proc. § 372 (minor must appear either by a guardian of the estate or by a guardian ad litem). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to sue and be sued in the minor's own name and the capacity to compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. See Section 7050(e)(4), (5). See also Code Civ. Proc. § 373 (appointment of guardian ad litem to represent interest of minor); Family Code § 6602 (action for injuries before or during birth); Labor Code §§ 5307.5, 5408 (appointment of trustee or guardian ad litem to represent minor in workers' compensation proceeding); Prob. Code §§ 1003 (appointment of guardian ad litem to represent interest of minor in proceeding under Probate Code), 2462 (representation by guardian of estate in actions and proceedings), 2500-2507 (compromise of claims, actions, and proceedings by guardian), 3500, 3600-3603 (compromise by parent of minor's disputed claim).

**§ 6602. Child conceived but not yet born; action for injuries before or during birth**

6602. (a) A child conceived, but not yet born, is deemed an existing person, so far as necessary for its interests in the event of its subsequent birth.

(b) An action by or on behalf of a minor for personal injuries sustained before or in the course of its birth must be commenced within six years after the date of birth, and the time the minor is under any disability mentioned in Section 352 of the Code of Civil Procedure shall not be excluded in computing the time limited for the commencement of the action.

**Comment.** Section 6602 continues former Civil Code Section 29 without substantive change.

**Note:** Subdivision (a) of Section 6602 might more appropriately be located as new Section 43.1 in Part 2 of Division 1 of the Civil Code (Personal Rights). Subdivision (b) of Section 6602 might more appropriately be located among the Code of Civil Procedure statutes of limitation.

**§ 6603. Minor's attorney's fees**

6603. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved, on petition by an interested person, by the court in which the litigation is pending or by the court having jurisdiction of the guardianship estate of the minor. If such a contract is not approved and a judgment is recovered by or on behalf of the minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

**Comment.** Section 6603 continues former Probate Code Section 3302 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract, the capacity to sue and be sued in the minor's own name, and the capacity to compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. See Section 7050(e)(2), (4), (5).

**PART 3. CONTRACTS**

Chapter 1. Capacity to Contract

Chapter 2. Disaffirmance of Contracts

Chapter 3. Contracts in Art, Entertainment, and Professional Sports

**CHAPTER 1. CAPACITY TO CONTRACT**

§ 6700 Contractual capacity of minor

§ 6701. Limitation on authority of minor

**§ 6700 Contractual capacity of minor**

6700. Except as provided in Section 6701, a minor may make a contract in the same manner as an adult, subject to the power of disaffirmance under Chapter 2 (commencing with Section 6710), and subject to Part 1 (commencing with Section 300) of Division 3 (validity of marriage).

**Comment.** Section 6700 continues the substance of former Civil Code Section 34, omitting the reference to the title on master and servant (which has been repealed). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

### **§ 6701. Limitation on authority of minor**

6701. A minor cannot do any of the following:

- (a) Give a delegation of power.
- (b) Make a contract relating to real property or any interest therein.
- (c) Make a contract relating to any personal property not in the immediate possession or control of the minor.

**Comment.** Section 6701 continues former Civil Code Section 33 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for the purpose of making contracts and for many other purposes. See Section 7050.

## **CHAPTER 2. DISAFFIRMANCE OF CONTRACTS**

§ 6710. Right of disaffirmance

§ 6711. Contract made under express statutory authority

§ 6712. Contracts for necessities

§ 6713. Protection of good faith purchaser

### **§ 6710. Right of disaffirmance**

6710. Except as otherwise provided by statute, the contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative.

**Comment.** Section 6710 continues the substance of former Section 35 with the substitution of the "except as otherwise provided by statute" for the introductory clause of former Section 35 which referred only to specific sections. For exceptions to the right of disaffirmance, see Sections 6711 (contract made under express statutory authority), 6712 (contracts for necessities), 6713 (protection of good faith purchaser), 6751 (contract in arts, entertainment, or professional sports approved by court), 6921 (consent given by minor to medical or dental care). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

### **§ 6711. Contract made under express statutory authority**

6711. A minor cannot disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute.

**Comment.** Section 6711 continues former Civil Code Section 37 without substantive change.

**§ 6712. Contracts for necessities**

6712. A contract, otherwise valid, entered into during minority, may not be disaffirmed on that ground either during the actual minority of the person entering into the contract, or at any time thereafter, if all of the following requirements are satisfied:

- (a) The contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family.
- (b) These things have been actually furnished to the minor or to the minor's family.
- (c) The contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family.

**Comment.** Section 6712 continues paragraph (1) of subdivision (a) of former Civil Code Section 36 without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**§ 6713. Protection of good faith purchaser**

6713. If, before the contract of a minor is disaffirmed, goods the minor has sold are transferred to another purchaser who bought them in good faith for value and without notice of the transferor's defect of title, the minor cannot recover the goods from an innocent purchaser.

**Comment.** Section 6713 continues former Civil Code Section 35a without substantive change. An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

**Note:** Why only BEFORE disaffirmance? Suppose a bona fide purchaser takes them AFTER disaffirmance—shouldn't the protection be the same? Doesn't Commercial Code Section 2403(1) provide broader protection and make Section 6713 unnecessary? See 1 Witkin § 339, at 315-16 (9th ed. 1987).

### **CHAPTER 3. CONTRACTS IN ART, ENTERTAINMENT, AND PROFESSIONAL SPORTS**

§ 6750. Types of contracts governed by this chapter

§ 6751. Contract not subject to disaffirmance if approved by court

§ 6752. Court order setting aside net earnings for benefit of minor

§ 6753. Modification or termination of order

**§ 6750. Types of contracts governed by this chapter**

6750. This chapter applies to the following contracts:

- (a) A contract pursuant to which a person is employed or agrees to render artistic or creative services. "Artistic or creative services" includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(b) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties (either tangible or intangible) or any rights therein for use in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field.

(c) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a professional sport, including, but not limited to, services as a professional boxer, professional wrestler, or professional jockey.

**Comment.** Section 6750 continues portions of paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 36 without substantive change. The word "contract" is substituted for the phrase "contract or agreement" which was used in former Civil Code Section 36. This is not a substantive change; as used in Section 6750, "contract" includes "agreement." See also Labor Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency).

### **§ 6751. Contract not subject to disaffirmance if approved by court**

6751. (a) A contract, otherwise valid, of a type described in Section 6750, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in the county in which the minor resides or is employed or, if the minor neither resides in nor is employed in this state, by the superior court of the county in which any party to the contract has its principal office in this state for the transaction of business.

(b) Approval of the court may be given on petition of either party to the contract, after such reasonable notice to the other party to the contract as is fixed by the court, with opportunity to such other party to appear and be heard.

(c) Approval of the court under this section, when given, extends to the whole of the contract, and all of its terms and provisions, including, but not limited to, any optional or conditional provisions contained in the contract for extension, prolongation, or termination of the term of the contract.

**Comment.** Subdivision (a) of Section 6751 continues the introductory portion of subdivision (a) and portions of paragraphs (2) and (3) of subdivision (a) of former Civil Code Section 36 without substantive change. Subdivisions (b) and (c) continue subdivision (b) of former Civil Code Section 36 without substantive change. The term "contract" includes "agreement." See also Labor Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency). An emancipated minor (see Section 7002) is considered as being over the age of majority for many purposes, including the capacity of the minor to enter into a binding contract. See Section 7050(e)(2).

### **§ 6752. Court order setting aside net earnings for benefit of minor**

6752. (a) Notwithstanding any other statute, in an order approving a contract of a minor of a type described in Section 6750, the court may require the portion of the net

earnings of the minor, not exceeding one-half thereof, that the court determines is just and proper be set aside and preserved for the benefit of the minor, either in a trust fund or other savings plan approved by the court.

(b) The court may withhold approval of the contract until the parent or parents or guardian, as the case may be, execute and file with the court the written consent of the parent or parents or guardian to the making of the order described in subdivision (a).

(c) For the purposes of this section, "net earnings of the minor" means the total sum received for the services of the minor pursuant to the contract less all of the following:

(1) All sums required by law to be paid as taxes to any government or governmental agency.

(2) Reasonable sums expended for the support, care, maintenance, education, and training of the minor.

(3) Fees and expenses paid in connection with procuring the contract or maintaining the employment of the minor.

(4) Fees of attorneys for services rendered in connection with the contract and other business of the minor.

**Comment.** Section 6752 continues the substance of former Civil Code Section 36.1 without substantive change.

### **§ 6753. Modification or termination of order**

6753. The court has continuing jurisdiction over a trust or other savings plan established pursuant to Section 6752 and may at any time, on good cause shown, order that the trust or other savings plan be amended or terminated, notwithstanding the provisions of the declaration of trust or other savings plan. The order may be made only after such reasonable notice to the beneficiary and to the parent or parents or guardian, if any, as is fixed by the court, with opportunity of all such parties to appear and be heard.

**Comment.** Section 6753 continues former Civil Code Section 36.2 without substantive change.

## **PART 4. MEDICAL TREATMENT**

Chapter 1. Definitions

Chapter 2. Consent by Person Having Care of Minor or by Court

Chapter 3. Consent by Minor

### **CHAPTER 1. DEFINITIONS**

§ 6900. "Dental care"

§ 6901. "Medical care"

§ 6902. "Parent or guardian"

**§ 6900. "Dental care"**

6900. As used in this part, "dental care" means X-ray examination, anesthetic, dental or surgical diagnosis or treatment, and hospital care by a dentist licensed under the provisions of the Dental Practice Act.

**Comment.** Section 6900 is drawn from and supersedes portions of former Civil Code Sections 25.8 and 34.6.

**§ 6901. "Medical care"**

6901. As used in this part, "medical care" means X-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of a physician and surgeon licensed under the provisions of the Medical Practice Act.

**Comment.** Section 6901 is drawn from and supersedes portions of former Civil Code Sections 25.8 and 34.6.

**§ 6902. "Parent or guardian"**

6902. As used in this part, "parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the guardian, of a minor.

**Comment.** Section 6902 is drawn from former Civil Code Section 25.8.

**CHAPTER 2. CONSENT BY PERSON  
HAVING CARE OF MINOR OR BY COURT**

§ 6910. Parent or guardian may authorize care provider to consent

§ 6911. Court consent

**§ 6910. Parent or guardian may authorize care provider to consent**

6910. The parent or guardian of a minor may authorize in writing an adult person into whose care a minor has been entrusted to consent to medical care or dental care, or both, for the minor.

**Comment.** Section 6910, together with Sections 6900, 6901, and 6902, continues the substance of former Civil Code Section 25.8. See also Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). As to the power of a guardian to consent to medical treatment, see Probate Code Section 2353. An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1). See also Health & Safety Code § 1530.6 (foster care licensees authorized to give consent to ordinary medical and dental treatment for child).

**Note:** No statute has been found that expressly gives the parent or guardian of a minor child the authority to consent to health care or dental care for the minor. Various statutes assume that the parent or guardian has this authority. See, e.g., Probate Code § 2353 (guardian has same right as a parent having legal custody of a child to give consent to medical treatment performed upon ward). Nevertheless since the "parent or guardian" (as defined in Section 6902) could delegate authority to give consent pursuant to Section 6910, it necessarily follows that that the parent or guardian could himself or herself also exercise the same authority to make health care decisions for the minor. Accordingly, the staff has not attempted to provide a statutory statement of the authority of a parent to give consent to medical treatment for a minor. We are

concerned that a draft of such a provision might create more problems that it would solve, such as authority of the health care provider to act without consent in an emergency situation.

### § 6911. Court consent

6911. (a) Upon application by a minor, the superior court may summarily grant consent for medical care or dental care or both for the minor if the court determines all of the following:

(1) The minor is 16 years of age or older and resides in this state.

(2) The consent of a parent or guardian is necessary to permit the medical care or dental care or both, and the minor has no parent or guardian available to give the consent.

(b) No fee may be charged for proceedings under this section.

**Comment.** Section 6911 continues the substance of former Probate Code Section 3301 insofar as that section related to consent to medical care and adds language to make clear that the section includes dental care. See Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). Section 6911 does not apply if the minor is under the age of 16 years, but in such a case a temporary guardian may be appointed to give consent to medical care or dental care. See Probate Code §§ 2252(b)(1), 2353. An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**Note:** If a general provision is included in the Family Code giving jurisdiction of all proceedings under the code to the superior court, the word "court" can be substituted for "superior court" in Section 6902. Section 6902 applies only if the minor is 16 years of age or older. Apparently, when the minor is under the age of 16, it is necessary to establish a guardianship if there is no parent authorized to consent to medical care or dental care. See Probate Code § 2252(b)(1) (power of temporary guardian of the person with respect to medical treatment of ward).

## CHAPTER 3. CONSENT BY MINOR

§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian

§ 6921. Minor's consent not subject to disaffirmance

§ 6922. Consent by independent minor over 14

§ 6923. Consent to donation of blood

§ 6924. Consent by minor to mental health treatment or counseling

§ 6925. Consent by minor to pregnancy treatment

§ 6926. Consent by minor to treatment for communicable disease

§ 6927. Consent by rape victim to treatment

§ 6928. Consent by assault victim to treatment

§ 6929. Consent by minor to drug or alcohol treatment

**§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian**

6920. Subject to the limitations provided in this chapter, notwithstanding any other provision of law, a minor may consent to the matters provided in this chapter, and the consent of the minor's parent or guardian is not necessary.

**Comment.** Section 6920 generalizes provisions found in former Civil Code Sections 25.5, 25.6, 25.7, 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10. See Section 6902 ("parent or guardian" defined). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6921. Minor's consent not subject to disaffirmance**

6921. A consent given by a minor under this chapter is not subject to disaffirmance because of minority.

**Comment.** Section 6921 generalizes provisions found in former Civil Code Sections 25.5, 25.6, 25.7, 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10.

**§ 6922. Consent by independent minor over 14**

6922. (a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

- (1) The minor is 15 years of age or older.
- (2) The minor is living separate and apart from his or her parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.
- (3) The minor is managing his or her own financial affairs, regardless of the source of the minor's income.

(b) The parent, parents, or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the parent, parents, or guardian of the minor of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent, parents, or guardian.

**Comment.** Section 6922, together with Sections 6920 and 6921, continues former Civil Code Section 34.6 without substantive change. See Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6923. Consent to donation of blood**

6923. (a) As used in this section, "donation of blood" means a giving of blood for which the donor of the blood receives no payment.

(b) A minor who is 17 years of age or older may consent to donation of his or her blood and to the penetration of tissue that is necessary to accomplish the donation.

(c) A minor who is 15 years of age or older may, with the written consent of the minor's parent or guardian, and the written authorization of a physician and surgeon, consent to donation of the minor's blood and to the penetration of tissue that is necessary to accomplish the donation.

**Comment.** Section 6923, together with Sections 6920 and 6921, continues former Civil Code Section 25.5 without substantive change. See Section 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1). For a substantially similar provision, see Health & Safety Code Section 1607.5.

**Note:** Section 6923 duplicates the substance of Health and Safety Code Section 1607.5 except that Section 1607.5 is not expressly limited to minors.

#### **§ 6924. Consent by minor to mental health treatment or counseling**

6924. (a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Administrative Code.

(B) A marriage, family and child counselor as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as defined in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services.

(2) The minor (1) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or (2) is the alleged victim of incest or child abuse.

(c) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the parent or guardian of the minor, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the parent or guardian of the minor.

(d) The parent, parents, or guardian of a minor is not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian.

(e) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

**Comment.** Section 6924, together with Sections 6920 and 6921, continues the substance of former Civil Code Section 25.9. See Section 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

### **§ 6925. Consent by minor to pregnancy treatment**

6925. (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 25958 of the Health and Safety Code.

**Comment.** Section 6925, together with Sections 6920 and 6921, continues former Civil Code Section 34.5 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6926. Consent by minor to treatment for communicable disease**

6926. (a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.

(b) The parent, parents, or guardian of the minor is not liable for payment for medical care provided pursuant to this section.

**Comment.** Section 6926, together with Sections 6920 and 6921, continues former Civil Code Section 34.7 without substantive change. See Sections 6901 ("medical care" defined), 6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6927. Consent by rape victim to treatment**

6927. A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard thereto.

**Comment.** Section 6927, together with Sections 6920 and 6921, continues former Civil Code Section 34.8 without substantive change. See Section 6901 ("medical care" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**§ 6928. Consent by assault victim to treatment**

6928. (a) As used in this section, "sexually assaulted" includes, but is not limited to, conduct coming within the provisions of Section 261, 286, or 288a of the Penal Code.

(b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard thereto.

(c) The professional person providing medical treatment shall attempt to contact the parent or guardian of the minor and shall note in the minor's treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful. This subdivision does not apply if the professional person reasonably believes that the parent or guardian of the minor committed the sexual assault on the minor.

**Comment.** Section 6928, together with Sections 6920 and 6921, continues former Civil Code Section 34.9 without substantive change. See Sections 6901 ("medical care" defined),

6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

**Note:** Should "professional person," used in subdivision (c) of Section 6928, be defined? Compare the definition of that term found in Sections 6924(a)(2) and 6929(a)(3).

### § 6929. Consent by minor to drug or alcohol treatment

6929. (a) As used in this section:

(1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 11 (commencing with Section 19900) of the Welfare and Institutions Code.

(2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:

(A) Schedule D of Section 4160 of the Business and Professions Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, or marriage, family, and child counselor.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the parent or guardian of the minor, and whether the attempt to contact the parent or guardian of the minor was successful or unsuccessful; or the reason why, in the opinion of the professional person, it would not be appropriate to contact the parent or guardian of the minor.

(d) The parent, parents, or guardian of the minor is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive methadone treatment without the consent of the minor's parent or guardian.

**Comment.** Section 6929, together with Sections 6920 and 6921, continues former Civil Code Section 34.10 without substantive change. See Sections 6901 ("medical care" defined),

6902 ("parent or guardian" defined). See also Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). An emancipated minor (see Section 7002) has the capacity to consent to medical, dental, or psychiatric care without parental consent, knowledge, or liability. See Section 7050(e)(1).

## **PART 5. ENLISTMENT IN ARMED FORCES**

§ 6950. Court consent

### **§ 6950. Court consent**

6950. (a) Upon application by a minor, the superior court may summarily grant consent for enlistment by the minor in the armed services if the court determines all of the following:

- (1) The minor is 16 years of age or older and resides in this state.
- (2) The consent of a parent or guardian is necessary to permit the enlistment, and the minor has no parent or guardian available to give the consent.

(b) No fee may be charged for proceedings under this section.

**Comment.** Section 6950 continues the substance of former Probate Code Section 3301 insofar as that section related to consent for enlistment in the armed services. A person on active duty in any of the Armed Forces of the United States is an emancipated minor (see Section 7002) and is considered over age of majority for many purposes. See Section 7050 (effect of emancipation).

**Note:** Should Section 6950 be limited to enlistment in the Armed Forces of the United States? In other words, should "Armed Forces of the United States" be substituted for "armed services"?

If a general provision is included in the Family Code giving jurisdiction of all proceedings under the code to the superior court, the word "court" can be substituted for "superior court" in Section 6950.

## **PART 6. EMANCIPATION OF MINORS LAW**

Chapter 1. General Provisions

Chapter 2. Effect of Emancipation

Chapter 3. Court Declaration of Emancipation

### **CHAPTER 1. GENERAL PROVISIONS**

§ 7000. Short title

§ 7001. Purpose and intent

§ 7002. Conditions for Emancipation

#### **§ 7000. Short title**

7000. This part shall be known and may be cited as the "Emancipation of Minors Law."

**Comment.** Section 7000 continues former Civil Code Section 60 with the substitution of "Law" for "Act."

**§ 7001. Purpose and intent**

7001. It is the purpose of this part to provide a clear statement defining emancipation and its consequences and to permit an emancipated minor to obtain a court declaration of his or her status. This part is not intended to affect the status of minors who may become emancipated under the decisional case law that was in effect prior to the enactment of Chapter 1059 of the Statutes of 1978.

**Comment.** The first sentence of Section 7001 continues the second sentence of former Civil Code Section 61 without substantive change. The second sentence of Section 7001 continues the substance of a portion of the third sentence of former Civil Code Section 61. Insofar as the third sentence of the former section concerned "minors who are now . . . emancipated," the former provision is omitted as obsolete.

Section 7001 omits the first sentence of former Section 61. This sentence was an obsolete provision describing the state of law in effect prior to the enactment of former Section 61 and the need for the enactment of the former Enforcement of Judgments Act.

**Note:** Should the second sentence of Section 7001 be continued? This sentence appears to preserve and hence to require a study of the pre-1978 case law in any case where the requirements for emancipation under this part are not satisfied. The uncertainty and apparent burden imposed on lawyers and the courts caused by including this sentence would appear to outweigh any benefit the might result from its inclusion.

**§ 7002. Conditions for Emancipation**

7002. A person under the age of 18 years is an emancipated minor if any of the following conditions is satisfied:

(a) The person has entered into a valid marriage, whether or not the marriage has been dissolved. This subdivision does not apply in the case of a minor whose marriage has been adjudged a nullity.

(b) The person is on active duty with the armed forces of the United States.

(c) The person has received a declaration of emancipation pursuant to Section 7122.

**Comment.** Section 7002 restates former Civil Code Section 62, but subdivision (a) adopts the language used in Probate Code Section 1515 (no guardian of person for married minor). As to the methods of dissolution of marriage, see Section 722.

Sections 7002 and 7050(e)(1) supersede and continue the substance of former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

**CHAPTER 2. EFFECT OF EMANCIPATION**

§ 7050. Emancipated minor considered over age of majority

§ 7051. Insurance contracts

§ 7052. Stock, memberships, and property

**§ 7050. Emancipated minor considered over age of majority**

7050. An emancipated minor shall be considered as being over the age of majority for the following purposes:

- (a) The minor's right to support by the minor's parents.
- (b) The right of the minor's parents to the minor's earnings and to control the minor.
- (c) The application of Sections 300 and 601 of the Welfare and Institutions Code.
- (d) Ending all vicarious liability of the minor's parents or guardian for the minor's torts. Nothing in this section affects any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability that arises from an agency relationship.
- (e) The minor's capacity to do any of the following:
  - (1) Consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability.
  - (2) Enter into a binding contract.
  - (3) Buy, sell, lease, encumber, exchange, or transfer an interest in real or personal property, including, but not limited to, shares of stock in a domestic or foreign corporation or a membership in a nonprofit corporation.
  - (4) Sue or be sued in the his or her own name.
  - (5) Compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor.
  - (6) Make or revoke a will.
  - (7) Make a gift, outright or in trust.
  - (8) Convey or release contingent or expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, and consent to a transfer, encumbrance, or gift of marital property.
  - (9) Exercise or release the minor's powers as donee of a power of appointment unless the creating instrument otherwise provides.
  - (10) Create for his or her own benefit or for the benefit of others a revocable or irrevocable trust.
  - (11) Revoke a revocable trust.
  - (12) Elect to take under or against a will.
  - (13) Renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercise of the right to surrender the right to revoke a revocable trust.
  - (14) Make an election referred to in Section 13502 of, or an election and agreement referred to in Section 13503 of, the Probate Code.
  - (15) Establish his or her own residence.
  - (16) Apply for a work permit pursuant to Section 49110 of the Education Code without the request of his or her parents.
  - (17) Enroll in a school or college.

**Comment.** Section 7050 continues former Civil Code Section 63 without substantive change. See also the Comment to Section 7002 concerning the continuance in Sections 7002 and 7050 of the substance of former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

**Note:** Should a provision be added to Section 7050(e) to make clear that an emancipated minor has the capacity "to give a delegation of power." See Section 6701(a) (minor cannot give a delegation of power). Is anything else omitted from Section 7050 other than the consumption of alcohol?

Subdivision (d) of Section 7050 refers to "vicarious" liability, whereas other statutory provisions imposing parental liability speak of "imputed" liability. See, e.g., Sections 6650 and 6651.

### § 7051. Insurance contracts

7051. An insurance contract entered into by an emancipated minor has the same effect as if it were entered into by an adult and, with respect to such a contract, the minor has the same rights, duties, and liabilities as an adult.

**Comment.** Section 7051 continues former Civil Code Section 63.1 without change.

### § 7052. Stock, memberships, and property

7052. With respect to shares of stock in a domestic or foreign corporation held by an emancipated minor, a membership in a nonprofit corporation held by an emancipated minor, or other property held by an emancipated minor, the minor may do all of the following:

- (a) Vote in person, and give proxies to exercise any voting rights, with respect to the shares, membership, or property.
- (b) Waive notice of any meeting or give consent to the holding of any meeting.
- (c) Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

**Comment.** Section 7052 continues former Civil Code Section 63.2 without substantive change.

## CHAPTER 3. COURT DECLARATION OF EMANCIPATION

Article 1. General Provisions

Article 2. Procedure for Declaration

Article 3. Voiding or Rescinding Declaration

Article 4. Identification Cards and Information

### Article 1. General Provisions

§ 7110. Legislative intent

§ 7111. Effect of declaration on benefits

#### § 7110. Legislative intent

7110. It is the intent of the Legislature that proceedings under this chapter be as simple and inexpensive as possible. To that end, the Judicial Council is requested to

prepare and distribute to the clerks of the superior courts appropriate forms for the proceedings that are suitable for use by minors acting as their own counsel.

**Comment.** Section 7110 continues former Civil Code Section 70 without substantive change except that Section 7110 applies to all proceedings under this chapter. The former provision did not cover a proceeding to void a declaration of emancipation obtained by fraud or withholding material information.

### **§ 7111. Effect of declaration on benefits**

7111. The issuance of a declaration of emancipation does not entitle the minor to any benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code which would not otherwise accrue to an emancipated minor.

**Comment.** Section 7111 continues former Civil Code Section 67 without change.

## **Article 2. Procedure for Declaration**

§ 7120. Petition

§ 7121. Notice

§ 7122. Issuance of declaration of emancipation

§ 7123. Writ of mandate

### **§ 7120. Petition**

7120. (a) A minor may petition the superior court of the county in which the minor resides or is temporarily domiciled for a declaration of emancipation.

(b) The petition shall be verified and shall set forth with specificity all of the following facts:

- (1) The minor is at least 14 years of age.
- (2) The minor willingly lives separate and apart from his or her parents or guardian with the consent or acquiescence of his or her parents or guardian.
- (3) The minor is managing his or her own financial affairs.
- (4) The source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.

**Comment.** Section 7120 continues subdivision (a) of former Civil Code Section 64 without substantive change.

### **§ 7121. Notice**

7121. Before the petition is heard, such notice as the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given. The clerk of the court shall also notify the district attorney of the county where the matter is to be heard of the proceeding. If the minor is a ward or dependent child of the court, notice shall be given to the probation department.

**Comment.** Section 7121 continues subdivision (b) of former Section 64 without substantive change.

**§ 7122. Issuance of declaration of emancipation**

7122. (a) The court shall sustain the petition if it finds that the minor is a person described by Section 7120 and that emancipation would not be contrary to the minor's best interests.

(b) If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the county clerk.

(c) A declaration is conclusive evidence that the minor is emancipated.

**Comment.** Section 7122 continues subdivision (c), the first sentence of subdivision (d), and subdivision (g) of former Civil Code Section 64 without substantive change.

**§ 7123. Writ of mandate**

7123. (a) If the petition is denied, the minor has a right to file a petition for a writ of mandate.

(b) If the petition is sustained, the parents or guardian have a right to file a petition for a writ of mandate if they have appeared in the proceeding and opposed the granting of the petition.

**Comment.** Section 7123 continues subdivisions (e) and (f) of former Civil Code Section 64 without substantive change.

**Article 3. Voiding or Rescinding Declaration**

§ 7130. Grounds for voiding or rescinding

§ 7131. Petition to void declaration

§ 7132. Petition to rescind declaration

§ 7133. Notice

§ 7134. Court order

§ 7135. Effect of voiding or rescission on contract and property rights

**§ 7130. Grounds for voiding or rescinding**

7130. (a) A declaration of emancipation obtained by fraud or by the withholding of material information is voidable.

(b) A declaration of emancipation of a minor who is indigent and has no means of support is subject to rescission.

**Comment.** Subdivision (a) of Section 7130 continues the first sentence of former Civil Code Section 69 without substantive change. Subdivision (b) continues subdivision (c) of former Civil Code Section 65 without substantive change.

**§ 7131. Petition to void declaration**

7131. A petition to void a declaration of emancipation on the ground that the declaration was obtained by fraud or by the withholding of material information may be filed by any person or by any public or private agency. The petition shall be filed in the court that made the declaration.

**Comment.** The first sentence of Section 7131 continues the third sentence of former Civil Code Section 69 without substantive change and adds the portion specifying the ground on

which the petition is based which is drawn from the first sentence of former Civil Code Section 69. The second sentence is new.

### **§ 7132. Petition to rescind declaration**

7132. A petition to rescind a declaration of emancipation on the ground that the minor is indigent and has no means of support may be filed by the minor declared emancipated or by the minor's conservator. The petition shall be filed in the superior court of the county in which the minor or the conservator resides.

**Comment.** Section 7132 continues subdivision (a) of former Civil Code Section 65 without substantive change and adds the portion specifying the ground on which the petition is based which is drawn from subdivision (c) of former Civil Code Section 65. Section 7132 also makes clear that a petition filed by the conservator may be filed either in the county where the minor resides or in the county where the conservator resides.

### **§ 7133. Notice**

7133. (a) Before the petition is heard, such notice as the court determines is reasonable shall be given to the minor's parents or guardian, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) No liability accrues to a parent or guardian not given actual notice, as a result of voiding or rescinding the declaration of emancipation, until that parent or guardian is given actual notice.

**Comment.** Section 7133 continues subdivision (b) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69 without substantive change.

### **§ 7134. Court order**

7134. If the petition is sustained, the court shall forthwith issue an order voiding or rescinding the declaration of emancipation, which shall be filed by the county clerk.

**Comment.** Section 7134 continues the first sentence of subdivision (d) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69.

### **§ 7135. Effect of voiding or rescission on contract and property rights**

7135. Voiding or rescission of the declaration of emancipation does not alter any contractual obligation or right or any property right or interest that arose during the period that the declaration was in effect.

**Comment.** Section 7135 continues subdivision (e) of former Civil Code Section 65 and the second sentence of former Civil Code Section 69 without substantive change.

## **Article 4. Identification Cards and Information**

§ 7140. Department of Motor Vehicles records system and identification cards

§ 7141. Good faith reliance on identification card

§ 7142. Protection of public entities and public employees

§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded

**§ 7140. Department of Motor Vehicles records system and identification cards**

7140. On application of a minor declared emancipated under this chapter, the Department of Motor Vehicles shall enter identifying information in its law enforcement computer network, and the fact of emancipation shall be stated on the department's identification card issued to the emancipated minor.

**Comment.** Section 7140 continues the second sentence of subdivision (d) of former Civil Code Section 64 without substantive change.

**§ 7141. Good faith reliance on identification card**

7141. A person who, in good faith, has examined a minor's identification card and relies on a minor's representation that the minor is emancipated, has the same rights and obligations as if the minor were in fact emancipated at the time of the representation.

**Comment.** Section 7141 continues former Civil Code Section 66 without substantive change.

**§ 7142. Protection of public entities and public employees**

7142. No public entity or employee is liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in the Department of Motor Vehicles records system or identification cards as provided in this part.

**Comment.** Section 7142 continues former Civil Code Section 68 without substantive change.

**§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded**

7143. If a declaration of emancipation is voided or rescinded, notice shall be sent immediately to the Department of Motor Vehicles which shall remove the information relating to emancipation in its law enforcement computer network. Any identification card issued stating emancipation shall be invalidated.

**Comment.** Section 7143 continues the second and third sentences of subdivision (d) of former Civil Code Section 65 and a portion of the fourth sentence of former Civil Code Section 69 without substantive change.

**Note:** Who notifies the Department of Motor Vehicles? The court clerk? Should this be made clear?

**DIVISION 16. ADOPTION**

**Note:** Minor language changes made in this division are too numerous to be specifically noted in every case. Most changes are made for stylistic consistency and to conform with modern drafting conventions. For example, "may not" is prohibitory and is used in place of "shall not" and "cannot," and the use of personal pronouns has been minimized. Other changes are made for internal consistency, such as changing best "interests" to best "interest" of the child, and using "adoption petition" instead of "petition for adoption." Surplus language is omitted where possible, such as by omitting references to the "superior" court in sections that do not govern the filing of a petition. In many places, a defined term has been substituted for equivalent language, such as using "prospective adoptive parent" for "person adopting" and other variations, and using "birth parent" in place of "birth father or mother."

Part 1. Definitions

Part 2. Adoption of unmarried minors

Part 3. Adoption of adults and married minors

**PART 1. DEFINITIONS**

- § 7500. Applicability of part
- § 7503. "Adoptive parent"
- § 7506. "Agency adoption"
- § 7509. "Applicant"
- § 7512. "Birth parent"
- § 7515. "Delegated county adoption agency"
- § 7518. "Department"
- § 7521. "Full-service adoption agency"
- § 7524. "Independent adoption"
- § 7527. "Intercountry adoption"
- § 7530. "Licensed adoption agency"
- § 7533. "Noncustodial adoption agency"
- § 7536. "Petitioner"
- § 7539. "Place for adoption"
- § 7542. "Prospective adoptive parent"
- § 7545. "Special-needs child"
- § 7548. "Stepparent adoption"

**§ 7500. Applicability of part**

7500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

**Comment.** Section 7500 is new and is comparable to Section 50. Section 7500 supersedes the introductory clause of former Civil Code Section 220.20. The definitions in this part have been made applicable to both minor adoptions governed by Part 2 and adult adoptions governed by Part 3.

**§ 7503. "Adoptive parent"**

7503. "Adoptive parent" means a person who has obtained an order of adoption of a child or adult.

**Comment.** Section 7503 supersedes subdivision (a) of former Civil Code Section 220.20. The definition has been broadened to apply to adoptions of minors and adults. The reference in the former law to petitioning for an adoption order and the reference to final decrees of adoption are omitted as surplus. The reference to children is also omitted as surplus. See Section 11 (singular includes plural).

**Note:** The definition of “child” has been omitted from this draft. Civil Code Section 220.20(e) defines the term to mean a minor child. However, this definition does not add anything to the obvious meaning in most cases and is unnecessary because the respective procedural sections make clear who is covered. See, e.g., Section 7600. The definition is incomplete since it does not exclude married minors and is inaccurate as applied to Part 3 concerning adult adoptions. Former Civil Code Section 221 attempted to provide several alternative definitions of child (including one where it meant adult). While this was more accurate than its successor (Civil Code Section 220.20(e)), it was cumbersome and was appropriately abandoned.

#### § 7506. “Agency adoption”

7506. “Agency adoption” means the adoption of a child, other than an intercountry adoption, in which the department or a licensed adoption agency is a party to, or joins in, the adoption petition.

**Comment.** Section 7506 continues subdivision (b) of former Civil Code Section 220.20 without substantive change. The defined term “licensed adoption agency” is used instead of the former reference to “an agency licensed by the department.” For provisions relating to agency adoptions, see Chapter 2 (commencing with Section 7700) of Part 2.

See also Sections 7518 (“department” defined), 7527 (“intercountry adoption” defined), 7530 (“licensed adoption agency” defined).

#### § 7509. “Applicant”

7509. “Applicant” means a person who has submitted a written application to adopt a child from the department or a licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

**Comment.** Section 7509 continues subdivision (c) of former Civil Code Section 220.20 without change. See also Sections 7518 (“department” defined), 7530 (“licensed adoption agency” defined).

**Note:** Could the “and who . . .” clause be omitted? The requirement of being under consideration does not seem to play any part in the substantive sections. See Sections 7712, 7902, 7904, 7908. A review of sections where this definition is used may lead to the conclusion that this definition is unnecessary; it could be replaced by “prospective adoptive parent.”

#### § 7512. “Birth parent”

7512. “Birth parent” means the biological parent or, in the case of a person previously adopted, the adoptive parent.

**Comment.** Section 7512 continues subdivision (d) of former Civil Code Section 220.20 without substantive change. “Person” is used in place of “child” since this definition applies

to Part 3 (commencing with Section 8300) concerning adult adoptions. See also Section 7503 ("adoptive parent" defined).

**§ 7515. "Delegated county adoption agency"**

7515. "Delegated county adoption agency" means a licensed county adoption agency that has agreed to provide the services described in Chapter 3 (commencing with Section 7800).

**Comment.** Section 7515 continues subdivision (f) of former Civil Code Section 220.20 without substantive change. See also Section 7530 ("licensed adoption agency" defined).

**§ 7518. "Department"**

7518. "Department" means the State Department of Social Services.

**Comment.** Section 7518 continues subdivision (g) of former Civil Code Section 220.20 without change.

**§ 7521. "Full-service adoption agency"**

7521. (a) "Full-service adoption agency" means a licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private full-service adoption agencies shall be organized and operated on a nonprofit basis. Full-service adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 7812 until January 1, 1994.

**Comment.** Section 7521 continues subdivision (h) of former Civil Code Section 220.20 without substantive change. See also Sections 7512 ("birth parent" defined), 7542 ("prospective adoptive parent" defined).

**§ 7524. "Independent adoption"**

7524. "Independent adoption" means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the adoption petition.

**Comment.** Section 7524 continues subdivision (i) of former Civil Code Section 220.20 without change. For provisions relating to independent adoptions, see Chapter 3 (commencing with Section 7800) of Part 2.

See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

**§ 7527. "Intercountry adoption"**

7527. "Intercountry adoption" means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption

includes completion of the adoption in the child's native country or completion of the adoption in this state.

**Comment.** Section 7527 continues subdivision (j) of former Civil Code Section 220.20 without substantive change. For provisions relating to intercountry adoptions, see Chapter 4 (commencing with Section 7900) of Part 2.

**§ 7530. "Licensed adoption agency"**

7530. "Licensed adoption agency" means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

**Comment.** Section 7530 continues subdivision (k) of former Civil Code Section 220.20 without change. See also Section 7518 ("department" defined).

**§ 7533. "Noncustodial adoption agency"**

7533. (a) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, which does all of the following:

- (1) Assesses the prospective adoptive parents.
- (2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive parents.
- (3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.

(b) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. Noncustodial adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 7812 until January 1, 1994.

**Comment.** Section 7533 continues subdivision (l) of former Civil Code Section 220.20 without substantive change. The reference to "prospective adoptive applicants" in subdivision (a)(2) has been changed to "prospective adoptive parents." See Section 7542 ("prospective adoptive parent" defined). See also Sections 7512 ("birth parent" defined), 7521 ("full-service adoption agency" defined), 7530 ("licensed adoption agency" defined), 7539 ("place for adoption" defined).

**§ 7536. "Petitioner"**

7536. "Petitioner" means a prospective adoptive parent who has filed an adoption petition with the court pursuant to this division.

**Comment.** Section 7536 supersedes subdivision (n) of former Civil Code Section 220.20. The reference to the "superior" court and the venue language in the former provision have been omitted as surplus. The proper court for filing an adoption petition is specified in the appropriate procedural provision. See also Section 7542 ("prospective adoptive parent" defined).

**Note:** This definition could be dropped. It is not needed and is inaccurate if applied in several contexts. See, e.g., Section 7615.

**§ 7539. "Place for adoption"**

7539. "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents.

**Comment.** Section 7539 continues subdivision (o) of former Civil Code Section 220.20 without change. See also Sections 7512 ("birth parent" defined), 7524 ("independent adoption" defined), 7542 ("prospective adoptive parent" defined).

**Note:** There is some question whether this definition has any purpose, or if it is needed, whether it should be isolated from its limited context. It is used, in a different form, only in Sections 7812 (which is subject to a sunset clause) and 7813. The same terms are used in connection with intercountry adoptions in Sections 7910 and 7912, but the definition is restricted to independent adoptions. Confusion also may result because "placement" is used in a variety of settings. It is not clear whether "placement for adoption" such as in Section 7610 is covered by this definition.

If this phrase is to be defined, it may be asked why related phrases such as "freed for adoption" or "relinquished for adoption" or "legally free" are not defined.

**§ 7542. "Prospective adoptive parent"**

7542. "Prospective adoptive parent" means a person who has filed or intends to file a petition under Part 2 (commencing with Section 7600) to adopt a child who has been or who is to be placed in the person's physical care or a petition under Part 3 (commencing with Section 8300) to adopt an adult.

**Comment.** Section 7542 restates the substance of subdivision (p) of former Civil Code Section 220.20 and also applies the definition to adult adoptions.

**§ 7545. "Special-needs child"**

7545. "Special-needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group that should remain intact, mental, physical, medical, or emotional handicaps, or age of three years or more.

**Comment.** Section 7545 continues subdivision (q) of former Civil Code Section 220.20 without substantive change.

**§ 7548. "Stepparent adoption"**

7548. "Stepparent adoption" means the adoption of a child by a stepparent where one birth parent retains custody and control of the child.

**Comment.** Section 7548 continues subdivision (r) of former Civil Code Section 220.20 without substantive change. For provisions relating to stepparent adoptions, see Chapter 5 (commencing with Section 8000) of Part 2.

See also Section 7512 ("birth parent" defined).

**Note:** This definition omits the important requirement in Section 8000 that the stepparent be married to the custodial birth parent. This raises the issue of the purpose

of this definition since it is incomplete and inaccurate. It would be better to provide that a stepparent adoption is an adoption under Chapter 5, if it needs definition at all. See, e.g., Section 7610(c).

## PART 2. ADOPTION OF UNMARRIED MINORS

- Chapter 1. General provisions
- Chapter 2. Agency adoptions
- Chapter 3. Independent adoptions
- Chapter 4. Intercountry adoptions
- Chapter 5. Stepparent adoptions
- Chapter 6. Vacation of adoption
- Chapter 7. Disclosure of information

### CHAPTER 1. GENERAL PROVISIONS

**Note:** This draft does not continue the legislative findings in Civil Code Section 220.10. For the most part, those findings are specific to the reorganization of adoption statutes by 1990 Cal. Stat. ch. 1363. Family Code Section 2 serves the same purpose as Civil Code Section 220.10(b) concerning the continuation of prior law and precedent.

- § 7600. Minors eligible for adoption
- § 7601. Required age difference between adoptive parents and child
- § 7602. Consent of child over 12
- § 7603. Consent of spouse of married adoptive parent
- § 7604. Consent of parents
- § 7605. Consent of mother
- § 7606. Exception to requirement of parental consent
- § 7607. Required provisions in forms
- § 7608. Regulations concerning medical reports
- § 7609. Advertising by unlicensed person prohibited
- § 7610. Accounting report
- § 7611. Closed hearings
- § 7612. Examination by court; agreement; order of adoption
- § 7613. Appearance by counsel for adoptive parent in military or Red Cross service
- § 7614. Certificate of adoption
- § 7615. New birth certificate naming deceased spouse
- § 7616. Relationship between adopted child and adoptive parents
- § 7617. Responsibility of birth parents terminated
- § 7618. Name of child
- § 7619. Children of Indian ancestry

#### § 7600. Minors eligible for adoption

7600. An unmarried minor may be adopted by an adult as provided in this part.

**Comment.** Section 7600 restates former Civil Code Section 221.10 without substantive change and supersedes subdivision (e) of former Civil Code Section 220.20. The language of this section has been simplified.

**§ 7601. Required age difference between adoptive parents and child**

7601. (a) Except as otherwise provided in subdivision (b), a prospective adoptive parent or parents shall be at least 10 years older than the child.

(b) If the court is satisfied that the adoption of a child by a stepparent, or by a sister, brother, aunt, uncle, or cousin-german and, if that person is married, by that person and his or her spouse, is in the best interest of the parties and is in the public interest, it may approve the adoption without regard to the ages of the child and the prospective adoptive parent or parents.

**Comment.** Section 7601 continues former Civil Code Section 221.12 without substantive change. In subdivision (a), "person adopting a child" has been changed to "prospective adoptive parent or parents" for consistency with other provisions. As revised, subdivision (a) provides that both prospective adoptive parents are subject to the 10-year age difference rule. See Section 7542 ("prospective adoptive parent" defined).

**§ 7602. Consent of child over 12**

7602. The consent of a child, if over the age of 12 years, is necessary to the child's adoption.

**Comment.** Section 7602 continues former Civil Code Section 221.13 without substantive change.

**§ 7603. Consent of spouse of married adoptive parent**

7603. A married person, not lawfully separated from his or her spouse, may not adopt a child without the consent of the spouse, provided that the spouse is capable of giving that consent.

**Comment.** Section 7603 continues former Civil Code Section 221.14 without substantive change. The language of this section has been simplified by eliminating paired references to husband and wife.

**§ 7604. Consent of parents**

7604. (a) Except as provided in subdivision (b) and in Section 7605, a child having a presumed father under Section 1711 may not be adopted without the consent of the child's birth parents, if living.

(b) If one birth parent has been awarded custody by judicial decree, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires him or her to appear at the time and place set for the appearance in court under Section 7718, 7823, 7913, or 8007.

(c) Failure of a birth parent to pay for the care, support, and education of the child for the period of one year or failure of a birth parent to communicate with the child

for the period of one year is prima facie evidence that the failure was willful and without lawful excuse.

**Comment.** Section 7604 continues the first three sentences of former Civil Code Section 221.20 without substantive change. The word "birth" has been added preceding "parents" in subdivision (a) for consistency with the remainder of this section. The reference in subdivision (b) to the "parent having custody alone" has been changed to the "parent having sole custody" for consistency with the language of Sections 7700, 7814, and 8003. See also Section 7512 ("birth parent" defined).

**Note:** Does "birth parent" include adoptive parent here? Civil Code Section 221.20 requires consent of "parents."

**The number of sections listed at the end of subdivision (b) is shorter than in Civil Code Section 221.20 because only the relevant sections are listed, not general sections that have no independent authority, such as Sections 7612 (general provision concerning examination by court) and 7613 (appearance by counsel for adoptive parent absent because of military service).**

### § 7605. Consent of mother

7605. Except as provided in Section 7604, a child not having a presumed father under Section 1711 may not be adopted without the consent of the child's mother, if living.

**Comment.** Section 7605 continues the fourth sentence of former Civil Code Section 221.20 without substantive change.

### § 7606. Exception to requirement of parental consent

7606. Notwithstanding Sections 7604 and 7605, the consent of a birth parent is not necessary in the following cases:

(a) Where a birth parent has been judicially deprived of the custody and control of the child (1) by a court order declaring the child to be free from the custody and control of either or both birth parents pursuant to Part 3 (commencing with Section 3200) of Division 10 of this code, or Section 366.25 or 366.26 of the Welfare and Institutions Code, or (2) by a similar order of a court of another jurisdiction, pursuant to a law of that jurisdiction authorizing the order.

(b) Where a birth parent has, in a judicial proceeding in another jurisdiction, voluntarily surrendered his or her right to the custody and control of the child pursuant to a law of that jurisdiction providing for the surrender.

(c) Where a birth parent has deserted the child without provision for identification of the child.

(d) Where a birth parent has relinquished the child for adoption as provided in Section 7700.

(e) Where a birth parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction.

**Comment.** Section 7606 continues the last sentence of the first paragraph and subdivisions (a)-(c) of former Civil Code Section 221.20 without substantive change. "Birth parent" has been substituted for references to "birth father or mother" in this section. See Section 7512 ("birth parent" defined). See also Section 7530 ("licensed adoption agency" defined).

#### **§ 7607. Required provisions in forms**

7607. All forms adopted by the department authorizing the release of an infant from a health facility to the custody of persons other than the person entitled to custody of the child pursuant to Section 3000 and authorizing these other persons to obtain medical care for the infant shall contain a statement in boldface type delineating the various types of adoptions available, and the birth parents' rights with regard thereto, including, but not limited to, rights with regard to revocation of consent to adoption.

**Comment.** Section 7607 continues former Civil Code Section 221.30 without substantive change. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined).

#### **§ 7608. Regulations concerning medical reports**

7608. (a) The department shall adopt regulations specifying the form and content of the reports required by Sections 7706, 7817, and 7909. In addition to any other material that may be required by the department, the form shall include inquiries designed to elicit information on any illness, disease, or defect of a genetic or hereditary nature.

(b) All licensed adoption agencies and delegated county adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to adoptees or prospective adoptive parents of pertinent medical information reported to the department or the licensed adoption agency or delegated county adoption agency, upon the request of the person reporting the medical information.

**Comment.** Section 7608 continues former Civil Code Sections 222.26(b), 224.70(b), and 226.35(b) without substantive change. See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined).

#### **§ 7609. Advertising by unlicensed person prohibited**

7609. (a) Any person or organization that, without holding a valid and unrevoked license to place children for adoption issued by the department, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.

(b) Any person, other than a birth parent, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for

adoption issued by the department, places any child for adoption is guilty of a misdemeanor.

**Comment.** Section 7609 continues former Civil Code Section 221.40 without substantive change. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7539 ("place for adoption" defined).

**Note:** Subdivisions (a) and (b) are not consistently drafted. E.g., association and corporation are not mentioned in (a).

### § 7610. Accounting report

7610. (a) The petitioners in a proceeding for adoption of a child shall file with the court a full accounting report of all disbursements of anything of value made or agreed to be made by them or on their behalf in connection with the birth of the child, the placement of the child with the petitioners, any medical or hospital care received by the child's birth mother or by the child in connection with the child's birth, any other expenses of either birth parent, or the adoption. The accounting report shall be made under penalty of perjury and shall be submitted to the court on or before the date set for the hearing on the adoption petition, unless the court grants an extension of time.

(b) The accounting report shall be itemized in detail and shall show the services relating to the adoption or to the placement of the child for adoption that were received by the petitioners, by either birth parent, by the child, or by any other person for whom payment was made by or on behalf of the petitioners. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, licensed adoption agency, or other person or organization who received any funds of the petitioners in connection with the adoption or the placement of the child with them, or participated in any way in the handling of those funds, either directly or indirectly.

(c) This section does not apply to an adoption by a stepparent where one birth parent or adoptive parent retains custody and control of the child.

**Comment.** Section 7610 continues former Civil Code Section 221.50 without substantive change. See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined), 7539 ("place for adoption" defined).

**Note:** Subdivision (c) ignores the definitions of "stepparent adoption" and "birth parent".

### § 7611. Closed hearings

7611. All court hearings in an adoption proceeding shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties under the law governing adoptions.

**Comment.** Section 7611 continues former Civil Code Section 221.60 without substantive change. The reference to the "superior" court has been omitted as surplus. The appropriate court for adoption proceedings is governed by the specific procedure. See Sections 7713

(petition for agency adoption), 7802 (petition for independent adoption), 7911 (petition for intercountry adoption), 8000 (petition for stepparent adoption).

**§ 7612. Examination by court; agreement; order of adoption**

7612. (a) The court shall examine all persons appearing before it pursuant to this part. The examination of each person shall be conducted separately but within the physical presence of every other person unless the court, in its discretion, orders otherwise.

(b) The prospective adoptive parent or parents shall execute and acknowledge an agreement in writing that the child will be treated in all respects as their lawful child.

(c) If satisfied that the interest of the child will be promoted by the adoption, the court may make and enter an order of adoption of the child by the prospective adoptive parent or parents.

**Comment.** Section 7612 continues former Civil Code Section 221.63 without substantive change, except for the last part of subdivision (c) of the former provision, which is continued in Section 7616. "Prospective adoptive parent" is used in place of the reference to "party adopting." See Section 7542 ("prospective adoptive parent" defined). See also Section 7503 ("adoptive parent" defined).

**§ 7613. Appearance by counsel for adoptive parent in military or Red Cross service**

7613. (a) If the prospective adoptive parent is commissioned or enlisted in the military service, or auxiliary thereof, of the United States, or of any of its allies, or in the American Red Cross, so that it is impossible or impracticable, because of the prospective adoptive parent's absence from this state, or otherwise, to make an appearance in person, and the circumstances are established by satisfactory evidence, the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose. The power of attorney may be incorporated in the adoption petition.

(b) Where the prospective adoptive parent is permitted to appear by counsel, the agreement may be executed and acknowledged by the counsel, or may be executed by the absent party before a notary public, or any other person authorized to take acknowledgments including the persons authorized by Sections 1183 and 1183.5 of the Civil Code.

(c) Where the prospective adoptive parent is permitted to appear by counsel, or otherwise, the court may, in its discretion, cause an examination of the prospective adoptive parent, other interested person, or witness to be made upon deposition, as it deems necessary. The deposition shall be taken upon commission, as prescribed by the Code of Civil Procedure, and the expense thereof shall be borne by the petitioner.

(d) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition shall be filed in the office of the county clerk.

(e) The provisions of this section permitting an appearance through counsel are equally applicable to the spouse of a prospective adoptive parent who resides with the prospective adoptive parent outside this state.

(f) Where, pursuant to this section, neither prospective adoptive parent need appear before the court, the child proposed to be adopted need not appear. If the law otherwise requires that the child execute any document during the course of the hearing, the child may do so through counsel.

(g) Where none of the parties appears, the court may not make an order of adoption until after a report has been filed with the court pursuant to Section 7715, 7807, 7914, or 8001.

**Comment.** Section 7613 continues former Civil Code Section 221.65 without substantive change. See also Section 7542 ("prospective adoptive parent" defined).

**Note:** The reference in subdivision (c) to a taking a deposition on commission "as prescribed by the Code of Civil Procedure" is not clear.

**There is no comparable provision for appearance in the case of an adult adoption.**

#### § 7614. Certificate of adoption

7614. Upon the request of the adoptive parents or the adopted child, a county clerk may issue a certificate of adoption that states the date and place of adoption, the birthday of the child, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the birth parents of the child.

**Comment.** Section 7614 continues former Civil Code Section 221.70 without substantive change. See also Section 7503 ("adoptive parent" defined), 7512 ("birth parent" defined).

**Note:** There is no comparable provision for a certificate of adoption in the case of an adult adoption.

#### § 7615. New birth certificate naming deceased spouse

7615. (a) Notwithstanding any other law, an action may be brought in the superior court of the county in which the petitioner resides for the purpose of obtaining for a child adopted by the petitioner a new birth certificate specifying that a deceased spouse of the petitioner who was in the home at the time of the initial placement of the child is a parent of the child.

(b) In an adoption proceeding, the petitioner may request that the new birth certificate specify that a deceased spouse of the petitioner who was in the home at the time of the initial placement of the child is a parent of the child.

(c) The inclusion of the name of a deceased person in a birth certificate issued pursuant to a court order under this section does not affect any matter of testate or intestate succession, and is not competent evidence on the issue of the relationship between the adopted child and the deceased person in any action or proceeding.

**Comment.** Section 7615 continues former Civil Code Section 221.72 without substantive change. The reference to an "action for adoption" in subdivision (b) has been changed to "adoption proceeding" for consistency with the language of this part.

**Note:** This is a section where the word "petitioner" is used, but not in the sense defined in Section 7536.

#### **§ 7616. Relationship between adopted child and adoptive parents**

7616. After adoption, the adopted child and the adoptive parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.

**Comment.** Section 7616 continues without substantive change the last part of subdivision (c) of former Civil Code Section 221.63 and the second sentence of former Civil Code Section 221.74. See also Section 7503 ("adoptive parent" defined).

For a comparable provision, see Section 8305 (relationship in adoption of adults and married minors).

#### **§ 7617. Responsibility of birth parents terminated**

7617. The birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

**Comment.** Section 7617 continues former Civil Code Section 221.76 without substantive change. See also Section 7512 ("birth parent" defined).

For a comparable provision, see Section 8306 (responsibility of birth parents of adults and unmarried minors).

#### **§ 7618. Name of child**

7618. A child adopted pursuant to this part may take the family name of the adoptive parent.

**Comment.** Section 7618 continues the first sentence of former Civil Code Section 221.74 without substantive change. See also Section 7503 ("adoptive parent" defined).

For a comparable provision, see Section 8304 (name of adopted adult).

#### **§ 7619. Children of Indian ancestry**

7619. The department shall adopt rules and regulations it determines are reasonably necessary to ensure that the birth parent or parents of Indian ancestry, seeking to relinquish a child for adoption, provide sufficient information to the department or to the licensed adoption agency so that a certificate of degree of Indian blood can be obtained from the Bureau of Indian Affairs. The department shall immediately request a certificate of degree of Indian blood from the Bureau of Indian Affairs upon obtaining the information. A copy of all documents pertaining to the degree of Indian blood and tribal enrollment, including a copy of the certificate of degree of Indian blood, shall become a permanent record in the adoption files and shall be housed in a central location and made available to authorized personnel from the Bureau of

Indian Affairs when required to determine the adopted person's eligibility to receive services or benefits because of the adopted person's status as an Indian. This information shall be made available to the adopted person upon reaching the age of majority.

**Comment.** Section 7619 continues former Civil Code Section 221.80 without substantive change. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

## **CHAPTER 2. AGENCY ADOPTIONS**

- § 7700. Relinquishment of child to department or licensed adoption agency
- § 7701. Information to birth parents on status of adoption
- § 7702. Statement to birth parents at time of relinquishment
- § 7703. Notice to birth parent on termination of parental rights
- § 7704. Custody by department or licensed adoption agency; petition only by prospective adoptive parents; consideration of long-term foster parents
- § 7705. Consent to adoption of child; deceased persons; court order granting agency custody; guardian appointed
- § 7706. Medical report on child and biological parents
- § 7707. Photo-listing service
- § 7708. Placement preferences regarding racial, ethnic, and religious background
- § 7709. Good cause not to follow rules in Section 7708
- § 7710. Search for families meeting racial or ethnic criteria
- § 7711. Applicability of racial or ethnic criteria
- § 7712. Investigation of prospective adoptive parents
- § 7713. Adoption petition and order
- § 7714. Concealment or removal of child from county
- § 7715. Report of department or agency
- § 7716. Fee
- § 7717. Copy of report or findings to petitioner or attorney
- § 7718. Appearance of prospective adoptive parents and child
- § 7719. Notice to department of motion to withdraw or dismiss petition
- § 7720. Unfavorable recommendation by department or agency

### **§ 7700. Relinquishment of child to department or licensed adoption agency**

7700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or licensed adoption agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and duly acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A birth parent who is a minor has the right to relinquish his or her child for adoption to a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a birth parent resides outside this state and the child is being cared for and is placed for adoption by a licensed adoption agency, the birth parent may relinquish the child to the agency by a written statement signed by the birth parent before a notary on a form prescribed by the agency, and previously signed by an authorized official of the agency, which signifies the willingness of the agency to accept the relinquishment.

(d) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the adoption agency and the birth parent or parents relinquishing the child.

(e) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child.

**Comment.** Section 7700 continues former Civil Code Section 222.10 without substantive change. "Birth parent" has been substituted for "birth father or mother." See Sections 7512 ("birth parent" defined).

See also Section 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

For related provisions, see Sections 7809 (consent to independent adoption), 8003 (consent to stepparent adoption).

#### **§ 7701. Information to birth parents on status of adoption**

7701. At or before the time a relinquishment is signed, the department or licensed adoption agency shall advise the birth parent signing the relinquishment, verbally and in writing, that he or she may, at any time in the future, request from the department or agency all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following:

- (a) Whether the child has been placed for adoption.
- (b) The approximate date that an adoption was completed.
- (c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

**Comment.** Section 7701 continues former Civil Code Section 222.13 without substantive change. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

For a comparable provision, see Section 7813 (request for information on status of independent adoption).

#### **§ 7702. Statement to birth parents at time of relinquishment**

7702. (a) The department shall adopt a statement to be presented to the birth parents at the time a relinquishment is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parents of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parent keep the department or licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department or licensed adoption agency to whom the child was relinquished for adoption in order to permit a response to appropriate inquiries concerning medical or social history.

(3) Section 8203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 to request disclosure of the name and address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the adoption petition.

(5) The relinquishment will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed, which shall provide as follows:

"Section 8203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

YES

NO

UNCERTAIN AT THIS TIME; WILL NOTIFY DEPARTMENT OR AGENCY AT LATER DATE"

**Comment.** Section 7702 continues former Civil Code Section 222.15 without substantive change. The statement concerning the requirements of Section 8203 has been revised to conform to the language of that section. Accordingly, for example, "petition" has been changed to "request." The "uncertain" option in the form language has been revised to refer to the department or agency for consistency with the substantive provisions of this section.

See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 7818 (statement to birth parents in independent adoption).

**§ 7703. Notice to birth parent on termination of parental rights**

7703. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 1760) of Part 1 of Division 5 or Part 3 (commencing with Section 3200) of Division 10 of this code or pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if his or her address is known, that contains the following statement:

"You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights."

**Comment.** Section 7703 continues former Civil Code Section 222.18 without substantive change. Some language changes have been made for consistency with Section 7819. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

For a comparable provision, see Section 7819 (notice of termination of parental rights in independent adoption).

**§ 7704. Custody by department or licensed adoption agency; petition only by prospective adoptive parents; consideration of long-term foster parents**

7704. (a) The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated in its discretion at any time prior to the granting of an order of adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the department or licensed adoption agency.

(b) No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both birth parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the adoption petition has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the court may

nevertheless order the adoption if it finds that the refusal to consent is not in the child's best interest.

(c) Notwithstanding any other law, if the child has been in foster care for a period of more than four months, the child has substantial emotional ties to the foster parent or parents, the child's removal from the foster parent or parents would be seriously detrimental to the child's well-being, and the foster parent or parents make a written request to be considered to adopt the child, the foster parent or parents shall be considered with respect to the child along with all other prospective adoptive parents. The department or licensed adoption agency shall take into consideration any relevant factors that it deems necessary in determining which adoptive placement is in the child's best interest.

(d) The decision of the department or licensed adoption agency for the adoptive placement of the child shall be presumed to be in the child's best interest. This presumption may be rebutted in an action, brought by the foster parent or parents, by a preponderance of the evidence that foster care has been provided by the requesting foster parent or parents for more than four months, that the child has substantial emotional ties to the foster parent or parents, and that the adoptive placement of the child with someone other than the foster parent or parents would be seriously detrimental to the child's well-being.

(e) Subdivisions (c) and (d) do not apply to a child who has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

**Comment.** Section 7704 continues former Civil Code Section 222.20 without substantive change. In subdivision (a), the provision for return of physical custody to the department is new and is added for consistency with the first sentence of the subdivision. The reference in subdivision (b) to the "superior" court has been omitted as surplus. See Section 7713 (petition in superior court). In subdivision (c), the reference to "prospective adoptive families" has been changed to the defined term "prospective adoptive parents." In subdivision (e), the former provision that "[t]his subdivision does not apply" to a child adjudged a dependent of the juvenile court has been changed to "[s]ubdivisions (c) and (d) do not apply." This is consistent with former Section 224n of the Civil Code, the predecessor section of former Section 222.20.

See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined).

**Note:** The language of this section concerning the manner of freeing a child for adoption implies that there is some means other than relinquishment or termination of parental rights. It might be better to define "free for adoption," just as "place for adoption" has been defined (although that definition is limited to independent adoptions).

**§ 7705. Consent to adoption of child; deceased persons; court order granting agency custody; guardian appointed**

7705. (a) Where a child is in the custody of a public agency or licensed adoption agency, if it is established that the persons whose consent to the adoption is required by law are deceased, an action may be brought by the department or a licensed adoption agency requesting the court to make an order establishing that the requesting agency has the right to custody and control of the child and the authority to place the child for adoption. The department or agency bringing the action shall give notice in the form prescribed by the court to all known relatives of the child up to and including the third degree of lineal or collateral consanguinity.

(b) This section does not apply where a guardian of the person of the child has been appointed pursuant to nomination by a will.

**Comment.** Section 7705 continues former Civil Code Section 222.22 without substantive change. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

**Note:** What does "public agency" in the first clause of this section refer to? It appears to be something more than the "department" but the remainder of the section confers authority, explicitly and implicitly, only on the department and licensed adoption agencies. Should "public agency" be changed to "department"?

This section speaks in terms of degrees of relationship whereas Section 7601 uses the "cousin-german."

**§ 7706. Medical report on child and biological parents**

7706. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

**Comment.** Section 7706 continues former Civil Code Section 222.26(a) without substantive change. See also Section 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 7909 (medical report in intercountry adoption). For a related provision, see Section 7817 (medical report in independent adoption). See also Sections 7608 (regulations concerning medical reports), 8202 (availability of medical reports).

**Note:** The phrase "written medical report" has been changed to "written report" since "medical" is redundant in light of the reference to the "medical background." However, it should be noted that a similar change was made in the 1974 statute by amendment in 1980, only to be switched back in 1983. See former Civil Code § 224s. See also draft Sections 7817 and 7909.

**This section refers casually to an “agency.” Presumably this means a licensed adoption agency, but since it is a prohibition, it might as well apply to all agencies. Thus, the informal “agency” has been retained.**

**§ 7707. Photo-listing service**

**7707. (a) The department shall establish a statewide photo-listing service to serve all licensed adoption agencies in the state as a means of recruiting adoptive families. The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.**

**(b) The photo-listing service shall maintain a book that, except as provided in this section, contains a photograph and description of each child who has been legally freed for adoption and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child’s photo-listing status shall be reflected in the book within 30 working days of receipt of the registration or notification.**

**(c) The photo-listing service shall be provided to all licensed adoption agencies, adoption support groups, and state, regional, and national photo-listings and exchanges requesting copies of the photo-listing service.**

**(d) All children legally freed for adoption whose case plan goal is adoption shall be photo-listed, unless deferred as provided in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working days of the time a child is legally freed for adoption. When adoption has become the case plan goal for a particular child, the licensed adoption agency may photo-list that child prior to the child’s becoming legally freed for adoption.**

**(e) A child shall be deferred from the photo-listing service when the child’s foster parents or other identified individuals who have applied to adopt the child are meeting the licensed adoption agency’s requests for required documentation and are cooperating in the completion of a home study being conducted by the agency.**

**(f) A child who is 12 years old or older may be deferred from the photo-listing service if the child does not consent to being adopted.**

**(g) Within 15 working days following a one-year period in which a child is listed in the book, the licensed adoption agency shall submit a revised description and photograph of the child.**

**(h) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant changes in a child’s photo-listing status within two working days of the change.**

**(i) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.**

**Comment.** Section 7707 restates former Civil Code Section 222.30 without substantive change. The order of some provisions in this section has been changed. See also Sections 7518 (“department” defined), 7530 (“licensed adoption agency” defined).

**Note:** This section uses a new phrase — “legally freed children” — which presumably means children freed for adoption. It is not clear what “legally” means here. If it is important, why isn’t it used in other sections concerning freeing children for adoption. See Sections 7704 and 7708. For the time being, however, the language has been retained out of an abundance of caution.

**§ 7708. Placement preferences regarding racial, ethnic, and religious background**

7708. Where a child is being considered for adoption, the following order of placement preferences regarding racial background and ethnic identification shall be used, subject to this section and Section 7709, in determining the placement of the child:

(a) In the home of a relative.

(b) If a relative is not available, or if placement with available relatives is not in the child’s best interest, with an adoptive family with the same racial background or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(c) If placement cannot be made under the rules set forth in this section within 90 days from the time the child is relinquished for adoption or has been declared free from parental custody or control, the child is free for adoption with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child’s race, ethnicity, and culture. The child’s religious background shall also be considered in determining an appropriate placement. Unless it can be documented that a diligent search meeting the requirements of Section 7710 for a family meeting the placement criteria has been made, a child may not be placed for adoption with a family of a different racial background or ethnic identification pursuant to this subdivision.

**Comment.** Section 7708 continues former Civil Code Section 222.35 without substantive change. The cross-reference to Section 7709 in the introductory paragraph is new, but makes no substantive change.

**§ 7709. Good cause not to follow rules in Section 7708**

7709. A determination of good cause not to follow the rules provided in Section 7708 may be based on one or more of the following considerations:

(a) Request of the birth parent or parents.

(b) Extraordinary physical or emotional needs of the child.

(c) The child is legally free for adoption for a period exceeding 90 days, during which a diligent search was conducted, and no family meeting the placement

preference criteria is available for placement. Documentation is necessary in order to make a finding of good cause under this subdivision.

(d) Application of the rules provided in Section 7708 would not be in the child's best interest.

**Comment.** Section 7709 restates former Civil Code Section 222.36 without substantive change, except that the documentation requirement in subdivision (c) has been limited to apply only to subdivision (c), as provided in former Civil Code Section 276.1(c). The reference to "birth" parent in subdivision (a) is new. See Section 7512 ("birth parent" defined).

**Note:** As to the phrase "legally free for adoption," see the Note following Section 7707.

#### **§ 7710. Search for families meeting racial or ethnic criteria**

7710. (a) The department shall adopt rules governing the diligent search required by subdivision (c) of Section 7708.

(b) Every public and private adoption agency shall maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of Section 7708 and in accordance with the diligent search rules adopted by the department. In conducting a diligent search, each agency shall use all appropriate resources, as necessary, in a directed effort to recruit a family meeting the placement preference criteria through (1) the use of all appropriate intra-agency and interagency, state, regional, and national exchanges and listing books, (2) child-specific recruitment in electronic and printed media coverage, and (3) the use of agency contacts with parent groups to advocate for specific waiting children.

(c) Records of agencies maintained pursuant to this section may be reviewed upon request by the department.

**Comment.** Section 7710 continues former Civil Code Section 222.37 without substantive change. The requirement that the department adopt rules in subdivision (a) has been separated from the requirement in former Civil Code Section 222.37 that agencies follow the rules adopted. See also Section 7518 ("department" defined).

#### **§ 7711. Applicability of racial or ethnic criteria**

7711. Sections 7708 to 7710, inclusive, apply only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the birth parents.

**Comment.** Section 7711 continues former Civil Code Section 222.38 without substantive change. The reference to "birth" parents has been added in subdivision (c) for clarity. See Section 7512 ("birth parent" defined).

#### **§ 7712. Investigation of prospective adoptive parents**

7712. (a) The department or licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic

violation. The department or licensed adoption agency may also secure the person's full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department or licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

**Comment.** Section 7712 continues former Civil Code Section 222.40 without substantive change. See also sections 7509 ("applicant" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined), 7545 ("special-needs child" defined).

For comparable provisions, see Sections 7811 (investigation in independent adoption), 7908 (investigation in intercountry adoption). For a related provision, see Section 8001(a) (investigation in stepparent adoption).

### § 7713. Adoption petition and order

7713. (a) A person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had prior to adoption shall appear in the joinder signed by the adoption agency.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child's adopted name, but not the name the child had prior to adoption.

**Comment.** Section 7713 continues former Civil Code Section 222.70 without substantive change. The reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. See also Section 7536 ("petitioner" defined).

For comparable provisions, see Sections 7802 (petition for independent adoption), 7911 (petition for intercountry adoption), 8000 (petition for stepparent adoption).

**Note:** This section could be redrawn to use "prospective adoptive parent" rather than "person desiring to adopt." This sort of revision would also make the definition of "petitioner" surplus.

#### **§ 7714. Concealment or removal of child from county**

7714. (a) In no event may a child who has been relinquished for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the department or licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or licensed adoption agency responsible for the child. If the department or licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners and that the court has not issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the department or licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

**Comment.** Section 7714 continues former Civil Code Section 222.50 without substantive change. In subdivision (a), the prohibition of removal "for any period of time" has been omitted as surplus.

See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7803 (removal and concealment in independent adoption), 7912 (removal and concealment in intercountry adoption).

**Note:** It is not clear, from reading this section, who the "interested persons" might be. "Petitioners" probably means prospective adoptive parents.

### § 7715. Report of department or agency

7715. The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court. The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

**Comment.** Section 7715 continues former Civil Code Section 222.75 without substantive change. The language of this provision has been revised to use the mandatory "shall" in place of the former statement that "it shall be the duty" to submit the report. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

For related provisions, see Sections 7807 (report of department or agency in independent adoption), 7914 (report of department or agency in intercountry adoption), 8001 (report of county welfare department or probation officer in stepparent adoption).

**Note:** The phrase "it shall be the duty" of the department has been changed to the department "shall" in line with standard drafting practices. The language dates from the enactment of the original section (see, e.g., Civil Code § 226.6) and it does not appear to have any special purpose.

Similar "duty" language has also been revised in draft Sections 7806, 7807, and 8100.

### § 7716. Fee

7716. Where a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the department, the agency or department may, at the time of filing a favorable report with the court, require the petitioners to pay to the agency, as agent of the state, or to the department, a fee of five hundred dollars (\$500). The agency or department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, if the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

**Comment.** Section 7716 continues former Civil Code Section 222.72 without substantive change. See also Sections 7503 (“adoptive parent” defined), 7518 (“department” defined), 7542 (“prospective adoptive parent” defined), 7545 (“special-needs child” defined).

For related provisions, see Sections 7810 (fee for report in independent adoption), 8002 (fee for report in stepparent adoption).

#### **§ 7717. Copy of report or findings to petitioner or attorney**

7717. If any report or findings are submitted to the court by the department or licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner’s attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

**Comment.** Section 7717 continues former Civil Code Section 222.77 without substantive change. See also Sections 7518 (“department” defined), 7530 (“licensed adoption agency” defined), 7536 (“petitioner” defined).

For comparable provisions, see Sections 7821 (copy of report in independent adoption), 7915 (copy of report in intercountry adoption).

**Note:** The reference to “findings” appears to be surplus. Section 7715 refers only to a “report.” Can “findings” be omitted in the interest of simplicity and consistency?

#### **§ 7718. Appearance of prospective adoptive parents and child**

7718. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 7612 and 7613.

**Comment.** Section 7718 continues former Civil Code Sections 221.62 and 222.78 without substantive change. “Prospective adoptive parents” has been substituted for “person or persons desiring to adopt a child.” See Section 7542 (“prospective adoptive parent” defined).

For comparable provisions, see Sections 7823 (appearance in independent adoptions), 7913 (appearance in intercountry adoptions), 8007 (appearance in stepparent adoptions).

**Note:** “Proposed adoptee” could be used in this section and elsewhere. This language is used in the sections concerning adult adoptions. For the time being, however, phrases like “child proposed to be adopted” have been retained because they are customary and more concrete.

#### **§ 7719. Notice to department of motion to withdraw or dismiss petition**

7719. If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action.

**Comment.** Section 7719 continues former Civil Code Section 222.80 without substantive change. See also Section 7518 (“department” defined), 7536 (“petitioner” defined).

For a comparable provision, see Section 8006(a) (notice of withdrawal or dismissal in stepparent adoption). For related provisions, see Sections 7804 (notice of withdrawal or dismissal in independent adoption), 7916 (notice of withdrawal or dismissal in intercountry adoption).

**§ 7720. Unfavorable recommendation by department or agency**

7720. (a) If the department or licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or licensed adoption agency, the petitioners, and, if necessary, the birth parents by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or licensed adoption agency shall appear to represent the child.

**Comment.** Section 7720 continues former Civil Code Section 222.90 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 7713 (petition in superior court). The reference to the "clerk of the court in which the proceeding is pending" is shortened to the "clerk" to eliminate surplus language.

See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7822 (unfavorable recommendation in independent adoption), 7917 (unfavorable recommendation in intercountry adoption).

**CHAPTER 3. INDEPENDENT ADOPTIONS**

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- § 7818. Statement to birth parents at time of consent
- § 7819. Notice to birth parent on termination of parental rights
- § 7820. Appeal from department or agency disapproval
- § 7821. Copy of report or findings to petitioner or attorney

§ 7822. Unfavorable recommendation by department or agency

§ 7823. Appearance of prospective adoptive parents and child

**§ 7800. Legislative declaration concerning attorney-client relationship**

7800. (a) The Legislature finds and declares that lawyering may be deficient when conflict of interest deprives the client of undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111(A)(2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars (\$500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but prior to any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) Any written consent to dual representation shall be filed with the court prior to the filing of the birth parent's consent to adoption.

**Comment.** Section 7800 continues former Civil Code Section 224.10 without substantive change. "Attorney" has been substituted for "counsel" for internal consistency. See also Sections 7512 ("birth parent" defined), 7542 ("prospective adoptive parent" defined).

#### **§ 7801. Selection of prospective adoptive parents**

7801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child's birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) As used in this section, "personal knowledge" includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, and their general area of residence or, upon request, their address.

**Comment.** Subdivision (a) of Section 7801 continues former Civil Code Section 224.20 without substantive change. Subdivision (b) continues subdivision (m) of former Civil Code Section 220.20 without substantive change. See also Sections 7512 ("birth parent" defined), 7542 ("prospective adoptive parent" defined).

#### **§ 7802. Adoption petition and order**

7802. (a) A person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed, nor

does it affect the jurisdiction of any court to have proceeded prior to January 1, 1991, upon the petition omitting the allegation, in any manner provided in this chapter or otherwise, nor does the omission affect the validity of any decree of adoption or other order made by any court before, on, or after January 1, 1991, with respect to a petition omitting the allegation.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had prior to adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had prior to adoption.

**Comment.** Section 7802 continues former Civil Code Section 224.30 without substantive change. The reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. See also Sections 7518 ("department" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7713 (petition for agency adoption, 7911 (petition for intercountry adoption), 8000 (petition for stepparent adoption).

**Note:** See the Note following Section 7713.

### **§ 7803. Concealment or removal of child from county**

7803. (a) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or delegated county adoption agency responsible for the investigation of the proposed adoption. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or delegated county adoption agency. If the department or delegated adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without

good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(b) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners and that the court has not issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(c) A violation of this section is a violation of Section 280 of the Penal Code.

(d) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

**Comment.** Section 7803 continues former Civil Code Section 224.33 without substantive change. See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7714 (removal and concealment in agency adoption), 7912 (removal and concealment in intercountry adoption).

#### **§ 7804. Notice to department of motion to withdraw or dismiss petition**

7804. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The department or delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the adoption petition or where the department or agency recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.

(c) If a birth parent has refused to give the required consent, or the reason or cause for the withdrawal of the petition, or dismissal of the proceeding, is the withdrawal of the consent of the birth parent or parents, at the hearing the court shall order the child restored to the care and custody of the birth parent or parents.

**Comment.** Section 7804 continues former Civil Code Section 224.36 without substantive change. In subdivision (b), the phrase "withdrawal of dismissal" has been corrected to read "withdrawal or dismissal." See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined).

For a comparable provision, see Section 7916 (notice of withdrawal or dismissal in intercountry adoption). For related provisions, see Sections 7719 (notice of withdrawal or dismissal in agency adoption), 8006(a) (notice of withdrawal or dismissal in stepparent adoption).

#### **§ 7805. Removal of child from home of petitioners**

7805. At the hearing, if the court sustains the recommendation of the department or delegated county adoption agency that the child be removed from the home of the petitioners because the department or agency recommends denial or if the petitioners move to withdraw the petition or if the court dismisses the petition and does not return the child to the birth parents, the court shall commit the child to the care of the department or delegated county adoption agency, whichever made the recommendation, for the department or agency to arrange adoptive placement or to make a suitable plan. In those counties not served by a delegated county adoption agency, the county welfare department shall act as the agent of the department and shall provide care for the child in accordance with rules and regulations established by the department.

**Comment.** Section 7805 continues former Civil Code Section 224.37 without substantive change. See also Sections 7515 (“delegated county adoption agency” defined), 7518 (“department” defined), 7536 (“petitioner” defined), 7539 (“place for adoption” defined).

#### **§ 7806. Duty of department or agency**

7806. The department or delegated county adoption agency shall accept the consent of the birth parents to the adoption of the child by the petitioners and, prior to filing its report with the court, shall ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child.

**Comment.** Section 7806 continues former Civil Code Section 224.40 without substantive change. See also Sections 7512 (“birth parent” defined), 7515 (“delegated county adoption agency” defined), 7518 (“department” defined), 7536 (“petitioner” defined).

**Note:** See the Note following Section 7715 concerning duty language.

#### **§ 7807. Investigation of proposed independent adoption; report**

7807. (a) Except as provided in subdivisions (b) and (c), within 180 days after the filing of the petition, the department or delegated county adoption agency shall investigate the proposed independent adoption and submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition.

(b) In a case where the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption, the report shall be filed immediately.

(c) In its discretion, the court may allow additional time for the filing of the report, after at least five days’ notice to the petitioner or petitioners and an opportunity for the petitioner or petitioners to be heard with respect to the request for additional time.

**Comment.** Section 7807 continues former Civil Code Section 224.42 without substantive change. See also Sections 7515 (“delegated county adoption agency” defined), 7518 (“department” defined), 7524 (“independent adoption” defined), 7536 (“petitioner” defined).

For related provisions, see Sections 7715 (report of department or agency in agency adoption), 7914 (report of department or agency in intercountry adoption), 8001 (report of county welfare department or probation officer in stepparent adoption).

**Note:** See the Note following Section 7715 concerning duty language.

#### **§ 7808. Interview by department or agency**

7808. The department or a delegated county adoption agency shall interview the petitioners and all persons whose consent is required and whose addresses are known as soon as possible and, in the case of residents of California, within 45 working days, excluding legal holidays, after the filing of the adoption petition. In order to facilitate these interviews, at the same time the petition is filed, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

**Comment.** Section 7808 continues former Civil Code Section 224.44 without substantive change. See also Sections 7515 (“delegated county adoption agency” defined), 7518 (“department” defined), 7536 (“petitioner” defined).

#### **§ 7809. Request to sign consent in presence of court**

7809. (a) With respect to petitions for which a fee is charged, deferred, reduced, or waived under Section 7810, if the department or delegated county adoption agency fails without good cause to conduct the interviews of the petitioners and all persons whose consent is required as specified in Section 7808 and, within the period of time specified in Section 7808, the petitioners, upon giving 10 days’ written notice to the department or delegated county adoption agency responsible for the investigation of the adoption, may request the court in which the adoption petition has been filed, or the superior court in the county in which a birth parent resides, to permit the signing of the consent in the presence of the court by any person whose consent is required. The consent and a statement of understanding shall be obtained on forms prescribed by the department. In all cases in which the consent of the birth parent or parents is taken pursuant to this subdivision, the consent form and the statement of understanding shall be read and signed by the birth parent or parents in the presence of the superior court. Consent provided pursuant to this subdivision is in lieu of the otherwise applicable provisions of subdivisions (a) and (c) of Section 7814, but has the same effect.

(b) For purposes of this section, “good cause” for failure to conduct an interview includes, but is not limited to, the following:

(1) An inability to contact or locate any of the persons who are required to be interviewed pursuant to Section 7808.

(2) Failure of the petitioner to provide the district office of the department or the delegated county adoption agency with a copy of the filed petition and the names, addresses, and telephone numbers of all persons to be interviewed, within 10 working days of the date the petition is filed with the court.

(c) The fee authorized by subdivision (a) of Section 7810 shall be waived if the consent of any party from whom consent is required is taken in the presence of the court pursuant to subdivision (a) of this section.

(d) This section remains in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

**Comment.** Section 7809 continues former Civil Code Section 224.45 without substantive change. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 7802 (petition in superior court).

See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined).

For related provisions, see Sections 7700 (consent to agency adoption), 8003 (consent to stepparent adoption).

#### § 7810. Fee

7810. (a) Except as otherwise provided in this section, if a petition is filed under this chapter for the adoption of a child, the petitioner shall pay a fee of five hundred dollars (\$500) to the department or delegated county adoption agency prior to the filing of a favorable report in the court by the department or agency. The department or agency may defer, waive, or reduce the fee when in its judgment the payment would cause economic hardship to the prospective adoptive parents and would be detrimental to the welfare of the adopted child.

(b) Revenues produced by fees collected by the department pursuant to subdivision (a) shall be used, when appropriated by the Legislature, to fund only the state program for independent adoptions. Revenues produced by fees collected by the delegated county adoption agency pursuant to subdivision (a) shall be used by the county to fund the county program for independent adoptions. Revenues produced by fees collected by the department or counties pursuant to subdivision (a) may not be used to supplant current funding for the adoptions program.

(c) The department shall determine the impact of the fee required under this section on the independent adoption of children, including staffing, the time required to complete investigations and court reports, and the number of fee waivers or reduction requests made and granted or denied. The department shall report its findings to the Legislature on or before January 1, 1992.

(d) This section applies only to independent adoption petitions filed on or after September 1, 1989.

(e) This section remains in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

**Comment.** Section 7810 continues former Civil Code Section 224.47 without substantive change. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 7802 (petition in superior court).

See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7524 ("independent adoption" defined).

For related provisions, see Sections 7716 (fee for report in agency adoption), 8002 (fee for report in stepparent adoption).

### **§ 7811. Investigation of prospective adoptive parents**

7811. (a) The department or delegated county adoption agency shall require each person filing an adoption petition to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or delegated county adoption agency may also secure the person's full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the petitioner shall be paid by the petitioner. The department or delegated county adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

**Comment.** Section 7811 continues former Civil Code Section 224.49 without substantive change. See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined), 7542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 7712 (investigation in agency adoption, 7908 (investigation in intercountry adoption). For a related provision, see Section 8001(a) (investigation in stepparent adoption).

### **§ 7812. Interview by department or agency; counseling; assessment of adoptive family; report to Legislature**

7812. (a) Notwithstanding the time limits of Section 7808, if the person to be interviewed has been advised as provided in subdivision (c) and if there is no serious question about the suitability of the prospective adoptive family as provided in

subdivision (g), the department or a delegated county adoption agency shall interview at the department or agency office any person willing to be interviewed from whom consent is required, within 10 working days of receiving a copy of the filed adoption petition and documentation that all of the following conditions have been met:

(1) The person from whom consent is required has been advised pursuant to subdivision (c).

(2) There is no serious question about the suitability of the prospective adoptive family as provided in subdivision (g).

(3) The department or agency has received the name, address, and telephone number of the person to be interviewed and the complete report of the assessment of the prospective adoptive family.

(b) The department or licensed county adoption agency may take the consent of the person to the adoption at this interview or subsequently.

(c) The advice required by subdivision (a) shall be given by a representative of the department or a full-service adoption agency or noncustodial adoption agency, as specified in this subdivision prior to placement of the child for adoption. The advice shall include a balanced presentation of the alternatives to adoption, the right to obtain additional counseling, the right to retain separate legal counsel, the meaning of the consent to adoption, the right to future information about the status of the adoption, the needs of the child and the prospective adoptive parents for complete information on the background of the child, the content of the assessment of the prospective adoptive family, and other information determined necessary by the department. The person giving the advice shall also collect information on the background of the child from the person being advised.

(d) Each person advised pursuant to subdivision (c) shall be offered at least three separate counseling sessions, to be held on different days, except that this requirement does not apply to a birth father consent for the adoption is not required. Each counseling session shall be not less than 50 minutes' duration. The counseling may be provided by a representative of the department or a licensed adoption agency or by persons licensed to provide psychotherapy or counseling selected by the person. The counseling costs shall be paid by the prospective adoptive parents at the request of the birth parents. If counseling is requested prior to the placement of the child for adoption, it shall be initiated prior to the placement.

(e) Confirmation that a person has been advised and has received counseling, if desired, as required by subdivision (d), shall be documented by the department or by a full-service adoption agency or noncustodial adoption agency on a form prescribed by the department.

(f) If the person from whom consent is required decides to relinquish the child for adoption, rather than to consent to adoption of the child by the petitioners, the agency advising the birth parent or parents may not accept the relinquishment of the child, except when there are no other licensed adoption agencies in the county acceptable to

the birth parent or parents, in which case the advising agency still may not accept a relinquishment sooner than five days after completion of the giving of that advice.

(g) The determination that there is no serious question about the suitability of the prospective adoptive family, as required by subdivision (a), shall be based on an assessment conducted by the department or by a licensed adoption agency. The assessment shall be completed or updated within 12 months before the placement of the child for adoption. The assessment shall include consideration of those factors required by the department in a study to determine whether the prospective adoptive family and its home are suitable for a child, except those factors regarding the adjustment of the child in the home. In addition to describing fully information collected in the assessment and the conclusions of the assessment, the report of the assessment shall specify the characteristics of a child that the family would adopt, including, but not limited to, age, sex, ethnicity, race, and special needs. The prospective adoptive parents and any person being advised pursuant to subdivision (c) shall be provided with a written summary of the report of the assessment.

(h) If the assessment results in a determination that there is a serious question as to the suitability of the prospective adoptive family, or if the assessment is discontinued prior to completion because of such a question, the department or adoption agency shall provide a report of the complete or incomplete assessment to the department. The department shall retain this report for 10 years for use in any assessment of the suitability of the family to adopt a child.

(i) Any relationship between an attorney and a licensed private adoption agency involved in providing advice, counseling, or assessment to any party in an adoption pursuant to subdivisions (c) and (d), shall be disclosed in writing to any person from whom consent is required and to the prospective adoptive parents.

(j) No licensed private adoption agency is required to provide the advice and assessment services specified in subdivisions (c) through (g). However, if such an agency elects to provide these services, it shall provide both services. There is no requirement that prospective adoptive parents and birth parents use the same adoption agency for these services. If the agency has a policy that allows it to provide services only to members of specific groups, this policy shall be disclosed to families prior to the beginning of the assessment process.

(k) The department or licensed county adoption agency shall perform the advice and assessment services specified in subdivisions (c) through (g) at no cost only in those cases where all of the following apply:

(1) The prospective adoptive parents are seeking the assessment because of the intended placement of a specific child of an identified birth parent.

(2) The advice and assessment services can be conducted prior to the placement of the child.

(3) The department or licensed county adoption agency can provide the services without delaying any mandated service.

(4) The fees specified in subdivision (a) of Section 7810 would be waived because they would cause economic hardship to the prospective adoptive parents and would be detrimental to the welfare of the adopted child as determined by the department.

(l) The department shall study the effect of the processes described in subdivisions (a) to (k), inclusive, on the child and the parties to the adoption. The study shall provide and evaluate comparative data using information regarding the factors specified in this subdivision, which shall cover a period prior to, and concurrent with, the implementation of this section for adoptions conducted under this section or pursuant to other statute. These factors include the number and percentage of birth parents actually receiving counseling, the number of petitions in which a birth parent seeks the withdrawal of consent to adoption, the number of occasions in which the birth parent's consent is not taken at the initial interview under provisions of this section and the reasons, the number of adoptions commenced and completed under this section and pursuant to other statute, the number of requests for return of a child by a birth parent after placement but before consent, the amount of time spent by the state in completing the home study, and the number of negative home studies presented to the court.

(m) The Independent Adoption Preplacement Program authorized by this section shall be deemed to be successful if there is a 10 percent reduction in the number of withdrawals of consent to adoption in cases commenced under this section, and if at least 25 percent of all nonagency adoptions are commenced pursuant to this section at the time the evaluation is completed.

(n) The department shall report its findings to the Legislature on or before January 1, 1993.

(o) The department may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code to implement this section.

(p) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

**Comment.** Section 7812 continues former Civil Code Section 224.50 without substantive change. In subdivision (b), the reference to "licensed county adoption agency" has been changed to "delegated county adoption agency." See also Sections 7506 ("agency adoption" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7521 ("full-service adoption agency" defined), 7530 ("licensed adoption agency" defined), 7533 ("noncustodial adoption agency" defined), 7539 ("place for adoption" defined), 7542 ("prospective adoptive parent" defined).

**Note:** Is there a reason for using "prospective adoptive family" instead of "prospective adoptive parents"? What is the significance of switching from "delegated" to "licensed" county adoption agency?

Few changes have been made in this section since it is subject to the sunset provision. However, it could profitably be made into a separate article, if this chapter were divided into articles.

**§ 7813. Request for information on status of adoption**

7813. At or before the time a consent to adoption is signed, the department or delegated county adoption agency shall advise the birth parent signing the consent, verbally and in writing, that he or she may, at any time in the future, request from the department or agency, all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following:

- (a) Whether the child has been placed for adoption.
- (b) The approximate date that an adoption was completed.
- (c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

**Comment.** Section 7813 continues former Civil Code Section 224.61 without substantive change. See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7539 ("place for adoption" defined).

For a comparable provision, see Section 7701 (information on status of agency adoption).

**§ 7814. Consent of birth parents to adoption**

7814. (a) The consent of the birth parent or parents to the adoption by the petitioners shall be signed in the presence of an agent of the department or of the delegated county adoption agency on a form prescribed by the department and shall be filed with the clerk of the superior court in the county of the petitioner's residence.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child, and when duly acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of his or her child and the consent is not subject to revocation by reason of minority.

**Comment.** Section 7814 continues former Civil Code Section 224.62 without substantive change. See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined).

**§ 7815. Petition for withdrawal of consent**

7815. (a) Consent of a birth parent to the adoption of the child by the prospective adoptive parent or parents may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee

for filing the petition. The motion or petition shall be in writing and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the department, to the prospective adoptive parent or parents, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The department or delegated county adoption agency shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

**Comment.** Section 7815 continues former Civil Code Section 224.64 without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. In subdivisions (a) and (b), the phrase "person or persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent or parents."

See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8005 (consent in stepparent adoptions).

### § 7816. Consent of agency or department

7816. In an independent adoption where the consent of the birth parent or parents is not necessary, the department or delegated county adoption agency shall, prior to the hearing of the petition, file its consent to the adoption with the clerk of the court in which the petition is filed. The consent may not be given unless the child's welfare will be promoted by the adoption.

**Comment.** Section 7816 continues former Civil Code Section 224.66 without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 7802 (petition in superior court).

See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7524 ("independent adoption" defined).

**§ 7817. Medical report on child and biological parents**

7817. (a) A written report on the child's medical background, and if available, the medical background of the child's biological parents, so far as ascertainable, shall be made by the department or delegated county adoption agency as part of the study required by Section 7806.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) The report shall be submitted to the prospective adoptive parents who shall acknowledge its receipt in writing.

**Comment.** Section 7817 continues former Civil Code Section 224.70(a) without substantive change. See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7542 ("prospective adoptive parent" defined).

For related provisions, see Sections 7706 (medical report in agency adoption, 7909 (medical report in intercountry adoption). See also Sections 7608 (regulations concerning medical reports), 8202 (availability of medical reports).

**§ 7818. Statement to birth parents at time of consent**

7818. (a) The department shall adopt a statement to be presented to the birth parents at the time the consent to adoption is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parents keep the department informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department in order to permit a response to appropriate inquiries concerning medical or social history.

(3) Section 8203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 to request disclosure of the name and address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department.

(5) The consent will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than

the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the consent to adoption is signed, which shall provide as follows:

"Section 8203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 to make a request to the State Department of Social Services for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

- YES
- NO
- UNCERTAIN AT THIS TIME; WILL NOTIFY DEPARTMENT OR AGENCY AT LATER DATE"

**Comment.** Section 7818 continues former Civil Code Section 224.73 without substantive change. The statement concerning the requirements of Section 8203 has been revised to conform to the language of that section. Accordingly, for example, "petition" has been changed to "request." The "uncertain" option in the form language has been revised to refer to the department for consistency with the substantive provisions of this section.

See also Section 7512 ("birth parent" defined), 7518 ("department" defined), 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 7702 (statement to birth parents in agency adoption).

**Note:** References to the licensed adoption agency in what is now subdivision (a)(2) and the statement in subdivision (b) are deleted since they seem to be in error. By definition, an independent adoption does not involve "joinder" of a licensed adoption agency. And if the disclosure form is filed with the department, any change in the disclosure should also be filed there. Civil Code Section 224.73 is not internally consistent. The form language refers to "agency" whereas subdivision (a)(3) refers only to the department.

### § 7819. Notice to birth parent on termination of parental rights

7819. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 1760) of Part 1 of Division 5 or Part 3 (commencing with Section 3200) of Division 10, the department or delegated county adoption agency shall send a written notice to the birth parent, if his or her address is known, that contains the following statement:

"You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights."

**Comment.** Section 7819 continues former Civil Code Section 224.76 without substantive change. Some language changes have been made for consistency with Section 7703. See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined).

For a comparable provision, see Section 7703 (notice of termination of parental rights in agency adoption).

**Note:** Unlike Section 7703, this section does not refer to termination of parental rights under Welfare and Institutions Code §§ 366.25 and 366.26.

### **§ 7820. Appeal from department or agency disapproval**

7820. The birth parent or parents or the petitioner may appeal in either of the following cases:

(1) If for a period of 180 days from the date of filing the adoption petition or upon the expiration of any extension of the period granted by the court, the department or delegated county adoption agency fails or refuses to accept the consent of the birth parent or parents to the adoption.

(2) In a case where the consent of the department or delegated county adoption agency is required by this chapter, if the department or agency fails or refuses to file or give its consent to the adoption.

(b) The appeal shall be filed in the court in which the adoption petition is filed. The court clerk shall immediately notify the department or delegated county adoption agency of the appeal and the department or agency shall, within 10 days, file a report of its findings and the reasons for its failure or refusal to consent to the adoption or to accept the consent of the birth parent or parents.

(c) After the filing of the report by the department or delegated county adoption agency, the court may, if it deems that the welfare of the child will be promoted by that adoption, allow the signing of the consent by the birth parent or parents in open court or, if the appeal is from the refusal of the department or delegated county adoption agency to consent thereto, grant the petition without the consent.

**Comment.** Section 7820 continues former Civil Code Section 224.80 without substantive change. This section has been divided into subdivisions and reorganized. In subdivision (c), the reference to "findings" has been changed to "report" for internal consistency.

See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined), 7536 ("petitioner" defined).

**Note:** Existing law is unclear as to whether the 180 day condition applies to both "if" clauses. Grammatically, it applies only to the first condition, but it appears that it should apply to both, otherwise the time frame for the appeal is unclear.

There is also an inconsistency between the refusal to accept the birth parent's consent mentioned here and the duty to accept it under draft Section 7806.

Note that this section, unlike several others, does not specify that notice is to be given the department "at Sacramento." This could be added, or a general provision could be included in Chapter 1 requiring notice to be given to the department at Sacramento unless the department otherwise requires.

### **§ 7821. Copy of report or findings to petitioner or attorney**

7821. When any report or findings are submitted to the court by the department or a delegated county adoption agency, a copy of the report or findings, whether

favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

**Comment.** Section 7821 continues former Civil Code Section 224.91 without substantive change. See also Sections 7515 ("delegated county adoption agency" defined), 7518 ("department" defined).

For comparable provisions, see Sections 7717 (copy of report in agency adoption), 7915 (copy of report in intercountry adoption).

### **§ 7822. Unfavorable recommendation by department or agency**

7822. (a) If the findings of the department or delegated county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or delegated county adoption agency, the petitioners, and the birth parents by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or delegated county adoption agency shall appear to represent the child.

**Comment.** Section 7822 continues former Civil Code Section 224.93 without substantive change. See also Sections 7512 ("birth parent" defined), 7515 ("delegated county adoption agency" defined), 7518 ("department" defined).

For comparable provisions, see Sections 7720 (unfavorable recommendation in agency adoption), 7917 (unfavorable recommendation in intercountry adoption).

### **§ 7823. Appearance of prospective adoptive parents and child**

7823. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 7612 and 7613.

**Comment.** Section 7823 continues former Civil Code Sections 221.62 and 224.95 without substantive change. "Prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." See also Section 7542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 7718 (appearance in agency adoptions), 7913 (appearance in intercountry adoptions), 8007 (appearance in stepparent adoptions).

**Note:** See the Note following Section 7718.

## **CHAPTER 4. INTERCOUNTRY ADOPTIONS**

§ 7900. Adoption services exclusively by licensed adoption agencies

§ 7901. Department regulations

§ 7902. Agency services

§ 7903. Care, custody, and control of child; Medi-Cal eligibility

§ 7904. Agency services for adoptions finalized in foreign country

- § 7905. Agreements of licensed adoption agencies with other agencies
- § 7906. Agreement to share or transfer financial responsibility
- § 7907. Funding by fees
- § 7908. Investigation of prospective adoptive parents
- § 7909. Medical report on child and biological parents
- § 7910. Petition to adopt within 30 days of placement
- § 7911. Adoption petition; order
- § 7912. Concealment or removal of child from county
- § 7913. Appearance of prospective adoptive parents and child
- § 7914. Report to court
- § 7915. Copy of report or findings to petitioner or attorney
- § 7916. Notice to department of motion to withdraw or dismiss
- § 7917. Unfavorable recommendation by licensed adoption agency
- § 7918. Transfer of child to care of agency

#### **§ 7900. Adoption services exclusively by licensed adoption agencies**

7900. Intercountry adoption services described in this chapter shall be exclusively provided by private adoption agencies licensed by the department specifically to provide these services.

**Comment.** Section 7900 continues former Civil Code Section 226.10 without substantive change. See also Sections 7518 ("department" defined), 7527 ("intercountry adoption" defined).

#### **§ 7901. Department regulations**

7901. The department shall adopt regulations to administer the intercountry adoption program.

**Comment.** Section 7901 continues former Civil Code Section 226.11 without change. See also Sections 7218 ("department" defined), 7527 ("intercountry adoption" defined).

#### **§ 7902. Agency services**

7902. For intercountry adoptions that will be finalized in this state, the licensed adoption agency shall provide all of the following services:

- (a) Assessment of the suitability of the applicant's home.
- (b) Placement of the foreign-born child in an approved home.
- (c) Postplacement supervision.
- (d) Submission to the court of a report on the intercountry adoptive placement with a recommendation regarding the granting of the petition.
- (e) Services to applicants seeking to adopt related children living in foreign countries. The Legislature recognizes that these children have an impelling need for adoptive placement with their relatives.

**Comment.** Section 7902 continues former Civil Code Section 226.20 without substantive change. See also Sections 7509 ("applicant" defined), 7527 ("intercountry adoption" defined), 7530 ("licensed adoption agency" defined).

**§ 7903. Care, custody, and control of child; Medi-Cal eligibility**

7903. (a) For each intercountry adoption finalized in this state, the licensed adoption agency shall assume all responsibilities for the child including care, custody, and control as if the child had been relinquished for adoption in this state from the time the child left the child's native country.

(b) Notwithstanding subdivision (a), if the child's native country requires and has given full guardianship to the prospective adoptive parents, the prospective adoptive parents shall assume all responsibilities for the child including care, custody, control, and financial support.

(c) If the licensed adoption agency or prospective adoptive parents fails to meet the responsibilities under subdivision (a) or (b) and the child becomes a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code, the state shall assume responsibility for the cost of care for the child. When the child becomes a dependent of the court and if, for any reason, is ineligible for AFDC under Section 14005.1 of the Welfare and Institutions Code and loses Medi-Cal eligibility, the child shall be deemed eligible for Medi-Cal under Section 14005.4 of the Welfare and Institutions Code and the State Director of Health Services shall be given authority to provide payment for the medical services to the child that are necessary to meet the child's needs.

**Comment.** Section 7903 continues former Civil Code Section 226.21 without substantive change. See also Sections 7527 ("intercountry adoption" defined), 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined).

**Note:** The phrase "shall be given authority" in subdivision (c) should be changed to "has authority" unless there is a special reason for existing phrase.

**§ 7904. Agency services for adoptions finalized in foreign country**

7904. For an intercountry adoption that will be finalized in a foreign country, the licensed adoption agency shall provide both of the following services:

(a) Assessment of the suitability of the applicant's home.

(b) Certification to the Immigration and Naturalization Service that this state's intercountry adoption requirements have been met.

**Comment.** Section 7904 continues former Civil Code Section 226.23 without substantive change. See also Sections 7530 ("intercountry adoption" defined), 7530 ("licensed adoption agency" defined).

**Note:** "Intercountry" has been added in the introductory clause and in subdivision (b).

**§ 7905. Agreements of licensed adoption agencies with other agencies**

7905. Licensed adoption agencies may work only with domestic and foreign adoption agencies with whom they have written agreements that specify the responsibilities of each. The agreements may not violate any statute or regulation of the United States or of this state.

**Comment.** Section 7905 continues former Civil Code Section 226.25 without substantive change. See also Section 7530 ("licensed adoption agency" defined).

**§ 7906. Agreement to share or transfer financial responsibility**

7906. Nothing in this chapter may be construed to prohibit the licensed adoption agency from entering into an agreement with the prospective adoptive parents to share or transfer financial responsibility for the child.

**Comment.** Section 7906 continues former Civil Code Section 226.27 without substantive change. See also Sections 7530 ("licensed adoption agency" defined), 7542 ("prospective adoptive parent" defined).

**§ 7907. Funding by fees**

7907. The costs incurred by a licensed adoption agency pursuant to programs established by this chapter shall be funded by fees charged by the agency for services required by this chapter. The agency's fee schedule is required to be approved by the department initially and whenever it is altered.

**Comment.** Section 7907 continues former Civil Code Section 226.28 without substantive change. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

**Note:** The words "shall be" in the second sentence have been changed to "is required to be" for accuracy. Presumably the department's approval is not mandated.

**§ 7908. Investigation of prospective adoptive parents**

7908. (a) A licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The licensed adoption agency may also secure the person's full criminal record, if any.

(b) The criminal record, if any, shall be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child.

**Comment.** Section 7908 continues former Civil Code Section 226.30 without substantive change. See also Section 7530 ("licensed adoption agency" defined).

For comparable provisions, see Sections 7712 (investigation in agency adoption, 7811 (investigation in independent adoption). For a related provision, see Section 8001(a) (investigation in stepparent adoption).

**Note:** The provision concerning the waiver of fees for special-needs children does not appear in this section. Compare Sections 7712 and 7811. Should it?

### **§ 7909. Medical report on child and biological parents**

7909. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents, so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

**Comment.** Section 7909 continues former Civil Code Section 226.35(a) without substantive change. See also Sections 7518 ("department" defined), 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 7706 (medical report in agency adoption. For a related provision, see Section 7817 (medical report in independent adoption). See also Sections 7608 (regulations concerning medical reports), 8202 (availability of medical reports).

### **§ 7910. Petition to adopt within 30 days of placement**

7910. As a condition of placement, the prospective adoptive parents shall file a petition to adopt the child under Section 7911 within 30 days of placement.

**Comment.** Section 7910 continues former Civil Code Section 226.50 without substantive change. See also Sections 7539 ("place for adoption" defined), 7542 ("prospective adoptive parent" defined).

### **§ 7911. Adoption petition; order**

7911. (a) A person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had prior to adoption shall appear in the joinder signed by the licensed adoption agency.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child's adopted name, but not the name the child had prior to adoption.

**Comment.** Section 7911 continues former Civil Code Section 226.52 without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections.

See also Section 7518 ("department" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7713 (petition for agency adoption, 7802 (petition for independent adoption), 8000 (petition for stepparent adoption).

**Note:** The reference to the "joinder" in subdivision (b) is unclear. This chapter does not require such a joinder.

### § 7912. Concealment or removal of child from county

7912. (a) In no event may a child who has been placed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the licensed adoption agency responsible for the child. If the licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners or the court has not issued an order prohibiting the removal of the child from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

**Comment.** Section 7912 continues former Civil Code Section 226.40 without substantive change. See also Sections 7512 ("birth parent" defined), 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined), 7539 ("place for adoption" defined).

For comparable provisions, see Sections 7714 (removal and concealment in agency adoption), 7803 (removal and concealment in independent adoption).

### **§ 7913. Appearance of prospective adoptive parents and child**

7913. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 7612 and 7613.

**Comment.** Section 7913 continues former Civil Code Sections 221.62 and 226.55 without substantive change. "Prospective adoptive parents" has been substituted for "person or persons desiring to adopt a child." See also Section 7542 ("prospective adoptive parent" defined).

For comparable provisions, see Sections 7718 (appearance in agency adoptions), 7823 (appearance in independent adoptions), 8007 (appearance in stepparent adoptions).

**Note:** See the Note following Section 7718.

### **§ 7914. Report to court**

7914. If the licensed adoption agency is a party to or joins in the adoption petition, it shall submit a full report of the facts of the case to the court. The department may also submit a report.

**Comment.** Section 7914 continues former Civil Code Section 226.57 without substantive change. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

For related provisions, see Sections 7715 (report of department or agency in agency adoption), 7807 (report of department or agency in independent adoption), 8001 (report of county welfare department or probation officer in stepparent adoption).

### **§ 7915. Copy of report or findings to petitioner or attorney**

7915. If any report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

**Comment.** Section 7915 continues former Civil Code Section 226.59 without change. See also Section 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined).

For comparable provisions, see Sections 7717 (copy of report in agency adoption), 7821 (copy of report in independent adoption).

**§ 7916. Notice to department of motion to withdraw or dismiss**

7916. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The licensed adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners desire to withdraw the adoption petition or where the licensed adoption agency recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.

**Comment.** Section 7916 continues former Civil Code Section 226.60 without substantive change. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined), 7536 ("petitioner" defined).

For a comparable provision, see Section 7804 (notice of withdrawal or dismissal in independent adoption). For related provisions, see Sections 7719 (notice of withdrawal or dismissal in agency adoption), 8006(a) (notice of withdrawal or dismissal in stepparent adoption).

**§ 7917. Unfavorable recommendation by licensed adoption agency**

7917. (a) If the licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and the agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the agency recommends that the petition be denied, the clerk upon receipt of the report of the licensed adoption agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the licensed adoption agency and the petitioners by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The licensed adoption agency shall appear to represent the child.

**Comment.** Section 7917 continues former Civil Code Section 226.64 without substantive change. See also Section 7530 ("licensed adoption agency" defined).

For comparable provisions, see Sections 7720 (unfavorable recommendation in agency adoption), 7822 (unfavorable recommendation in independent adoption).

**§ 7918. Transfer of child to care of agency**

7918. At the hearing, if the court sustains the recommendation that the child be removed from the home of the petitioners because the licensed adoption agency has recommended denial or the petitioners desire to withdraw the petition or the court dismisses the petition and does not return the child to his or her parents, the court shall commit the child to the care of the licensed adoption agency for the agency to arrange adoptive placement or to make a suitable plan.

**Comment.** Section 7918 continues former Civil Code Section 226.66 without substantive change. See also Section 7530 ("licensed adoption agency" defined).

## **CHAPTER 5. STEPPARENT ADOPTIONS**

§ 8000. Adoption petition; order

§ 8001. Investigation

§ 8002. Cost of investigation

§ 8003. Consent of birth parents to adoption

§ 8004. Consent form

§ 8005. Motion or petition to withdraw consent

§ 8006. Notice of withdrawal or dismissal; dismissal where consent refused

§ 8007. Appearance of prospective adoptive parent and child

**§ 8000. Adoption petition; order**

8000. (a) A stepparent desiring to adopt a child of his or her spouse may for that purpose petition the superior court of the county in which the petitioner resides.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had prior to adoption.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child's adopted name, but not the name the child had prior to adoption.

**Comment.** Section 8000 continues former Civil Code Section 227.10 without substantive change. See also Section 7536 ("petitioner" defined).

For comparable provisions, see Sections 7713 (petition for agency adoption, 7802 (petition for independent adoption), 7911 (petition for intercountry adoption). For other related provisions, see Sections 7715 (report of department or agency in agency adoption), 7807 (report of department or agency in independent adoption), 7914 (report of department or agency in intercountry adoption).

**§ 8001. Investigation**

8001. (a) The probation officer or, at option of the board of supervisors, the county welfare department in the county in which the adoption proceeding is pending shall make an investigation of each case stepparent adoption. The court may not make an order of adoption until after the probation officer or welfare department has filed its report and recommendation and they have been considered by the court.

(b) Unless ordered by the court, no home study may be required of the petitioner's home in a stepparent adoption. The agency conducting the investigation or any

interested person may request the court to order a home study or the court may order a home study on its own motion.

(c) As used in this section, "home study" means a physical investigation of the premises where the child is residing.

**Comment.** Section 8001 continues former Civil Code Section 227.20 without substantive change. See also Section 7548 ("stepparent adoption" defined).

For related provisions, see Sections 7712 (investigation in agency adoption, 7811 (investigation in independent adoption), 7908 (investigation in intercountry adoption).

### **§ 8002. Cost of investigation**

8002. In a stepparent adoption, the stepparent is liable for all reasonable costs incurred in connection with an investigation required by Section 8001, up to a maximum of one hundred dollars (\$100). The probation officer or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

**Comment.** Section 8002 continues former Civil Code Section 227.30 without substantive change. The first part of the first sentence has been revised to use the defined term "stepparent adoption" and to delete the phrase "stepparent adopting a child of his or her spouse" to eliminate language that is inconsistent with the definition. See Section 7548 ("stepparent adoption" defined). Other language changes have been made for consistency with corresponding provisions. See Sections 7716 and 7810. See also Sections 7542 ("prospective adoptive parent" defined).

For related provisions, see Sections 7716 (fee for report in agency adoption), 7810 (fee for report in independent adoption).

### **§ 8003. Consent of birth parents to adoption**

8003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a county clerk, probation officer, or county welfare department staff member of any county of this state. The county clerk, probation officer, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and duly acknowledged before the county clerk, probation officer, or county welfare department staff member, is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of his or her child and the consent is not subject to revocation by reason of the minority.

**Comment.** Section 8003 continues former Civil Code Section 227.40 without substantive change. The first sentence of subdivision (a) has been revised to require consent of "birth parents" rather than "parents." This terminology is consistent with subdivision (d). The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 7802 (petition in superior court).

See also Sections 7512 ("birth parent" defined), 7548 ("stepparent adoption" defined).

For related provisions, see Sections 7700 (consent to agency adoption), 7809 (consent to independent adoption).

#### § 8004. Consent form

8004. In a stepparent adoption, the form prescribed by the department for the consent of the birth parent shall contain substantially the following notice:

"Notice to the parent who gives the child for adoption: If you and your child lived together at any time as parent and child, the adoption of your child by a stepparent does not affect the child's right to inherit your property or the property of other blood relatives."

**Comment.** Section 8004 continues former Civil Code Section 227.44 without change. See also Sections 7512 ("birth parent" defined), 7518 ("department" defined), 7548 ("stepparent adoption" defined).

#### § 8005. Motion or petition to withdraw consent

8005. (a) Consent of the birth parent to the adoption of the child by the stepparent may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the probation officer or county welfare department, to the prospective adoptive parent, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer or county welfare department shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances

and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

**Comment.** Section 8005 continues former Civil Code Section 227.46 without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. The reference to the "superior" court in subdivision (a) has been omitted as surplus. See Section 7802 (petition in superior court). In subdivision (b), the phrase "persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent."

See also Section 7542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 7815 (consent in independent adoptions).

#### **§ 8006. Notice of withdrawal or dismissal; dismissal where consent refused**

8006. (a) If the petitioner moves to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the probation officer or county welfare department of the action.

(b) If a birth parent has refused to give the required consent, the adoption petition shall be dismissed.

**Comment.** Section 8006 continues former Civil Code Section 227.50 without substantive change. See also Sections 7512 ("birth parent" defined), 7536 ("petitioner" defined).

For a comparable provision, see Section 7719 (notice of withdrawal or dismissal in agency adoption). For related provisions, see Sections 7804 (notice of withdrawal or dismissal in independent adoption), 7916 (notice of withdrawal or dismissal in intercountry adoption).

#### **§ 8007. Appearance of prospective adoptive parent and child**

8007. The prospective adoptive parent and the child proposed to be adopted shall appear before the court pursuant to Sections 7612 and 7613.

**Comment.** Section 8007 continues former Civil Code Sections 221.62 and 227.60 without substantive change. The phrase "person or persons desiring to adopt a child" has been changed to "prospective adoptive parent" for consistency with the remainder of this chapter.

For comparable provisions, see Sections 7718 (appearance in agency adoptions), 7823 (appearance in independent adoptions), 7913 (appearance in intercountry adoptions). See also Section 7542 ("prospective adoptive parent" defined).

**Note:** Should this section require the appearance of the birth parent who is the spouse of the stepparent? Existing law refers to the "person or persons desiring to adopt a

child," but the birth parent spouse is not adopting and the reference to "persons" does not make sense here. Accordingly, Section 8007 refers only to the "prospective adoptive parent."

See the Note following Section 7718.

## CHAPTER 6. VACATION OF ADOPTION

§ 8100. Petition to set aside adoption; order

§ 8101. Court order to county officer

§ 8102. Limitation of actions

### § 8100. Petition to set aside adoption; order

8100. (a) If a child adopted pursuant to the law of this state shows evidence of a developmental disability or mental illness as a result of conditions existing prior to the adoption to such an extent that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable, and of which conditions the adoptive parents or parent had no knowledge or notice prior to the entry of the order of adoption, a petition setting forth those facts may be filed by the adoptive parents or parent with the court that granted the adoption petition. If these facts are proved to the satisfaction of the court, it may make an order setting aside the order of adoption.

(b) The petition shall be filed within five years after the entry of the order of adoption.

(c) The court clerk shall immediately notify the department at Sacramento of the petition. Within 60 days after the notice, the department shall file a full report with the court and shall appear before the court for the purpose of representing the adopted child.

**Comment.** Section 8100 continues former Civil Code Section 228.10 without substantive change. In subdivisions (a) and (b), the reference to a "decree" of adoption has been omitted as surplus. In subdivision (c), the reference to the "superior" court has been omitted as surplus. See Section 7802 (petition in superior court). The "it shall be the duty" language in subdivision (c) has been replaced by "shall."

See also Section 7518 ("department" defined).

### § 8101. Court order to county officer

8101. (a) If an order of adoption is set aside as provided in Section 8100, the court making the order shall direct the district attorney, the county counsel, or the county welfare department to take appropriate action under the Welfare and Institutions Code. The court may also make any order relative to the care, custody, or confinement of the child pending the proceeding the court sees fit.

(b) The county in which the proceeding for adoption was had is liable for the child's support until the child is able to support himself or herself.

**Comment.** Section 8101 continues former Civil Code Section 228.13 without substantive change. In subdivision (a), the reference to a "decree" of adoption has been omitted as surplus.

**§ 8102. Limitation of actions**

8102. (a) An action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on the ground of any defect or irregularity of procedure in the adoption proceeding shall be commenced within three years after entry of the order.

(b) An action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on any ground other than a defect or irregularity of procedure shall be commenced within five years after entry of the order.

**Comment.** Section 8102 continues former Civil Code Section 228.15 without substantive change. The references to a "decree" of adoption have been omitted as surplus.

**CHAPTER 7. DISCLOSURE OF INFORMATION**

§ 8200. Confidentiality of records; certificate of adoption

§ 8201. Information to public agencies and licensed adoption agencies

§ 8202. Medical report

§ 8203. Disclosure of identity of birth parents

§ 8204. Waiver of confidentiality of adoption records

§ 8205. Request for contact with biological sibling

§ 8206. Release of letters, photographs, or other items of personal property

**§ 8200. Confidentiality of records; certificate of adoption**

8200. (a) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the county clerk pursuant to this chapter is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the superior court. A judge of the superior court may not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition or any portion of any such documents, except in exceptional circumstances and for good cause approaching the necessitous. The petitioner may be required to pay the expenses for preparing the copies of the documents to be inspected.

(b) Upon written request of any party to the proceeding and upon the order of any judge of the superior court, the county clerk shall not provide any documents referred to in this section for inspection or copying to any other person, unless the name of the child's birth parents or any information tending to identify the child's birth parents is deleted from the documents or copies thereof.

(c) Upon the request of the adoptive parents or the child, a county clerk may issue a certificate of adoption that states the date and place of adoption, the child's birth date, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the child's birth parents.

**Comment.** Section 8200 continues former Civil Code Section 229.10 without substantive change. In subdivisions (a) and (b), references to the "action" have been changed to the "proceeding."

See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7548 ("stepparent adoption" defined).

### **§ 8201. Information to public agencies and licensed adoption agencies**

8201. Notwithstanding any other law, the department and any licensed adoption agency may furnish information relating to an adoption petition to the juvenile court, county welfare department, public welfare agency, or private welfare agency licensed by the department, if it is believed the child's welfare will be promoted thereby.

**Comment.** Section 8201 continues former Civil Code Section 229.20 without substantive change. See also Sections 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

### **§ 8202. Medical report**

8202. (a) Notwithstanding any other law, the department or licensed adoption agency that made a medical report required by Section 7706, 7817, or 7909 shall provide a copy of the medical report, in the manner the department prescribes by regulation, to any of the following persons upon the person's request:

(1) A person who has been adopted pursuant to this part and who has attained the age of 18 or who presents a certified copy of his or her marriage certificate.

(2) The adoptive parent of a person under the age of 18 who has been adopted pursuant to this part.

(b) A person who is denied access to a medical report pursuant to regulations adopted pursuant to this section may petition the superior court for review of the reasonableness of the department's or licensed adoption agency's decision. The names and addresses of any persons contained in the report shall be removed unless the person requesting the report has previously received the information pursuant to subdivision (a) of Section 8203.

**Comment.** Section 8202 continues former Civil Code Section 229.30 without substantive change. This section has been substantially reorganized. See also Sections 7503 ("adoptive parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

### **§ 8203. Disclosure of identity of birth parents**

8203. (a) The department or a licensed adoption agency shall do the following:

(1) Upon request of a person who has been adopted pursuant to this part and who has attained the age of 21, disclose the identity of the person's birth parent or parents and their most current address shown in the records of the department or licensed adoption agency, if the birth parent or parents have indicated consent to the disclosure in writing.

(2) Upon request of the birth parent of a person who has been adopted pursuant to this part and who has attained the age of 21, disclose the adopted name of the adoptee

and the adoptee's most current address shown in the records of the department or licensed adoption agency, if the adult adoptee has indicated in writing, pursuant to the registration program developed by the department, that he or she wishes his or her name and address to be disclosed.

(3) Disclose the identity of a birth parent and his or her most current address shown in the records of the department or licensed adoption agency upon the request of the adoptive parent of a person under the age of 21 who has been adopted pursuant to this part, upon the finding by the department or licensed adoption agency that a medical necessity or other extraordinary circumstances justify the disclosure.

(b) The department shall prescribe the form of the request required by this section. The form shall provide for an affidavit to be executed by the requester that to the best of his or her knowledge he or she is an adoptee, the adoptee's birth parent, or the adoptee's adoptive parent. The department may adopt regulations requiring any additional means of identification from a requester that it deems necessary. The request shall advise an adoptee that if he or she consents, his or her adoptive parents will be notified of the filing of the request prior to the release of the name and address of his or her birth parent.

(c) Subdivision (a) is not applicable if a birth parent or an adoptee has indicated that he or she does not wish his or her name or address to be disclosed.

(d) The department shall either respond to a request for information pursuant to this section or forward the request to a licensed adoption agency pursuant to subdivision (f) within 20 working days of its receipt of the request.

(e) The department may forward requests for information pursuant to this section to any licensed adoption agency that was a party to the adoption.

(f) Notwithstanding any other law, the department shall announce the availability of the present method of arranging contact among an adult adoptee, his or her birth parents, and adoptive parents authorized by Section 8204 utilizing a means of communication appropriate to effectively inform the public.

(g) The department or licensed adoption agency may charge a reasonable fee in an amount the department establishes by regulation to cover the costs of processing requests for information made pursuant to subdivision (a). The revenue resulting from the fees so charged shall be utilized by the department or licensed adoption agency to increase existing staff as needed to process these requests. Fees received by the department shall be deposited in the Adoption Information Fund. This revenue shall be in addition to any other funds appropriated in support of the state adoption program.

(h) The department or licensed adoption agency shall waive the fees authorized by this section for any person who is receiving public assistance pursuant to Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

(i) This section applies only to adoptions in which the relinquishment for or consent to adoption was signed on or after January 1, 1984.

**Comment.** Section 8203 continues former Civil Code Section 229.40 without substantive change. This section has been substantially reorganized. See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

#### **§ 8204. Waiver of confidentiality of adoption records**

8204. (a) Notwithstanding any other law, if an adult adoptee, living birth parents, and any living adoptive parent have each filed a written waiver of rights with respect to the confidentiality of adoption records with the department or a licensed adoption agency, the department or licensed agency may arrange for contact among these persons. Neither the department nor a licensed adoption agency may solicit, directly or indirectly, the execution of such a waiver.

(b) The waiver authorized by this section shall be in a form prescribed by the department.

**Comment.** Section 8204 continues former Civil Code Section 229.50 without substantive change. In the first part of the first sentence, "birth parent" has been changed to "living birth parents" for internal consistency.

See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

#### **§ 8205. Request for contact with biological sibling**

8205. (a) Notwithstanding any other law, the department or adoption agency that joined in the adoption petition shall release the names and addresses of biological siblings to one another if both of the siblings have attained the age of 21 and have filed the following with the department or agency:

(1) A current address.

(2) A written request for contact with any biological sibling whose existence is known to the person making the request.

(3) A written waiver of the person's rights with respect to the disclosure of his or her name and address to the sibling, if the person is an adoptee.

(b) Upon inquiry and proof that a person is the biological sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise the sibling that a waiver has been filed by the adoptee. The department or may charge a reasonable fee, not to exceed fifty dollars (\$50), for providing the service required by this section.

(c) An adoptee may revoke a waiver filed pursuant to this section by giving written notice of revocation to the department or agency.

(d) The department shall adopt a form for the request authorized by this section. The form shall provide for an affidavit to be executed by a person seeking to employ the procedure provided by this section that, to the best of the person's knowledge, the person is an adoptee or biological sibling of an adoptee. The form also shall contain a notice of an adoptee's rights pursuant to subdivision (c) and a statement that

information will be disclosed only if there is a currently valid waiver on file with the department or agency. The department may adopt regulations requiring any additional means of identification from a person making a request pursuant to this section as it deems necessary, and for obtaining the consent of the birth parents of the adoptee and the sibling in order to make the disclosure authorized by this section in any case in which the sibling remained in the custody and control of the birth parents until the age of 18 years.

(e) The department or agency may not solicit the execution of a waiver authorized by this section. However, the department shall announce the availability of the procedure authorized by this section, utilizing a means of communication appropriate to effectively inform the public.

**Comment.** Section 8205 continues former Civil Code Section 229.60 without substantive change. The provisions of subdivision (a) have been substantially revised. In subdivision (d), the provisions concerning consent of "natural" parents have been changed to "birth" parents for consistency with the disclosure provisions. See, e.g., Section 7702.

See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7518 ("department" defined).

**Note:** What service is "required" under subdivision (b)?

Note that "natural" parents is used in Civil Code Section 229.60, whereas "biological" is usually used in these circumstances in this statute, and is used to refer to the sibling. It is unfortunate to use "birth" parents, "biological" parents, and "natural" parents in the same statute. In this draft, "birth" has been substituted for "natural" since it refers to the required consents for a disclosure which provisions apply to "birth" parents. See, e.g., Section 7702.

### **§ 8206. Release of letters, photographs, or other items of personal property**

8206. (a) Notwithstanding any other law, the department or licensed adoption agency shall release any letters, photographs, or other items of personal property in its possession to an adoptee, birth parent, or adoptive parent, upon written request. The material may be requested by any of the following persons:

- (1) The adoptee, if the adoptee has attained the age of 18 years.
- (2) The adoptive parent or parents, on behalf of an adoptee under the age of 18 years, as long as instructions to the contrary have not been made by the depositor.
- (3) The birth parent or parents.

(b) Notwithstanding any other law, all identifying names and addresses shall be deleted from the letters, photographs, or items of personal property before delivery to the requester.

(c) Letters, photographs, and other items of personal property deposited on or after January 1, 1985, shall be accompanied by a release form or similar document signed by the person depositing the material, specifying to whom the material may be released. At its discretion, the department or licensed adoption agency may refuse for

deposit items of personal property that, because of value or bulk, would pose storage problems.

(d) Notwithstanding subdivisions (a) and (b), only the following photographs deposited before January 1, 1985, shall be released:

(1) Photographs of the adoptee that have been requested by the adoptee.

(2) Photographs that have been deposited by the adoptee, the adoptive parent or parents, or the birth parent or parents, and for which there is a letter or other document on file indicating that person's consent to the release of the photographs.

(e) The department and licensed adoption agencies may charge a fee to cover the actual costs of any services required by this section in excess of normal postadoptive services provided by the department or agency. The department shall develop a fee schedule that shall be implemented by the department and licensed adoption agencies in assessing charges to the person who deposits the material or the person to whom the material is released. The fee may be waived by the department or licensed adoption agencies in cases in which it is established that a financial hardship exists.

(f) As used in this section, "photograph" means a photograph of the person depositing the photograph or the person making the request for the release.

**Comment.** Section 8206 continues former Civil Code Section 229.70 without substantive change. See also Sections 7503 ("adoptive parent" defined), 7512 ("birth parent" defined), 7518 ("department" defined), 7530 ("licensed adoption agency" defined).

**Note:** The "notwithstanding" clauses in subdivisions (a), (b), and (d) are in conflict. It is presumed that the one in subdivision (b) trumps the one in subdivision (a), but the drafting is less than ideal. In addition, subdivision (d) appears to trump subdivision (b) as to pre-January 1, 1985, materials.

There is also some question about the point of subdivision (b) since it appears to defeat the purpose of subdivision (a). A picture, for example, with identifying names deleted is not of much use. At a minimum, it should not apply to decedents and should be subject to a contrary direction from the person pictured or the person who deposited the material.

Subdivision (f) is unclear. Does it include a photograph in which the depositor or requester is one of several persons? Or is it limited to photographs of only these persons?

### **PART 3. ADOPTION OF ADULTS AND MARRIED MINORS**

**Note:** This part is a substantial reorganization of the adult adoption provisions of Civil Code Sections 230.10-230.20. Existing law contains four fairly brief "general" provisions and followed by a single lengthy section in which most of the applicable law appears. This draft splits up the long section and reorganizes the law in a manner consistent with the 1990 reorganization of the other procedures. "Prospective adoptive parent" has been substituted for "adopting person" and "person adopting" throughout this part.

Chapter 1. General provisions

Chapter 2. Procedure for adult adoption

Chapter 3. Procedure for terminating adult adoption

**CHAPTER 1. GENERAL PROVISIONS**

§ 8300. Adoption of adult or married minor

§ 8301. Consent of spouse of prospective adoptive parent

§ 8302. Consent of spouse of proposed adoptee

**§ 8300. Adoption of adult or married minor**

8300. (a) An adult may be adopted by another adult as provided in this part.

(b) A married minor may be adopted in the same manner as an adult under this part.

**Comment.** Section 8300 restates former Civil Code Section 230.10 without substantive change.

**Note:** This section splits the longer sentence in Civil Code Section 230.010 and eliminates surplus language, including adult "person."

**§ 8301. Consent of spouse of prospective adoptive parent**

8301. A married person who is not lawfully separated from his or her spouse may not adopt an adult without the consent of the spouse, provided that the spouse is capable of giving that consent.

**Comment.** Section 8301 continues the first sentence of the second paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change.

**§ 8302. Consent of spouse of proposed adoptee**

8302. (a) A married person who is not lawfully separated from his or her spouse may not be adopted without the consent of the spouse, provided that the spouse is capable of giving that consent.

(b) The consent of the parents of the proposed adoptee, of the department, or of any other person is not required.

**Comment.** Section 8302 continues the second and third sentences of the second paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change and supersedes the second paragraph of subdivision (c) of former Civil Code Section 230.20. See also Section 7518 ("department" defined).

**§ 8303. Adoption of more than one unrelated adult within one year**

8303. (a) A person may not adopt more than one unrelated adult under this part within one year of the person's adoption of an unrelated adult, unless the proposed adoptee is the biological sibling of a person previously adopted pursuant to this part or unless the proposed adoptee is disabled or physically handicapped.

(b) A person may not adopt an unrelated adult under this part within one year of an adoption of another person under this part by the prospective adoptive parent's spouse, unless the proposed adoptee is a biological sibling of a person previously adopted pursuant to this part.

**Comment.** Section 8303 continues former Civil Code Section 230.12 without substantive change. "Biological sibling" has been substituted for "sibling by birth" for consistency with the language of Section 8205.

See also Section 7542 ("prospective adoptive parent" defined).

**Note:** This section does not cover all of the cases. In some situations, the section could operate to give different results depending on the order in which people are adopted. E.g., if a spouse adopts a disabled person, subdivision (b) would seem to bar adoption of a nonrelated, nondisabled person. However, if the sequence were reversed, both persons could be adopted. Is there a policy at issue here, or is it just incomplete? Is it worth straightening out?

The use of "unrelated" is not crystal clear. In context, it appears to mean unrelated to the prospective adoptive parent.

#### **§ 8304. Name of adopted person**

8304. A person adopted pursuant to this part may take the family name of the adoptive parent.

**Comment.** Section 8304 continues the first sentence of former Civil Code Section 230.14 without substantive change. See also Section 7503 ("adoptive parent" defined).

For a comparable provision, see Section 7618 (name of adopted child).

#### **§ 8305. Relationship of parent and child**

8305. After adoption, the adoptee and the adoptive parent or parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.

**Comment.** Section 8305 continues the second sentence of former Civil Code Section 230.14 without substantive change. See also Section 7503 ("adoptive parent" defined).

For a comparable provision, see Section 7616 (relationship in adoption of unmarried minors).

#### **§ 8306. Relief from parental duties of birth parents**

8306. The birth parents of a person adopted pursuant to this part are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted person, and have no right over the adopted person.

**Comment.** Section 8306 continues former Civil Code Section 230.16 without substantive change. See also Section 7512 ("birth parent" defined).

For a comparable provision, see Section 7617 (responsibility of birth parents of unmarried minors).

#### **§ 8307. Hearing open and public**

8307. A hearing with regard to adoption under Chapter 2 (commencing with Section 8320) or termination of a parent and child relationship under Chapter 3 (commencing with Section 8340) may, in the discretion of the court, be open and public.

**Comment.** Section 8307 continues subdivision (d) of former Civil Code Section 230.20 without substantive change.

### **CHAPTER 2. PROCEDURE FOR ADULT ADOPTION**

§ 8320. Adoption agreement

§ 8321. Petition for approval of adoption

- § 8322. Setting matter for hearing
- § 8323. Notice to and appearance by interested persons
- § 8324. Appearance by prospective adoptive parent and proposed adoptee
- § 8325. Court's discretion to require report
- § 8326. Notice of hearing for developmentally disabled adult
- § 8327. Report concerning person with developmental disability
- § 8328. Hearing and order

### § 8320. Adoption agreement

8320. (a) An adult may adopt another adult who is younger, except the spouse of the prospective adoptive parent, by an adoption agreement approved by the court, as provided in this chapter.

(b) The adoption agreement shall be in writing, executed by the prospective adoptive parent and the proposed adoptee, and shall state that the parties agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties and responsibilities of that relationship.

**Comment.** Section 8320 continues the first paragraph of subdivision (a) of former Civil Code Section 230.20 without substantive change.

### § 8321. Petition for approval of adoption

8321. (a) The prospective adoptive parent and the proposed adoptee may file in the superior court of the county in which either person resides a petition for approval of the adoption agreement.

(b) The petition for approval of the adoption agreement shall state all of the following:

(1) The length and nature of the relationship between the prospective adoptive parent and the proposed adoptee.

(2) The degree of kinship, if any.

(3) The reason the adoption is sought.

(4) A statement as to why the adoption would be in the best interest of the prospective adoptive parent, the proposed adoptee, and the public.

(5) The names and addresses of any living birth parents or adult children of the proposed adoptee.

(6) Whether the prospective adoptive parent or his or her spouse has previously adopted any other adult and, if so, the name of the adult, together with the date and place of the adoption.

**Comment.** Subdivision (a) of Section 8321 continues the first sentence of subdivision (b) of former Civil Code Section 230.20 without substantive change. Subdivision (b) continues subdivision (f)(1) of former Civil Code Section 230.20 without substantive change. See also Sections 7512 ("birth parent" defined), 7542 ("prospective adoptive parent" defined).

### § 8322. Setting matter for hearing

8322. When the petition for approval of the adoption agreement is filed, the court clerk shall set the matter for hearing.

**Comment.** Section 8322 restates the substance of the first part of the second sentence of subdivision (b) of former Civil Code Section 230.20.

**§ 8323. Notice to and appearance by interested persons**

8323. The court may require notice of the time and place of the hearing to be served on any other interested person and any interested person may appear and object to the proposed adoption.

**Comment.** Section 8323 continues the third sentence of subdivision (b) of former Civil Code Section 230.20 without substantive change.

**§ 8324. Appearance by prospective adoptive parent and proposed adoptee**

8324. Both the prospective adoptive parent and the proposed adoptee shall appear at the hearing in person, unless an appearance is impossible, in which event an appearance may be made for either or both of the persons by counsel, empowered in writing to make the appearance.

**Comment.** Section 8324 continues the last part of the second sentence of subdivision (b) of former Civil Code Section 230.20 without change. See also Section 7542 ("prospective adoptive parent" defined).

**§ 8325. Court's discretion to require report**

8325. No investigation or report to the court by any public officer or agency is required, but the court may require the county probation officer or the department to investigate the circumstances of the proposed adoption and report thereon, with recommendations, to the court prior to the hearing.

**Comment.** Section 8325 continues the last sentence of subdivision (b) of former Civil Code Section 230.20 without change. See also Section 7518 ("department" defined).

**§ 8326. Notice of hearing for developmentally disabled adult**

8326. The prospective adoptive parent shall mail or personally serve notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, and to any living birth parents or adult children of the proposed adoptee, at least 30 days before the day of the hearing on an adoption petition in any case in which both of the following conditions exist:

(a) The proposed adoptee is an adult with developmental disabilities.

(b) The prospective adoptive parent is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

**Comment.** Section 8326 continues subdivision (e) of former Civil Code Section 230.20 without substantive change. See also Sections 7512 ("birth parent" defined), 7542 ("prospective adoptive parent" defined).

**§ 8327. Report concerning person with developmental disability**

8327. If the prospective adoptive parent is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities, or is a spouse or employee of a provider, and seeks to adopt an unrelated adult with developmental disabilities, the regional center for the developmentally disabled notified pursuant to Section 8326 shall file a written report with the court regarding the suitability of the proposed adoption in meeting the needs of the proposed adoptee and regarding any known previous adoption by the prospective adoptive parent.

**Comment.** Section 8327 continues subdivision (f)(2) of former Civil Code Section 230.20 without substantive change. See also Section 7542 ("prospective adoptive parent" defined).

**§ 8328. Hearing and order**

8328. (a) At the hearing the court shall examine the parties, or the counsel of any party not present in person.

(b) If the court is satisfied that the adoption will be in the best interests of the persons seeking the adoption and in the public interest and that there is no reason why the petition should not be granted, the court shall approve the adoption agreement and make an order of adoption declaring that the person adopted is the child of the adoptive parent. Otherwise, the court shall withhold approval of the agreement and deny the petition.

(b) In determining whether or not the adoption of any person pursuant to this part is in the best interests of the persons seeking the adoption or the public interest, the court may consider evidence, oral or written, whether or not it is in conformity with the Evidence Code.

**Comment.** Section 8328 continues the first and third paragraphs of subdivision (c) of former Civil Code Section 230.20 without substantive change. See also Section 7503 ("adoptive parent" defined).

**CHAPTER 3. PROCEDURE FOR TERMINATING ADULT ADOPTION****§ 8340. Petition to terminate relationship of parent and child****§ 8340. Petition to terminate relationship of parent and child**

8340. (a) Any person who has been adopted under this part may, upon written notice to the adoptive parent, file a petition to terminate the relationship of parent and child. The petition shall state the name and address of the petitioner, the name and address of the adoptive parent, the date and place of the adoption, and the circumstances upon which the petition is based.

(b) If the adoptive parent consents in writing to the termination, an order terminating the relationship of parent and child may be issued by the court without further notice.

(c) If the adoptive parent does not consent in writing to the termination, a verified, written response shall be filed within 30 days of the date of mailing of the notice, and the matter shall be set for hearing. The court may require an investigation by the county probation officer or the department.

**Comment.** Section 8340 continues subdivision (g) of former Civil Code Section 230.20 without substantive change. See also Sections 7503 ("adoptive parent" defined), 7518 ("department" defined).

**Note:** "In writing" has been added in subdivision (c) for consistent coverage with subdivision (b).

Disposition Table for Existing Sections

**DISPOSITION TABLE FOR EXISTING SECTIONS**

(All sections in new Family Code unless otherwise indicated)

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
25 .....	6500	(part) .....	6921
25.1 .....	6502	(part) .....	6926
25.5 (part) .....	6920	34.8 (part) .....	6920
(part) .....	6921	(part) .....	6921
(part) .....	6923	(part) .....	6927
25.6 (part) .....	6920	34.9 (part) .....	6920
(part) .....	superseded by 7002	(part) .....	6921
(part) .....	superseded by 7050(e)(1)	(part) .....	6928
25.7 (part) .....	6921	34.10 (part) .....	6920
(part) .....	superseded by 7002	(part) .....	6921
(part) .....	superseded by 7050(e)(1)	(part) .....	6929
25.8 (part) .....	6900	35 .....	6710
(part) .....	6901	35a .....	6713
(part) .....	6902	36 (part) .....	6712
(part) .....	6910	(part) .....	6750
25.9 (part) .....	6920	(part) .....	6751
(part) .....	6921	36.1 .....	6752
(part) .....	6924	36.2 .....	6753
26 .....	6500	37 .....	6711
27 .....	6501	38 .....	Civil Code 38
29 .....	6602	39 .....	Civil Code 39
33 .....	6701	40 .....	Civil Code 40
34 .....	6700	41 (part) .....	6600
34.5 (part) .....	6920	(part) .....	Civil Code 41
(part) .....	6921	42 .....	6601
(part) .....	6925	60 .....	7000
34.6 (part) .....	6900	61 (part) .....	7001
(part) .....	6901	(part) .....	(Omitted, obsolete)
(part) .....	6920	62 .....	7002
(part) .....	6921	63 .....	7050
(part) .....	6922	63.1 .....	7051
34.7 (part) .....	6920	63.2 .....	7052

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
64(a) .....	7120	(d) .....	4101(c)
(b) .....	7121	196a(1st sentence) .....	3900
(c) .....	7122(a)	(2nd sentence)	
(d)(1st sentence) .....	7122(b)	(part) .....	4000
(2nd sentence) .....	7140	(part) .....	4500
(e) .....	7123(a)	196.5(1st sentence) .....	3901
(f) .....	7123(b)	(2nd sentence)	
(g) .....	7122(c)	(part) .....	4000
65(a) .....	7132	(part) .....	4500
(b) .....	7133	(3rd sentence) .....	omitted (obsolete)
(c) .....	7130(b)	(4th sentence) .....	3901
(d)(1st sentence) .....	7134	197 .....	3000
(remainder) .....	7143	197.5 .....	3102
(e) .....	7135	201 .....	3902
66 .....	7141	202 .....	3002
67 .....	7111	203 .....	3008(discontinue)
68 .....	7142	204 .....	3005
69 (1st sentence) .....	7130(a)	205 .....	3952
(2nd sentence) .....	7135	206(1st sentence)	
(3rd sentence) .....	7131	(part) .....	3910
(4th sentence)		(part) .....	4400
(part) .....	7133	(2nd sentence) .....	4401
(part) .....	7134	(3rd sentence) .....	omitted (obsolete)
(part) .....	7143	206.5(1st sentence)	
70 .....	7110	(part) .....	4410
196(a)(part) .....	3900	(part) .....	4411
(a)(part) .....	4005	(2nd sentence) .....	4412
(b)(first part) .....	4101(a)	(3rd sentence) .....	4412
(b)(last sentence) .....	4100	(4th sentence) .....	4414
(c)(1st sentence) .....	4103	(5th sentence) .....	4414
(c)(2nd sentence) .....	4101(b)	206.6 .....	4413
(c)(3rd sentence) .....	4104	206.7 .....	not continued (obsolete)
(c)(4th sentence) .....	4102	207 .....	3950
(c)(5th sentence) .....	4100	208 .....	3951

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
208.5 .....	3930	221.50 .....	7610
210 .....	3006	221.60 .....	7611
211 .....	3004	221.62(part) .....	7718
212 .....	3003	(part) .....	7823
213 .....	3001	(part) .....	7913
220.10.....	7600	(part) .....	8007
220.20(introductory part) ...	7500	221.63(a) .....	7612(a)
(a).....	7503	(b) .....	7612(b)
(b).....	7506	(c)(1st part).....	7612(c)
(c).....	7509	(c)(remainder).....	7616
(d).....	7512	221.65 .....	7613
(e)(superseded) .....	7600	221.70 .....	7614
(f) .....	7515	221.72 .....	7615
(g).....	7518	221.74(1st sentence) .....	7618
(h).....	7521	(2nd sentence) .....	7616
(i) .....	7524	221.76 .....	7617
(j) .....	7527	221.80 .....	7619
(k).....	7530	222.10 .....	7700
(l) .....	7533	222.13 .....	7701
(m) .....	7801(b)	222.15 .....	7702
(n).....	7536	222.18 .....	7703
(o).....	7539	222.20 .....	7704
(p).....	7542	222.22 .....	7705
(q).....	7545	222.26(a) .....	7706
(r) .....	7548	(b) .....	7608
221.10.....	7600	222.30 .....	7707
221.12.....	7601	222.35 .....	7708
221.13.....	7602	222.36 .....	7709
221.14.....	7603	222.37 .....	7710
221.20(1st part).....	7604	222.38 .....	7711
(4th sentence) .....	7605	222.40 .....	7712
(remainder) .....	7606	222.50 .....	7714
221.30.....	7607	222.70 .....	7713
221.40.....	7609	222.72 .....	7716

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
222.75.....	7715	226.23 .....	7904
222.77.....	7717	226.25 .....	7905
222.78.....	7718	226.27 .....	7906
222.80.....	7719	226.28 .....	7907
222.90.....	7720	226.30 .....	7908
224.10.....	7800	226.35(a) .....	7909
224.20.....	7801(a)	(b) .....	7608
224.30.....	7802	226.40 .....	7912
224.33.....	7803	226.50 .....	7910
224.36.....	7804	226.52 .....	7911
224.37.....	7805	226.55 .....	7913
224.40.....	7806	226.57 .....	7914
224.42.....	7807	226.59 .....	7915
224.44.....	7808	226.60 .....	7916
224.45.....	7809	226.64 .....	7917
224.47.....	7810	226.66 .....	7918
224.49.....	7811	227.10 .....	8000
224.50.....	7812	227.20 .....	8001
224.61.....	7813	227.30 .....	8002
224.62.....	7814	227.40 .....	8003
224.64.....	7815	227.44 .....	8004
224.66.....	7816	227.46 .....	8005
224.70(a) .....	7817	227.50 .....	8006
(b).....	7608	227.60 .....	8007
224.73.....	7818	228.10 .....	8100
224.76.....	7819	228.13 .....	8101
224.80.....	7820	228.15 .....	8102
224.91.....	7821	229.10 .....	8200
224.93.....	7822	229.20 .....	8201
224.95.....	7823	229.30 .....	8202
226.10.....	7900	229.40 .....	8203
226.11.....	7901	229.50 .....	8204
226.20.....	7902	229.60 .....	8205
226.21.....	7903	229.70 .....	8206

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
230.10.....	8300	(b)(remainder) .....	3292
230.12.....	8303	(c) .....	3221
230.14(1st sentence) .....	8304	(c) .....	3292(c)
(2nd sentence).....	8305	(d) .....	3207
230.16.....	8306	(e) .....	3208
230.20(a)(1st paragraph) ....	8320	232.3(a),(b).....	3270
(a)(2nd paragraph)		(c) .....	3271
(1st sentence) .....	8301	232.5(1st sentence) .....	3201
(remainder) .....	8302	(2nd sentence) .....	3290
(b)(1st sentence) .....	8321(a)	232.6(1st sentence) .....	3200
(b)(2nd sentence)		(2nd sentence) .....	3203
(1st part) .....	8322	232.9 .....	3230
(2nd part) .....	8324	233(1st sentence)	
(b)(3rd sentence) .....	8323	(part) .....	3231
(b)(4th sentence) .....	8325	(part) .....	3240
(c)(1st paragraph) .....	8328	(2nd sentence) .....	3206
(c)(2nd paragraph).....	8302	(3rd sentence) .....	3250
(c)(3rd paragraph) .....	8328	(remainder) .....	3251
(d).....	8307	233.5(1st paragraph) .....	3205(a)
(e) .....	8326	(2nd paragraph) .....	3205(b)
(f)(1) .....	8321(b)	233.6 .....	3205(c)
(f)(2) .....	8327	234(1st paragraph) .....	3280
(g).....	8340	(2nd paragraph) .....	3291
232(a)(introductory part) ....	3202	235(a) .....	3281
(a)(introductory part) .....	3220	(b) .....	3282
(a)(1) .....	3222	235.5 .....	3284
(a)(2) .....	3223	236 .....	3283
(a)(3) .....	3224	237 .....	3204
(a)(4) .....	3225	237.5(introductory part) ....	3260
(a)(5) .....	3226	(a) .....	3261
(a)(6) .....	3227	(b)(1st sentence) .....	3262
(a)(7) .....	3228	(b)(2nd sentence) .....	3260
(a)(8) .....	3229	(c)(1st sentence).....	3260
(b)(1st sentence).....	3290	(c)(remainder) .....	3263

**Disposition Table for Existing Sections**

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(d) .....	3264	254 .....	omitted (unnecessary)
237.7 .....	3295	264 .....	3300
238 .....	3294	265 .....	3301
239 .....	3293	266 .....	3302
241(a) .....	145	267 .....	3303
(b) .....	3510	268 .....	3304
(c) .....	3505	269 .....	3305
(d) .....	3910	270 .....	3306
(e) .....	not continued	271 .....	3307
242(part) .....	3900	272 .....	3308
(part) .....	3910	273 .....	3309
(part) .....	4300	274 .....	3310
(part) .....	4400	275 .....	3350
244 .....	3551	275.1 .....	3351
245 .....	3550	275.2 .....	3352
246(part) .....	4005(a)	275.3 .....	3353
(part) .....	4320	275.4 .....	3354
(part) .....	4404	687 .....	760
247(part) .....	3651	4000 .....	85
(part) .....	4405	4001 .....	210
248(first sentence)		4100 .....	300
(part) .....	4000	4101(a) .....	301
(part) .....	4303	(b),(c) .....	302
(part) .....	4403	4102 .....	303
(part) .....	4500	4103 .....	304
Remainder of section		4104 .....	305
(part) .....	4002	4200 .....	350
(part) .....	4303	4201(a)(1st portion) .....	360
(part) .....	4403	(remainder) .....	361
249 .....	3555	(b)(1st sentence) .....	362
250 .....	3552	(b)(2nd sentence) .....	363
251 .....	4402	(b)(remainder) .....	364
252 .....	14	(c),(d) .....	365
253 .....	3	4201.5 .....	370

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
4202 .....	400	(c)(3)(2nd sentence) .....	553
4203 .....	401	(c)(3)(3rd sentence) .....	553
4204(1st sentence) .....	366	(c)(3)(3rd sentence) .....	556(b)
(remainder) .....	367	(c)(3)(4th sentence) .....	556(c)
4205 .....	450	(c)(4) .....	555(a)
4205.1 .....	451	(c)(5) .....	552
4205.5 .....	452	(c)(6) .....	554
4206 .....	460(a)	(c)(7) .....	555(b)
4206.5 .....	460(b)	(d) .....	550(b)
4207 .....	461	(e) .....	570(d)
4208(a) .....	462	(f) .....	570(c)
(b) .....	463	(g) .....	509
4209 .....	464	(h) .....	510
4210 .....	465	(i) .....	505(e)
4212 .....	306	4213.1 .....	503
4213(a)(1st sentence) .....	501	4213.2 .....	570(b)
(a)(2nd sentence) .....	502(a)	4214 .....	500
(a)(3rd sentence) .....	502(b)	4216 .....	351
(a)(4th sentence) .....	502(c)	4300(a)(1st part) .....	580
(a)(5th sentence) .....	506(a)	(a)(remainder) .....	581
(a)(6th sentence) .....	506(b)	(b) .....	582
(a)(7th sentence) .....	570(a)	(c) .....	583(a)
(a)(8th sentence) .....	507	(d) .....	583(b)
(a)(9th sentence) .....	508	(e)(1st sentence) .....	584
(a)(10th sentence) .....	505(a)	(e)(2nd sentence) .....	585
(a)(11th sentence) .....	505(b)	4301 .....	586
(a)(12th sentence) .....	505(c)	4303(1st sentence) .....	587(a)
(a)(13th sentence) .....	505(d)	(2nd sentence) .....	588
(b) .....	504	(3rd sentence) .....	587(b)
(c)(1) .....	550(a)	4304 .....	589
(c)(2) .....	551(a)	4305 .....	590
(c)(2) .....	551(b)	4306 .....	591
(c)(3)(1st sentence) .....	551(c)	4307 .....	592
(c)(3)(1st sentence) .....	556(a)	4308 .....	593

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
4309 .....	594	(a)(3rd sentence) .....	3603
4350 .....	722	(b)(1st sentence) .....	3601
4350.5 .....	12	(b)(2nd sentence) .....	3602
4350.5 .....	140	4357.5(a)(1st sentence) .....	3621
4351(first part) .....	200	(a)(2nd sentence) .....	3620
(remainder) .....	201	(a)(3rd sentence) .....	95
4351.5(a),(b) .....	3101(a)	(b)(1st sentence) .....	3622
(c)(1st part) .....	3180(a)	(b)(2nd sentence) .....	3630(a)
(c)(3rd sentence) .....	3155	(b)(3rd sentence) .....	3624(a)
(d) .....	3156	(b)(4th sentence) .....	3624(c)
(e)(1st sentence) .....	3158	(c) .....	3624(b)
(e)(2nd sentence) .....	3157	(d) .....	3625
(f)(1st sentence) .....	3159(a)	(e)(1st sentence) .....	3626
(f)(2nd sentence) .....	3159(b)	(e)(2nd sentence) .....	3627
(f)(3rd sentence) .....	3159(c)	(e)(3rd sentence) .....	3628
(f)(4th sentence) .....	3160(a)	(f) .....	3623
(f)(5th sentence) .....	3181(a)	(g) .....	3629
(f)(6th sentence) .....	3160(b)	(h) .....	3630(b)
(f)(7th sentence) .....	3160(b)	(i)(1st sentence) .....	3631
(f)(8th sentence) .....	3181(b)	(i)(2nd sentence) .....	3632
(g) .....	3180(b)	(j) .....	3633
(h) .....	3182	(k) .....	3634
(i) .....	3183	4358 .....	217
(j) .....	3101(c)	4358.5(1st paragraph) .....	3781
(k) .....	3101(b)	(2nd paragraph) .....	3782
(l) .....	3101(d)	(3rd paragraph) .....	3780
4351.6 .....	5518	4359(a)(1st paragraph) .....	1900
4352 .....	1911	(a)(2nd paragraph) .....	1901
4353 .....	2556	(a)(3rd paragraph) .....	1902(a)(1)
4355 .....	211	(a)(4th paragraph) .....	1908
4355.6 .....	212	(b)(1st sentence) .....	1903
4356 .....	213	(b)(2nd sentence) .....	1904
4357(a)(1st sentence) .....	3600	(b)(2nd paragraph) .....	1905
(a)(2nd sentence) .....	3604	(c)(1st sentence) .....	1902(a)(3)

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(c)(2nd sentence) . . . . .	1907	4370(a) . . . . .	270
(d) . . . . .	1902(b)	(b) . . . . .	271
(e) . . . . .	1906	(c), (d) . . . . .	273
4360 . . . . .	215	4370.5 . . . . .	272
4361 . . . . .	216	4370.6 . . . . .	274
4362(a) . . . . .	2000	4371 . . . . .	275
(b) . . . . .	2002	4380 . . . . .	290
(c) . . . . .	2001	4381 . . . . .	292
(d) . . . . .	2003	4382 . . . . .	3557
4363 . . . . .	214	4383(a)(1st sentence) . . . . .	5100
4363.1(a)(1st sentence) . . . . .	250	(a)(2nd sentence) . . . . .	5101
(a)(2nd sentence) . . . . .	251	(a)(3rd sentence) . . . . .	5103(a)
(a)(remainder) . . . . .	252	(a)(4th sentence) . . . . .	5103(b)
(b)(1st sentence) . . . . .	253(a)	(b) . . . . .	5104
(b)(2nd sentence) . . . . .	254	(c) . . . . .	5103(c)
(c) . . . . .	255	4384(1st sentence) . . . . .	291
4363.2(a) . . . . .	256	4384(2nd sentence) . . . . .	5102
(b) . . . . .	253(b)	4384.5 . . . . .	4502
(c) . . . . .	257	4385 . . . . .	4500
(d)(1st sentence) . . . . .	258	4390(introductory part) . . . . .	5200
(d)(2nd sentence) . . . . .	258	(a) . . . . .	5202
(d)(3rd sentence) . . . . .	259	(b) . . . . .	5204
(d)(4th sentence) . . . . .	259	(c) . . . . .	5206
(d)(5th sentence) . . . . .	260(c)	(d) . . . . .	5210
(e)(1st sentence) . . . . .	260(a)	(e) . . . . .	5212
(e)(2nd sentence) . . . . .	260(b)	(f) . . . . .	5214
4363.3 . . . . .	80	(g) . . . . .	5216
4364 . . . . .	2330.5	(h) . . . . .	150
4365(a) . . . . .	219	(h) . . . . .	5218
(b) . . . . .	omitted (obsolete)	(i) . . . . .	5220
4366(a) . . . . .	1920	4390.1 . . . . .	5244
(b) . . . . .	1921	4390.2 . . . . .	5239
(c) . . . . .	1922	4390.3(a) . . . . .	5230
(d) . . . . .	1923	(b) . . . . .	5231

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(c).....	5260	4401 .....	2201
4390.4.....	5261	4425 .....	2210
4390.5(a)(1st sentence) .....	5250	4426 .....	2211
(a)(2nd sentence).....	5251	4429 .....	2212(a)
(a)(3rd sentence) .....	5252(a)	4450 .....	2250
(b).....	5252(c)	4451 .....	2212(b)
(c).....	5253	4452(1st part) .....	2251
(d),(e) .....	5252(b)	(last sentence).....	2252
4390.6.....	5280	4454 .....	2253
4390.7(a) .....	5281	4455 .....	2254
(b).....	5282	4456 .....	2255
(c).....	5231	4457(a).....	2000
4390.8(a)(part) .....	5232	(b) .....	2002
(a)(part).....	5233	(c).....	2001
(b).....	5234	(d) .....	2003
4390.9(a)(part) .....	5270	4458 .....	1910
(a)(part).....	5271	4501 .....	2300
(b),(c) .....	5270	4503(1st sentence) .....	2330
(d).....	5272	(2nd sentence) .....	2331
4390.10(a) .....	5235	4506 .....	2310
(b) .....	5241	4507 .....	2311
(c) .....	5242	4508(a)(1st sentence) .....	2333
4390.11.....	5271	(a)(remainder).....	2334
4390.12(a) .....	5238	(b)(1st sentence) .....	2345
(b) .....	5243	(b)(2nd sentence) .....	2347
4390.13.....	5237	4509 .....	2335
4390.14.....	5240	4510(a).....	2312
4390.15.....	5295	(b) .....	2313
4390.16(a) .....	5283	(c),(d).....	2332
(b) .....	5236	4511 .....	2336
4390.17.....	5290	4512 .....	2338
4390.18.....	3556	4513 .....	2346
4390.19.....	5245	4514(a)(1st sentence) .....	2339
4400 .....	2200	(a)(2nd sentence) .....	2340

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(a)(3rd sentence) . . . . .	2341(a)	(d)(3) . . . . .	110
(b) . . . . .	2341(b)	(d)(2) . . . . .	140
(c) . . . . .	2342	(d)(4) . . . . .	135
(d) . . . . .	2344	(d)(5) . . . . .	105
(e) . . . . .	2343	(e) . . . . .	3083
4515 . . . . .	2337	(f) . . . . .	3084
4516 . . . . .	1910	(g) . . . . .	3085
4530(a) . . . . .	2320	(h) . . . . .	3086
(b) . . . . .	2321	(i) . . . . .	3087
4531 . . . . .	2322	(j) . . . . .	3088
4550 . . . . .	2400	(k) . . . . .	3089
4551 . . . . .	2401	(l) . . . . .	3025
4552 . . . . .	2402	(m) . . . . .	3024
4553 . . . . .	2403	4600.6 . . . . .	3023
4554 . . . . .	2404	4601 . . . . .	3100(a)
4555 . . . . .	2405	4601.5 . . . . .	3100(b)
4556 . . . . .	2406	4602(1st paragraph) . . . . .	3110
4600(a)(1st sentence) . . . . .	3020	(2nd paragraph) . . . . .	3110.5
(a)(2nd sentence) . . . . .	3021	(1991 amendment AB 162)	
(a)(3rd sentence) . . . . .	3042	(2nd paragraph) . . . . .	3111
(a)(4th sentence) . . . . .	3043	(last paragraph) . . . . .	3112
(b) . . . . .	3040(a)	4603 . . . . .	3120
(c) . . . . .	3041	4604(a) . . . . .	3130
(d) . . . . .	3040(b)	(b) . . . . .	3131
4600.1(a) . . . . .	3060	(c)(1st sentence) . . . . .	3132
(b) . . . . .	3061	(c)(remainder) . . . . .	3133
(c),(d) . . . . .	3062	4604.5 . . . . .	3140
(e)(1st sentence) . . . . .	3063	4605 . . . . .	3134
(e)(remainder) . . . . .	3064	4606(a),(b) . . . . .	3150
4600.2 . . . . .	3007	(c),(d) . . . . .	3151
4600.5(a) . . . . .	3080	(e) . . . . .	3152
(b) . . . . .	3081	(f),(g) . . . . .	3153
(c) . . . . .	3082	4607(a)(1st sentence) . . . . .	3170
(d)(1) . . . . .	100	(a)(2nd sentence) . . . . .	3171

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(a)(next 2 sentences) . . . . .	3172	(remainder) . . . . .	3653
(a)(5th sentence) . . . . .	3173	(a)(1)(7th sentence) . . . . .	3652
(b) . . . . .	3155	(a)(2)(first part) . . . . .	4101(a)
(c) . . . . .	3156	(a)(2)(last sentence) . . . . .	4100
(d)(1st sentence) . . . . .	3158	(a)(3)(first sentence) . . . . .	4103
(d)(2nd sentence) . . . . .	3157	(a)(3)(2nd sentence) . . . . .	4101(b)
(d)(3rd sentence) . . . . .	3176	(a)(3)(3rd sentence) . . . . .	4104
(e)(1st sentence) . . . . .	3159(a)	(a)(3)(4th sentence) . . . . .	4102
(e)(2nd sentence) . . . . .	3159(b)	(a)(3)(5th sentence) . . . . .	4100
(e)(3rd sentence) . . . . .	3159(c)	(a)(3)(6th sentence) . . . . .	4101(c)
(e)(4th sentence) . . . . .	3160(a)	(b) . . . . .	3028
(e)(5th sentence) . . . . .	3175(a)	(c) . . . . .	4007
(e)(6th sentence) . . . . .	3160(b)	(d) . . . . .	4013
(e)(7th sentence) . . . . .	3160(b)	(e) . . . . .	omitted (temporary)
(e)(8th sentence) . . . . .	3175(b)	4700.1(a) . . . . .	3680
(f) . . . . .	3174	(b)(1st sentence) . . . . .	3683(a)
(g) . . . . .	3162	(b)(2nd sentence) . . . . .	3683(b)
4607.1 . . . . .	3161	(b)(3rd sentence) . . . . .	3683(c)
4607.2 . . . . .	3177	(b)(4th sentence) . . . . .	3684(a)
4608 . . . . .	3022	(b)(5th sentence) . . . . .	3684(a)
4608.1(a)(1st paragraph) . . . . .	3190	(b)(6th sentence) . . . . .	3684(a)
(a)(2nd paragraph) . . . . .	3191	(c)(1st sentence) . . . . .	3685(a)
(b) . . . . .	3192	(c)(2nd sentence) . . . . .	3685(b)
4609 . . . . .	3026	(c)(3rd sentence) . . . . .	3693
4610 . . . . .	3044	(d)(1st sentence) . . . . .	3682
4611 . . . . .	3027	(d)(2nd sentence) . . . . .	3687(a)
4700(a)(1)(1st sentence) . . . . .	4001	(d)(3rd sentence) . . . . .	3687(c)
(a)(1)(2nd sentence) . . . . .	4005(b)	(d)(3rd paragraph) . . . . .	3688
(a)(1)(3rd sentence) . . . . .	4012	(d)(4th paragraph) . . . . .	3689
(a)(1)(4th sentence) . . . . .	4011	(e)(first part) . . . . .	3690
(a)(1)(5th sentence) . . . . .	3651(a)	(e)(3rd sentence) . . . . .	3554
(a)(1)(5th sentence) . . . . .	3651(b)	(f) . . . . .	4010
(a)(1)(6th sentence)		(g) . . . . .	3691(a)
(first part) . . . . .	4009	(h) . . . . .	3692

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(i) .....	3693	(g) .....	3810
(j) .....	3694	4701.1(a)(1)(1st sentence) . . .	4610(a)
(k) .....	4684(b)	(a)(1)(2nd sentence) . . . . .	4610(b)
4700.2(a) .....	3660	(a)(1)(3rd sentence) . . . . .	4616
(b)(1st sentence) .....	3664(a)	(a)(1)(last portion) . . . . .	4617
(b)(2nd sentence) .....	3662	(a)(2),(3) .....	4630
(b)(3rd sentence) .....	3663	(a)(4)(1st portion) . . . . .	4612
(b)(4th sentence) .....	3666	(a)(4)(1st portion) . . . . .	4632
(b)(5th sentence) .....	3668	(a)(4)(part) .....	4611
(c) .....	3665	(a)(4)(last portion) . . . . .	4631
(d) .....	3664(b)	(b) .....	4613
(e) .....	3667	(c)(1st sentence) .....	4614
4700.3 .....	3686	(c)(2nd sentence) .....	4615
4700.5 .....	4004	(d) .....	4620
4706 .....	4006	(e) .....	4603
4700.7 .....	3553	(f)(1st portion) .....	4640
4700.9(1st sentence) .....	3587	(f)(last portion) .....	4641
(2nd sentence)		(g) .....	4602
(part) .....	4000	(h) .....	4604
(part) .....	4500	(i) .....	4600
4700.10(a) .....	3800	4701.2 .....	4505
(b)(1st sentence) .....	3801(a)	4702(a) .....	4200
(b)(2nd sentence) .....	3801(b)	(b) .....	4201
(b)(3rd sentence) .....	3801(c)	(c) .....	4202
(b)(4th sentence) .....	3802	(d) .....	4203
(c)(1st sentence) .....	3802(a)	4703 .....	4000
(c)(2nd sentence)		4704 .....	3655
(part) .....	3803	4704.5(1st sentence) .....	3901
(part) .....	3804	(2nd sentence)	
(c)(3rd sentence) .....	3805	(part) .....	4000
(d) .....	3806	(part) .....	4500
(e)(1) .....	3807	(3rd sentence) . . . . .	omitted (obsolete)
(e)(2) .....	3808	(4th sentence) .....	3901
(f) .....	3809	4705 .....	4504

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
4707 .....	4003	(b)(2) .....	2602
4708 .....	4503	(b)(3) .....	2604
4709 .....	4506	(b)(4) .....	780
4720-4725 .....	see note §4050	(b)(4) .....	2603
4726(a)(1),(2) .....	3751	(b)(5) .....	2627
(a)(3) .....	3750	(c)(introduction) .....	2620
(b),(c) .....	3752	(c)(1) .....	2621
(d) .....	3753	(c)(2) .....	2622
4726.1(a)(1)(1st sentence) ...	3761(a)	(c)(3) .....	2623
(a)(1)(2nd sentence) ....	3760(c)	(c)(4) .....	2624
(a)(2) .....	3762	(d) .....	2625
(b) .....	3763	(e) .....	2626
(c) .....	3761(b)	(f) .....	2553
(d) .....	3764	4800.1 .....	superseded by 2580
(e) .....	3765	4800.2 .....	2640
(f) .....	3766	4800.3 .....	2641
(g) .....	3768	4800.4 .....	2650
(h),(i) .....	3767	4800.5 .....	2660
(j) .....	3766	4800.6 .....	2628
(k) .....	3770	4800.8 .....	2610
(l) .....	3769	4800.9 .....	2554
(m) .....	3760(a)	4801(a)(1st sentence) .....	4330
(n) .....	3772	(a)(1)-(10) .....	4320
(o) .....	3771	(a)(last paragraph)	
(p) .....	3760(b)	(1st sentence) .....	4332
4727-4732 .....	see note §4050	(2nd sentence) .....	4339
4750 .....	4700	(3rd sentence) .....	3651(a)
4752 .....	4701	(3rd sentence) .....	3651(b)
4800(a)(1st sentence) .....	2550	(4th sentence) .....	3333
(a)(2nd sentence) .....	2552	(5th sentence)	
(a)(3rd sentence) .....	2551	(part) .....	3653
(a)(4th sentence) .....	2501	(part) .....	3654
(b)(introduction) .....	2600	(b) .....	4337
(b)(1) .....	2601	(c) .....	4334

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(d)(1st paragraph)		(d)(1st sentence) . . . . .	3682
(1st sentence) . . . . .	4335	(d)(2nd sentence) . . . . .	3687(b)
(2nd sentence) . . . . .	4336	(d)(3rd sentence) . . . . .	3687(c)
(d)(2nd paragraph) . . . . .	4336	(d)(3rd paragraph) . . . . .	3688
(d)(3rd paragraph) . . . . .	4336	(d)(4th paragraph) . . . . .	3689
(e) . . . . .	4331(a)	(e)(first part) . . . . .	3690
(e) . . . . .	4331(b)	(e)(3rd sentence) . . . . .	3554
(e) . . . . .	4331(c)	(f) . . . . .	3691(b)
(f) . . . . .	4331(d)	(g) . . . . .	3692
4801.1(a) . . . . .	3660	(h) . . . . .	3693
(b)(1st sentence) . . . . .	3664(a)	(i) . . . . .	3694
(b)(2nd sentence) . . . . .	3662	4802(1st part) . . . . .	1620
(b)(3rd sentence) . . . . .	3663	(remainder) . . . . .	3580
(b)(4th sentence) . . . . .	3666	4803 . . . . .	125
(b)(5th sentence) . . . . .	3668	4804(part) . . . . .	2502
(c) . . . . .	3665	(part) . . . . .	3515
(d) . . . . .	3664(b)	4805 . . . . .	4338
(e) . . . . .	3667	4806(1st sentence) . . . . .	4321
4801.4 . . . . .	4360	(2nd sentence) . . . . .	4322
4801.5 . . . . .	4323	4807 . . . . .	4008
4801.7(a) . . . . .	4350	4809 . . . . .	220
(b) . . . . .	4351	4810 . . . . .	2555
(c) . . . . .	4351	4811(a)(1st, 2d sentences) . . . . .	3585
(d) . . . . .	4352	(a)(3rd sentence) . . . . .	3651
4801.9(a) . . . . .	3680	(b)(1st, 2d sentences) . . . . .	3590
(b)(1st sentence) . . . . .	3683(a)	(b)(3rd sentence part) . . . . .	3591(a)
(b)(2nd sentence) . . . . .	3683(b)	(b)(3rd sentence part) . . . . .	3591(b)
(b)(3rd sentence) . . . . .	3683(c)	(b)(3rd sentence part) . . . . .	3651
(b)(4th sentence) . . . . .	3684(a)	(c) . . . . .	3581
(b)(5th sentence) . . . . .	3684(a)	3591(c)	
(b)(6th sentence) . . . . .	3684(a)	3651(e)	
(c)(1st sentence) . . . . .	3685(a)	(d)(1st sentence)	
(c)(2nd sentence) . . . . .	3685(b)	(part) . . . . .	92
(c)(3rd sentence) . . . . .	3693	(part) . . . . .	3586

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(d)(2nd sentence)		5113	782
(part)	92	5114	774(a)
(part)	4501	5115	774(b)
(d)(3rd sentence)	4501	5118	772
4812	3592	5119	773
4813	202	5120.010	900
5000	2450	5120.020	901
5001	2451	5120.030	902
5002	2452	5120.040	903
5003	3	5120.110(a)	910
5004	2453	(b)	911
5100	720	(c)	910
5102(a)(1st part)	752	5120.120	912
(a)(remainder)	753	5120.130	913
(b)	754	5120.140	914
5103	721	5120.150	915
5104	750	5120.160	916
5105	751	5120.210	920
5106	755	5120.310	930
5107	770	5120.310	931
5108	771	5120.320	930
5110(1st sentence)		5120.330(a)	931
(1st part)	760	(b)	omitted (obsolete)
(remainder)	804	5122	1000
(2nd sentence)	804	5125(a)	1150
(3rd sentence)	obsolete	(b)	1151
(4th sentence)	700	(c)	1152
5110.150	761	(d)	1153
5110.710	850	(e)	1110
5110.720	851	5125.1(a)	1111
5110.730	852	(b)	1112
5110.740	853	(c)	1113
5111	802	(d)	1114
5112	783	(e)	1115

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(f) .....	1116	5170 .....	3422
5126 .....	781	5171 .....	3423
5127(1st sentence)		5172 .....	3424
(part) .....	1118	5173 .....	3425
(1st part) .....	1200	5174 .....	3400
(remainder) .....	1201	5180 .....	not continued
(2nd sentence)		5181 .....	6450
(1st part) .....	1202	5182 .....	6451
(remainder) .....	omitted (obsoiete)	5183 .....	6452
5128 .....	1117	5200 .....	1500
5131 .....	4302	5201 .....	1501
5132 .....	4301	5202 .....	1502
5138 .....	723	5203 .....	1503
5150 .....	3401	5300 .....	1600
5151 .....	3402	5301 .....	3
5152 .....	3403	5302 .....	1601
5153 .....	3404	5310 .....	1610
5154 .....	3405	5311 .....	1611
5155 .....	3406	5312 .....	1612
5156 .....	3407	5313 .....	1613
5157 .....	3408	5314 .....	1614
5158 .....	3409	5315 .....	1615
5159 .....	3410	5316 .....	1616
5160 .....	3411	5317 .....	1617
5161 .....	3412	7000 .....	1700
5162 .....	3413	7001 .....	1701
5163 .....	3414	7002 .....	1702
5163.5 .....	3415	7003 .....	1710
5164 .....	3416	7004(a) .....	1711
5165 .....	3417	(b) .....	1712
5166 .....	3418	7004.5 .....	1704
5167 .....	3419	7005 .....	1713
5168 .....	3420	7006(a),(b),(c) .....	1730
5169 .....	3421	(d) .....	1731

Disposition Table for Existing Sections

<i>Civil Code Sec.</i>	<i>New Code Sec.</i>	<i>Civil Code Sec.</i>	<i>New Code Sec.</i>
(e) . . . . .	1732	(b)(1st sentence) . . . . .	1810(a)
(f) . . . . .	1733	(b)(2nd sentence) . . . . .	1811
(g) . . . . .	1734	(b)(3rd sentence) . . . . .	1812
7007(a),(b),(c) . . . . .	1720	(b)(4th sentence) . . . . .	1810(b)
(d) . . . . .	1738	(b)(5th sentence) . . . . .	1810(c)
7008 . . . . .	1735	(c) . . . . .	1820
7010(a) . . . . .	1736	(d) . . . . .	1821
(b) . . . . .	1739	(e)(1st sentence) . . . . .	1830
(c) . . . . .	1737	(e)(2nd sentence) . . . . .	1831
(d) . . . . .	1737.5	(f) . . . . .	1801
(e) . . . . .	omitted	(g) . . . . .	1832
7011 . . . . .	1740	(h) . . . . .	1833
7012 . . . . .	1741	7021 . . . . .	1840
7013 . . . . .	1742		
7014 . . . . .	1743		
7015 . . . . .	1750		
7016 . . . . .	1714		
7017(a)(1) . . . . .	1760		
(a)(2) . . . . .	1761		
(b) . . . . .	1762		
(c) . . . . .	1763		
(d) . . . . .	1764		
(e) . . . . .	1765		
(f) . . . . .	1766		
(g) . . . . .	1769		
7017.1 . . . . .	1770		
7017.2(a) . . . . .	1767(a)		
(b)(1st sentence) . . . . .	1767(b)		
(b)(2nd sentence) . . . . .	1768(a)		
(c) . . . . .	1768		
7017.6 . . . . .	1703		
7018 . . . . .	14		
7020(a)(1st sentence) . . . . .	1800		
(a)(remainder) . . . . .	242		

Disposition Table for Existing Sections

<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>	<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>
263 (superseded) . . . . .	3110	(b) . . . . .	245
263 (superseded) . . . . .	3111	540 . . . . .	5511
263 (superseded) . . . . .	3112	541 . . . . .	5510
412.21(a)(1st sentence) . . . . .	230	542(introductory part) . . . . .	5500
(a)(2nd sentence)		(a) . . . . .	55
(1st part) . . . . .	233(a)	(b) . . . . .	70
(paragraphs		(c) . . . . .	60
(1)-(3)) . . . . .	230	(d) . . . . .	5505
(a)(3rd sentence) . . . . .	233(b)	543 . . . . .	5519
(a)(4th sentence) . . . . .	232	545(1st sentence) . . . . .	5530
(a)(5th sentence) . . . . .	233(c)	(2nd, 3rd sentences) . . . . .	5531
(a)(6th sentence) . . . . .	235	(4th sentence) . . . . .	240
(a)(7th sentence) . . . . .	234	(4th sentence) . . . . .	5530
(b)(1st sentence) . . . . .	231	(5th sentence) . . . . .	5516
(b)(2nd sentence)		545.5 . . . . .	5514
(part) . . . . .	233(a)	546(a)(1st sentence) . . . . .	5550
(part) . . . . .	231	(a)(2nd sentence) . . . . .	242
(b)(3rd sentence) . . . . .	233(b)	(a)(3rd sentence) . . . . .	242(c)(2)
(b)(4th sentence) . . . . .	232	(a)(4th sentence) . . . . .	5652(b)
(b)(5th sentence) . . . . .	233(c)	(a)(5th sentence) . . . . .	5551
(b)(6th sentence) . . . . .	omitted (unnecessary)	(b)(1st sentence) . . . . .	5601
(b)(7th sentence) . . . . .	235	(b)(2nd sentence) . . . . .	5650(a)
(b)(8th sentence) . . . . .	234	(b)(3rd sentence) . . . . .	5650(b)
429.10 . . . . .	2330(b)	(b)(4th sentence) . . . . .	5650(c)
527(a)(4th sentence)		(b)(5th sentence) . . . . .	5651
(part) . . . . .	240	(b)(6th sentence) . . . . .	5602
(part) . . . . .	241 (duplicates)	(b)(part) . . . . .	5652
(a)(5th sentence) . . . . .	242(a)(duplicates)	(b)(part) . . . . .	5519
(a)(6th sentence) . . . . .	242(b)	(b)(part) . . . . .	5604
(a)(7th sentence) . . . . .	243(a)(duplicates)	(b)(part) . . . . .	5605
(a)(8th sentence) . . . . .	243(b)(duplicates)	(b)(part) . . . . .	5603
(a)(9th sentence) . . . . .	243(c)(duplicates)	(b)(part) . . . . .	5651
(a)(10th sentence) . . . . .	244(a)(duplicates)	(b)(part) . . . . .	5606
(a)(11th sentence) . . . . .	244(b)(duplicates)	(c)(1st sentence) . . . . .	5700(a)

Disposition Table for Existing Sections

<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>	<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>
(c)(2nd sentence) . . . . .	5700(b)	1650 . . . . .	4800
(c)(3rd sentence) . . . . .	5603	1651 . . . . .	3
(c)(4th sentence) . . . . .	5700(c)	1652 . . . . .	4801
(c)(5th sentence) . . . . .	5701	1653 . . . . .	155
(c)(6th sentence) . . . . .	5602	1653 . . . . .	4802
(c)(part) . . . . .	5702	1654 . . . . .	4803
(c)(part) . . . . .	5703	1655 . . . . .	1804
(c)(part) . . . . .	5519	1655.5 . . . . .	4805
(c)(part) . . . . .	5702	1656 . . . . .	14
(c)(part) . . . . .	5604	1660 . . . . .	4810
(c)(part) . . . . .	5605	1661 . . . . .	4811
(c)(part) . . . . .	5606	1670 . . . . .	4820
(c)(part) . . . . .	5700	1671 . . . . .	4821
(c)(part) . . . . .	5701	1672 . . . . .	4822
546.5 . . . . .	5512	1672.5 . . . . .	4823
547(a)(1)(1st sentence) . . . . .	5750	1673 . . . . .	4824
(a)(1)(2nd sentence) . . . . .	5751	1674 . . . . .	4825
(a)(2)(1st sentence) . . . . .	5750	1675 . . . . .	4826
(a)(2)(2nd sentence) . . . . .	5751	1676 . . . . .	4827
(b) . . . . .	5752	1677 . . . . .	4828
(c) . . . . .	5753	1678 . . . . .	4829
(d) . . . . .	5754	1679 . . . . .	4830
(e) . . . . .	5755	1680 . . . . .	4831
547.5 . . . . .	5513	1681 . . . . .	4832
548 . . . . .	5756	1682 . . . . .	4833
549 . . . . .	5517	1683 . . . . .	4834
550(a)(1st sentence) . . . . .	5800	1684 . . . . .	4835
(a)(2nd sentence) . . . . .	5801	1685 . . . . .	4836
(a)(3rd sentence) . . . . .	5802(a)	1686 . . . . .	4837
(a)(4th sentence) . . . . .	5802(b)	1687 . . . . .	4838
(b),(c),(d) . . . . .	5804	1688 . . . . .	4839
551 . . . . .	5807	1689 . . . . .	4840
552 . . . . .	5515	1690 . . . . .	4841
553 . . . . .	5805	1691 . . . . .	4842

## Disposition Table for Existing Sections

<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>	<i>Code Civ. Proc. Sec.</i>	<i>New Code Sec.</i>
1692 .....	4843	1767 .....	6437
1693 .....	4844	1768 .....	6438
1694 .....	4845	1769 .....	6439
1695 .....	4846	1770 .....	6440
1696 .....	4847	1771 .....	6441
1697 .....	4848	1772 .....	6442
1698 .....	4849		
1698.1 .....	4850		
1698.2 .....	4851		
1689.3 .....	4852		
1699 .....	4853		
1699.4 .....	4854		
1730 .....	6401		
1731 .....	6400		
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1733 .....	6402		
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1743 .....	6413		
1744 .....	6414		
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1745.5 .....	6416		
1746 .....	6417		
1747 .....	6418		
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1760 .....	6430		
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1762 .....	6432		
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**Disposition Table for Existing Sections**

<i><b>Evid. Code Sec.</b></i>	<i><b>New Code Sec.</b></i>	<i><b>Probate Code Sec.</b></i>	<i><b>New Code Sec.</b></i>
621(a) .....	1850	3301 (part) .....	6911
621(b)-(h) .....	1851	(part) .....	6950
890 .....	1880	3302 .....	6603
891 .....	3		
892 .....	1881		
893 .....	1882		
894 .....	1883		
895 .....	1884		
895.5 .....	1885		
896 .....	1886		
897 .....	1887		