

Memorandum 92-19

Subject: Study F-1000 - Family Code (Corrective Amendments to Bill)

Attached to this memorandum is a set of draft amendments to the Family Code bill, Assembly Bill 2650. These amendments correct a number of technical errors in the bill, improve language in several sections, and, most importantly, implement a number of revisions suggested by interested persons who have reviewed and commented on the December 1991 Staff Working Draft Family Code. The changes included in these amendments (and more to come in the next set) are unobjectionable corrections and restorations of existing rules. In some cases, the amendments are taste changes that were agreed upon by persons at a workshop session as being the best resolution. Other amendments resolve inconsistencies in language.

We do not intend to review the attached amendments in detail at the meeting. If a Commissioner wants to consider any of the points raised in any of the attached exhibits or in the amendments, the staff will be happy to respond.

The amendments have been delivered to Legislative Counsel for preparation, in order to meet the legislative time table. If any changes need to be made, they can be done by amendment at the hearing on the bill, or in the next set of amendments. The point to remember is that these amendments are not substantive in effect.

Also attached as exhibits are letters from a number of people:

Exhibit 1 (pp. 1-24): Richard Piedmonte, on behalf of the California Judges Association, including letters from Commissioner James D. Endman (p. 2), Judge Thomas Ashworth III (p. 5), Bob Poulson p. 7), Judge Kenneth A. Black (p. 13), Judge Nancy Hoffman (p. 20), and Commissioner James H. Libbey (p. 23).

Exhibit 2 (pp. 25-26): Robert J. Fulton, San Jose

Exhibits 3 (pp. 27-36) & 4 (pp. 37-40): Frieda Gordon Daugherty, on behalf of the Ad Hoc Sub-committee of the Family Law Section of the Women Lawyers' Association of Los Angeles.

Exhibit 5 (pp. 41-44): State Bar Family Law Section Minutes.

Exhibit 6 (pp. 45-47): Nancy K. D. Lemon, Co-Chair of the Family Law Legislative Committee, California Alliance Against Domestic Violence.

Exhibit 7 (pp. 48-51): Dorothy Jonas and Bonnie K. Sloane, Co-Chairs of the Los Angeles Women's Leadership Network.

Exhibit 8 (pp 52-75): Lawrence M. Gassner, State Bar Family Law Executive Committee, forwarding comments from State Bar Standing Committees on Adoption, North (p. 55) and South (p. 73), including letter from Janis K. Stocks, Liaison, Adoption Standing Committees (p. 53).

Exhibit 9 (pp. 76-89): Janis K. Stocks, forwarding letters from Nancy Stassinopolous & Michele Sacks Lowenstein (p. 77), Michael C. Shea (p. 81), and James A. Hennenhoefer (p. 84).

Exhibit 10 (pp. 90-96): Bruce Greenlee, Staff Writer, Matthew Bender & Company.

As you will see from reviewing these letters and reports, commentary ranges from correction of typographical errors and inconsistent language usage, through minor corrections and supplementations, to suggestions for complete overhaul of an area of the law. At this stage, we have attempted to cull the technical corrections and suggestions for resolving inconsistencies that are of a consensus nature. The staff will continue to review these materials to see if additional changes should be made in the next set of amendments.

The staff also intends to continue compiling suggested changes that we are not recommending as amendments to AB 2650. Some suggestions appear good, but require additional analysis. The staff will make the analysis as time permits. Many other issues are substantive matters that will be presented to the Commission for its consideration. (See, e.g., Memorandum 92-14 on priorities and new topics, on the agenda for the March meeting.) In this respect, the Family Code project is serving as an ad hoc clearinghouse of suggestions for reform. This is a valuable function, even if the Commission decides not to study most of the issues on the list.

As you review the amendments, you will notice that there is an italicized entry, usually a section number in the Family Code, preceding the amendment number. This is provided for convenience in

locating items in the amendments and relating them to the bill. Where a number is followed by "ch" or "art" or "pt," the amendment relates to a chapter, article, or part heading that precedes the indicated section.

Several items merit an explanation:

Custody-related definitions. Amendments 24 and 27 strike out the definitions of "joint custody," "joint legal custody," "joint physical custody," "sole legal custody," and "sole physical custody." Amendment 77 reinserts them without change as Family Code Sections 3002-3007. This is in response to comments made at a workshop session.

Best interest of child. Amendment 31 deletes Family Code Section 215 which was an attempt to generalize the considerations to be taken into account in determining the best interest of a child throughout the code. However, concern was expressed that the provision was out of place in Division 2 and should be with child custody provisions. Nor should it apply to adoption. Accordingly, Amendment 96 relocated the section with other related provisions as Family Code Section 3022.

Definitions of obligee and obligor. Amendments 111 and 112 move the definitions of "obligee" and "obligor" from the status of general definitions applicable throughout the support division to special definitions, preserving the substance of existing law.

Notice of current mailing address. Amendment 114 strikes Family Code Section 3553 and Amendment 124 relocates this provision requiring parties to support orders to keep the other party informed of a current address. This restores this provision to its present location in simplified modification procedures.

Venue in proceedings for relief from duty to support parent. Amendment 154 adds a new rule providing for venue in a proceeding where an adult child petitions for relief from the duty to support a parent on the grounds that the parent abandoned the child. Existing law provides only for venue in the county where the parent resides.

Domestic violence. A number of amendments are intended to answer the concerns of persons who attended the workshop in Los Angeles and some correspondents as to changes made in the structure of the domestic violence statutes and consequent substantive changes. (See, e.g., letters from Ms. Lemon in Exhibit 6, and Ms. Jonas & Ms. Sloane in

Exhibit 7.) The changes are accomplished in Amendments 65, 66, 69, 171, 181, 184, 185, 190, 197, 198, 200, 201, and 202.

Cousin-german. Amendment 226, a consensus item, would substitute "first cousin" for "cousin-german" in Family Code Section 8601 concerning stepparent adoptions.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

FG300
03/03/92

AMENDMENTS TO ASSEMBLY BILL 2650
AS INTRODUCED

Title AMENDMENT 1

In line 8 of the title, strike out "11a" and insert:
11.5

SEC. 1 AMENDMENT 2

On page 2, strike out lines 1 and 2

SEC. 2 AMENDMENT 3

On page 2, line 3, strike out "SEC. 2." and insert:
SECTION 1.

SEC. 3 AMENDMENT 4

On page 2, line 5, strike out "SEC. 3." and insert:
SEC. 2.

CC 687 AMENDMENT 5

On page 2, strike out lines 7 to 9, inclusive, and on page 3,
strike out line 1

SEC. 5 AMENDMENT 6

On page 3, line 2, strike out "SEC. 5." and insert:
SEC. 3.

SEC. 6 AMENDMENT 7

On page 3, line 4, strike out "SEC. 6." and insert:
SEC. 4.

SEC. 7 AMENDMENT 8

On page 3, line 6, strike out "SEC. 7." and insert:
SEC. 5.

SEC. 8 AMENDMENT 9

On page 3, line 9, strike out "SEC. 8." and insert:
SEC. 6.

SEC. 9 AMENDMENT 10

On page 3, line 11, strike out "SEC. 9. Title 11a" and insert:
SEC. 7. Title 11.5

SEC. 10 AMENDMENT 11

On page 3, line 13, strike out "SEC. 10." and insert:
SEC. 8.

SEC. 11 AMENDMENT 12

On page 4, line 11, strike out "SEC. 11." and insert:
SEC. 9.

SEC. 12 AMENDMENT 13

On page 4, line 13, strike out "SEC. 12." and insert:
SEC. 10.

§ 7 AMENDMENT 14

On page 6, line 19, strike out "heretofore or hereafter" and
insert:
regardless of when

§ 13 AMENDMENT 15

On page 7, lines 8 and 9, strike out "application thereof to a"
and insert:
its application to any

§ 75 AMENDMENT 16

On page 8, strike out lines 8 to 15, inclusive

§ 75 AMENDMENT 17

On page 8, line 16, strike out "(d)" and insert:
(a)

§ 75 AMENDMENT 18

On page 8, line 17, strike out "(order" and insert:
(ex parte order

§ 75 AMENDMENT 19

On page 8, line 19, strike out "(e)" and insert:
(b)

§ 75 AMENDMENT 20

On page 8, line 22, strike out "(f)" and insert:
(c)

§ 75 AMENDMENT 21

On page 8, line 26, strike out "(g)" and insert:
(d)

§ 75 AMENDMENT 22

On page 8, line 30, strike out "(h)" and insert:
(e)

§ 75 AMENDMENT 23

On page 8, between lines 34 and 35, insert:

(f) An order made pursuant to subdivision (a), (b), or (c) of Section 7710 (ex parte order under Uniform Parentage Act).

(g) An order described in subdivision (a), (b), or (c) of Section 7710 made pursuant to Section 7720 (order after notice and hearing under Uniform Parentage Act).

(h) An order included in the judgment pursuant to Section 7750 (Uniform Parentage Act).

§ 100-110 AMENDMENT 24

On page 9, strike out lines 8 to 18, inclusive

§ 125 AMENDMENT 25

On page 9, lines 23 and 24, strike out "heretofore or hereafter"

§ 125 AMENDMENT 26

On page 9, line 24, after "acquired" insert:
before or after the operative date of this code

§ 135-140 AMENDMENT 27

On page 9, strike out lines 39 and 40, and on page 10, strike out
lines 1 to 5, inclusive

§ 200pt AMENDMENT 28

On page 10, line 26, strike out "AND VENUE"

§ 201-202 AMENDMENT 29

On page 10, strike out lines 30 to 40, inclusive, and on page 11,
strike out lines 1 to 15, inclusive

§ 214 AMENDMENT 30

On page 12, line 6, strike out "by statute or" and insert:
in this code or by

§ 215 AMENDMENT 31

On page 12, strike out lines 13 to 32, inclusive

§ 216 AMENDMENT 32

On page 12, line 33, strike out "216." and insert:
215.

§ 240 AMENDMENT 33

On page 14, line 19, after "under" insert:
any of the following provisions

§ 242 AMENDMENT 34

On page 15, line 12, strike out "1" and insert:

2

§ 242 AMENDMENT 35

On page 15, line 12, strike out "7700" and insert:

7710

§ 242 AMENDMENT 36

On page 15, line 18, strike out "1" and insert:

2

§ 242 AMENDMENT 37

On page 15, line 18, strike out "7700" and insert:

7710

§ 270 AMENDMENT 38

On page 16, between lines 35 and 36, insert:

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

§ 270 AMENDMENT 39

On page 16, line 36, strike out "(b)" and insert:

(c)

§ 270 AMENDMENT 40

On page 17, strike out lines 2 to 5, inclusive

§ 272 AMENDMENT 41

On page 17, line 28, strike out "is" and insert:

are

§ 306 AMENDMENT 42

On page 21, line 28, strike out "part" and insert:

division

§ 510 AMENDMENT 43

On page 30, line 32, strike out "certificate furnished pursuant to this chapter" and insert:

confidential marriage certificate

§ 535 AMENDMENT 44

On page 33, line 13, strike out "part" and insert:

division

§ 535 AMENDMENT 45

On page 33, line 19, strike out "part" and insert:
division

§ 700div AMENDMENT 46

On page 38, line 1, strike out "HUSBAND AND WIFE" and insert:
RIGHTS AND OBLIGATIONS DURING MARRIAGE

§ 700 AMENDMENT 47

On page 38, line 8, strike out "personal property, not real" and
insert:
real property, not personal

§ 722 AMENDMENT 48

On page 39, strike out lines 8 and 9, and insert:
(b) A judgment of dissolution.

§ 723 AMENDMENT 49

On page 39, line 21, after "(a)" insert a comma

§ 750ch AMENDMENT 50

On page 39, line 28, after "Rights" insert:
During Marriage

§ 760 AMENDMENT 51

On page 41, line 25, after "during" insert:
the

§ 800-801 AMENDMENT 52

On page 44, strike out lines 30 to 34, inclusive

§ 803 AMENDMENT 53

On page 45, line 3, strike out "chapter" and insert:
part

§ 1117 AMENDMENT 54

On page 54, lines 19 and 20, strike out "(which includes
disposition)

§ 1150 AMENDMENT 55

On page 54, line 31, strike out "heretofore or hereafter"

§ 1150 AMENDMENT 56

On page 54, line 32, after "acquired" insert:
before or after the operative date of this code

§ 1817 AMENDMENT 57

On page 63, line 40, strike out "as" and insert:
that

§ 1819 AMENDMENT 58

On page 64, line 36, strike out "its" and insert:
the judge's

§ 1820 AMENDMENT 59

On page 65, line 10, strike out "for which it is" and insert:
of that

§ 1820 AMENDMENT 60

On page 65, line 27, strike out "as" and insert:
that

§ 1836 AMENDMENT 61

On page 68, line 4, strike out "as" and insert:
that

§ 1839 AMENDMENT 62

On page 68, line 35, strike out "as" and insert:
that

§ 2031 AMENDMENT 63

On page 75, following line 38, insert:

2031. Nothing in Section 2030 adversely affects 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.

§ 2035art AMENDMENT 64

On page 76, strike out line 1 and insert:

Article 2. Orders During Pendency of Proceeding

§ 2036.5 AMENDMENT 65

On page 77, between lines 11 and 12, insert:

2036.5. After notice and a hearing, the court may issue an order specified in subdivision (c) of Section 2035 excluding one party from the family dwelling or from the dwelling of the other party on a showing only that 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 a minor child of the parties or of the other party.

§ 2037 AMENDMENT 66

On page 77, line 14, strike out "is issued against", strike out line 15, and in line 16, strike out "of Section 2035" and insert:
protects against domestic violence

§ 2038 AMENDMENT 67

On page 77, line 32, strike out "a" at the end of the line and strike out lines 33 and 34 and insert:
the order, or the

§ 2039 AMENDMENT 68

On page 78, strike out lines 9 and 10 and insert:
current status of any order issued pursuant to this article

§ 2042 AMENDMENT 69

On page 78, line 34, after "to" insert:
subdivision (b), (c), or (d) of

§ 2080 AMENDMENT 70

On page 84, line 31, strike out "Wife_s" and insert:
Wife's

§ 2083 AMENDMENT 71

On page 85, strike out lines 8 to 20, inclusive

§ 2500div AMENDMENT 72

On page 103, line 4, strike out "COMMUNITY ESTATE" and insert:
PROPERTY

§ 2604 AMENDMENT 73

On page 106, line 34, strike out "as"

§ 2610 AMENDMENT 74

On page 106, line 40, strike out "assure" and insert:
ensure

§ 2640 AMENDMENT 75

On page 109, line 6 and 7, strike out "down payments" and insert:
downpayments

§ 3000pt AMENDMENT 76

On page 111, line 38, after "1." insert:
DEFINITIONS AND

§ 3000ch AMENDMENT 77

On page 111, between lines 38 and 39, insert:

Chapter 1. Definitions

3000. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

3002. "Joint custody" means joint physical custody and joint legal custody.

3003. "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.

3004. "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.

3006. "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.

3007. "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.

Chapter 2. General Provisions

§ 3000 AMENDMENT 78

On page 111, line 40, strike out "3000." and insert:
3010.

§ 3000 AMENDMENT 79

On page 111, line 40, strike out "unmarried" and insert:
unemancipated

§ 3000 AMENDMENT 80

On page 112, line 2, strike out "unmarried minor"

§ 3000 AMENDMENT 81

On page 112, line 3, after the first "the" insert:
unemancipated minor

§ 3000 AMENDMENT 82

On page 112, line 4, strike out "1711" and insert:
7611

§ 3000 AMENDMENT 83

On page 112, line 5, strike out "unmarried minor"

§ 3000 AMENDMENT 84

On page 112, line 10, strike out "unmarried" and insert:
unemancipated

§ 3001 AMENDMENT 85

On page 112, line 11, strike out "3001." and insert:
3011.

§ 3001 AMENDMENT 86

On page 112, line 13, strike out "which" and insert:
that

§ 3002 AMENDMENT 87

On page 112, line 15, strike out "3002." and insert:
3012.

§ 3003 AMENDMENT 88

On page 112, line 17, strike out "3003." and insert:
3013.

§ 3004 AMENDMENT 89

On page 112, line 21, strike out "3004." and insert:
3014.

§ 3005 AMENDMENT 90

On page 112, line 25, strike out "3005." and insert:
3015.

§ 3005 AMENDMENT 91

On page 112, strike out lines 31 to 33, inclusive

§ 3006 AMENDMENT 92

On page 112, line 34, strike out "3006." and insert:
3016.

§ 3007 AMENDMENT 93

On page 112, line 38, strike out "3007." and insert:
3017.

§ 3007 AMENDMENT 94

On page 112, line 40, strike out "Burton-Miller Act" and insert:
Family Economic Security Act of 1982

§ 3008 AMENDMENT 95

On page 113, line 8, strike out "3008." and insert:
3018.

§ 3022 AMENDMENT 96

On page 113, between lines 32 and 33, insert:

3022. In making a determination of the best interest of the child in a proceeding under this division, 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 55 of this code.

(c) The nature and amount of contact with both parents.

§ 3026 AMENDMENT 97

On page 114, strike out lines 26 and 27, and insert:

3026. Family reunification

§ 3026 AMENDMENT 98

On page 114, line 29, after the period, insert:

Nothing in this section affects the applicability of Section 16507 of the Welfare and Institutions Code

§ 3027 AMENDMENT 99

On page 114, line 32, strike out "was" and insert:

is

§ 3028 AMENDMENT 100

On page 115, line 21, after "(2)" insert:
the

§ 3040 AMENDMENT 101

On page 116, line 6, strike out "215" and insert:
3022

§ 3040 AMENDMENT 102

On page 116, line 12, strike out "215" and insert:
3022

§ 3080 AMENDMENT 103

On page 118, line 36, strike out "215" and insert:
3022

§ 3081 AMENDMENT 104

On page 119, line 2, strike out "215" and insert:
3022

§ 3110.5 AMENDMENT 105

On page 122, line 18, strike out "3110.5." and insert:
3111.

§ 3111 AMENDMENT 106

On page 122, line 27, strike out "3111." and insert:
3112.

§ 3112 AMENDMENT 107

On page 123, line 6, strike out "3112." and insert:
3113.

§ 3153 AMENDMENT 108

On page 127, line 17, strike out "as"

§ 3172 AMENDMENT 109

On page 130, line 18, strike out "215" and insert:
3022

§ 3190(b) AMENDMENT 110

On page 132, line 40, strike out "proportion as" and insert:
proportions

§ 3505, 3510 AMENDMENT 111

On page 147, strike out lines 2 to 5, inclusive

§ 3550 AMENDMENT 112

On page 147, line 11, after "3550." insert:

(a) As used in this section:

(1) "Obligee" means a person to whom a duty of support is owed.

(2) "Obligor" means a person who owes a duty of support.

(b)

§ 3552 AMENDMENT 113

On page 147, line 20, strike out "support" and insert:
, family,

§ 3553 AMENDMENT 114

On page 147, strike out lines 35 to 38, inclusive

§ 3581 AMENDMENT 115

On page 148, strike out lines 28 to 32, inclusive

§ 3624 AMENDMENT 116

On page 152, line 1, after "for" insert:
an

§ 3624 AMENDMENT 117

On page 152, line 11, after "to" insert:
an

§ 3627 AMENDMENT 118

On page 153, line 7, strike out "no" and insert:
not

§ 3632 AMENDMENT 119

On page 154, line 2, strike out "The" and insert:
An

§ 3632 AMENDMENT 120

On page 154, line 3, strike out "no" and insert:
not

§ 3660art AMENDMENT 121

On page 155, line 15, after "Modification" insert:
or Termination

§ 3661 AMENDMENT 122

On page 155, strike out lines 22 and 23

§ 3663 AMENDMENT 123

On page 155, strike out line 31 and insert:
not more frequently than once every 12 months.

§ 3681 AMENDMENT 124

On page 157, strike out lines 7 and 8, and insert:
3681. In order to facilitate service of process under this article, each party to an order for support shall provide the other party with the party's current mailing address and any later change of address.

§ 3687 AMENDMENT 125

On page 159, line 2, strike out "defaults" and insert:
fails to file a response

§ 3691 AMENDMENT 126

On page 160, line 8, after "child" insert:
or family

§ 3691 AMENDMENT 127

On page 160, line 9, strike out "file" and insert:
mail

§ 3691 AMENDMENT 128

On page 160, line 9, strike out "with" and insert:
to

§ 3691 AMENDMENT 129

On page 160, line 15, strike out "file" and insert:
mail

§ 3691 AMENDMENT 130

On page 160, line 15, strike out "with" and insert:
to

§ 3750art AMENDMENT 131

On page 161, line 6, strike out "Providing" and strike out "For"
and insert:
for

§ 3771 AMENDMENT 132

On page 167, line 17, strike out "absent" and insert:
employee

§ 3780 AMENDMENT 133

On page 167, line 38, strike out the comma

§ 3781 AMENDMENT 134

On page 168, line 2, strike out "a" and insert:
any

§ 3781 AMENDMENT 135

On page 168, strike out line 3, and in line 4, strike out "legal
separation of the parties,"

§ 3803 AMENDMENT 136

On page 170, line 23, strike out "The" and insert:

A

§ 3804 AMENDMENT 137

On page 170, line 27, strike out "The" and insert:

A

§ 3805 AMENDMENT 138

On page 170, line 30, strike out "The" and insert:

A

§ 3900^{pt} AMENDMENT 139

On page 171, line 19, strike out "SUPPORT OF CHILDREN" and insert:
CHILD SUPPORT

§ 3902 AMENDMENT 140

On page 172, line 2, strike out "as" and insert:
that

§ 3950^{art} AMENDMENT 141

On page 172, line 20, strike out "For" and insert:
for

§ 4004 AMENDMENT 142

On page 174, strike out lines 6 to 8, inclusive, and insert:

4004. In a proceeding where there is at issue the support of a minor child, the court shall require the parties to reveal whether a party is currently receiving, or

§ 4006 AMENDMENT 143

On page 175, line 4, strike out "medical" and insert:
health

§ 4008 AMENDMENT 144

On page 175, line 30, strike out "as"

§ 4008 AMENDMENT 145

On page 175, line 31, strike out "is" and insert:
are

§ 4009 AMENDMENT 146

On page 175, line 34, strike out "therefor"

§ 4055 AMENDMENT 147

On page 178, line 10, after "4728.5" insert:
of the Civil Code

§ 4066 AMENDMENT 148

On page 183, line 10, strike out "egislature" and insert:
Legislature

§ 4101 AMENDMENT 149

On page 185, strike out line 9, and insert:
4104.

§ 4200art AMENDMENT 150

On page 186, line 13, strike out "Court Designated" and insert:
Court-Designated

§ 4300pt AMENDMENT 151

On page 187, line 26, strike out "SUPPORT OF HUSBAND OR WIFE" and
insert:
SPOUSAL SUPPORT

§ 4300ch AMENDMENT 152

On page 187, line 28, strike out "of Support" and insert:
To Support Spouse

§ 4333 AMENDMENT 153

On page 191, line 30, strike out "therefor"

§ 4410 AMENDMENT 154

On page 196, line 8, after "parent." insert:
If the parent does not reside in this state, the petition shall be
filed in the county where the adult child resides.

§ 4500 AMENDMENT 155

On page 197, strike out line 14, and insert:
4500. An order for child, family, or spousal

§ 4501 AMENDMENT 156

On page 197, strike out lines 20 to 24, inclusive, and insert:
order.

§ 4502 AMENDMENT 157

On page 197, lines 26 and 27, strike out "by filing an application for renewal of the judgment in the manner specified" and insert:
as provided

§ 4502 AMENDMENT 158

On page 197, strike out lines 30 to 33, inclusive

§ 4505 AMENDMENT 159

On page 198, strike out lines 12 to 15, inclusive

§ 4506 AMENDMENT 160

On page 198, line 16, strike out "4506." and insert:
4505.

§ 4507 AMENDMENT 161

On page 198, between lines 24 and 25, insert:

4506. (a) An abstract of a judgment ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment was entered and shall contain all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the proceeding.

(2) The date of entry of the judgment and of any renewal of the judgment.

(3) Where the judgment and any renewals are entered in the records of the court.

(4) The name and last known address of the party ordered to pay support.

(5) The name and address of the party to whom support payments are ordered to be paid.

(6) The social security numbers, birth date, and driver's license number of the party to whom support payments are to be paid. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court order.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(9) Any other information deemed reasonable and appropriate by the Judicial Council.

(b) The Judicial Council may develop a form for an abstract of a judgment ordering a party to pay child, family, or spousal support to another party which contains the information required by subdivision (a).

(c) As used in this section, "judgment" includes an order for child, family, or spousal support.

§ 4560 AMENDMENT 162

On page 200, lines 12 and 13, strike out "to establish paternity or for dissolution of a marriage"

§ 4562 AMENDMENT 163

On page 200, line 38, after "within" insert:

a

§ 4562 AMENDMENT 164

On page 200, line 38, after "court" insert a comma

§ 4800ch AMENDMENT 165

On page 212, strike out lines 29 and 30, and insert:

Chapter 4. Uniform Reciprocal Enforcement of Support Act

§ 4833 AMENDMENT 166

On page 221, line 20, strike out "this" and insert:
that

§ 4852(c) AMENDMENT 167

On page 226, line 19, strike out "that"

§ 5103 AMENDMENT 168

On page 228, line 28, after "family" insert a comma

§ 5103 AMENDMENT 169

On page 228, line 38, strike out "support or family" and insert:
, family, or spousal

§ 5230 AMENDMENT 170

On page 231, line 20, after "amount" insert:
, or to modify the support order.

§ 5501 AMENDMENT 171

On page 241, between lines 1 and 2, insert:

5501. The definitions in Part 2 (commencing with Section 50) of Division 1, including, but not limited to, the definitions of "abuse," "domestic violence," and "domestic violence prevention order," govern the construction of this division.

§ 5505 AMENDMENT 172

On page 241, line 3, strike out "do any of the" and strike out lines 4 to 7, inclusive, and insert:
contact, molest, attack, strike, threaten, sexually assault, batter, telephone, or disturb the peace of the person described in Section 70.

§ 5512 AMENDMENT 173

On page 242, line 3, strike out "5519" and insert:
5520

§ 5513 AMENDMENT 174

On page 242, line 20, strike out "215" and insert:
3022

§ 5514 AMENDMENT 175

On page 242, line 30, strike out "only be issued if" and insert:
not be issued unless

§ 5515.5 AMENDMENT 176

On page 242, line 38, strike out "5515.5." and insert:
5516.

§ 5516 AMENDMENT 177

On page 243, line 7, strike out "5516." and insert:
5517.

§ 5517 AMENDMENT 178

On page 243, line 13, strike out "5517." and insert:
5518.

§ 5518 AMENDMENT 179

On page 243, line 16, strike out "5518." and insert:
5519.

§ 5518 AMENDMENT 180

On page 244, line 20, strike out "5519." and insert:
5520.

§ 5515.5 AMENDMENT 181

On page 242, lines 39 and 40, strike out "paragraph (1), (2), or
(3) of subdivision (a) of Section 5550" and insert:
subdivision (b), (c), or (d) of Section 2035

§ 5518 AMENDMENT 182

On page 243, line 25, strike out "person" and insert:
party

§ 5518(e) AMENDMENT 183

On page 244, line 13, strike out "set" and insert:
sit

§ 5550 AMENDMENT 184

On page 245, strike out lines 12 to 40, inclusive, and on page 246, strike out lines 1 to 3, inclusive, and insert:
ex parte any of the orders set forth in Section 2035.

§ 5550 AMENDMENT 185

On page 246, lines 6 and 7, strike out "paragraphs (1), (2), and (3) of subdivision (a)" and insert:
subdivisions (b), (c), and (d) of Section 2035

§ 5602 AMENDMENT 186

On page 246, line 33, after "order" insert:
under Section 5650 or 5700

§ 5604 AMENDMENT 187

On page 246, line 39, after "order" insert:
under Section 5650 or 5700

§ 5605 AMENDMENT 188

On page 247, line 2, after "order" insert:
under Section 5650 or 5700

§ 5650ch AMENDMENT 189

On page 247, strike out line 33, and insert:
Where Danger of Domestic Violence

§ 5650 AMENDMENT 190

On page 248, lines 7 and 8, strike out "paragraph (1), (2), and (3) of subdivision (a) of Section 5550" and insert:
subdivisions (b), (c), and (d) of Section 2035

§ 5652 AMENDMENT 191

On page 248, line 23, strike out "(a)"

§ 5652 AMENDMENT 192

On page 248, line 25, strike out "(1)" and insert:

(a)

§ 5652 AMENDMENT 193

On page 248, line 26, strike out "(2)" and insert:

(b)

§ 5652 AMENDMENT 194

On page 248, line 27, strike out "(3)" and insert:

(c)

§ 5652 AMENDMENT 195

On page 248, line 29, strike out "(4)" and insert:

(d)

§ 5652 AMENDMENT 196

On page 249, strike out lines 5 to 10, inclusive

§ 5750 AMENDMENT 197

On page 250, line 26, strike out "subdivision (a) of Section 5550" and insert:

Section 2035

§ 5750 AMENDMENT 198

On page 250, strike out line 30 and in line 31, strike out "Section 5550" and insert:

subdivisions (b), (c), (d), and (f) of Section 2035

§ 5754 AMENDMENT 199

On page 252, line 5, after "separately" insert:

and

§ 5804 AMENDMENT 200

On page 253, lines 34 and 35, strike out "paragraph (1), (2), or (3) of subdivision (a) of Section 5550" and insert:
subdivision (b), (c), or (d) of Section 2035

§ 5805 AMENDMENT 201

On page 254, line 34, strike out "paragraph (1), (2), or" and strike out line 35 and insert:
subdivision (b), (c), or (d) of Section 2035.

§ 5807 AMENDMENT 202

On page 255, strike out line 7 and in line 8 strike out "5550" and insert:
subdivision (b), (c), or (d) of Section 2035

§ 6600pt AMENDMENT 203

On page 256, line 3, strike out the colon and insert a semicolon

§ 6925 AMENDMENT 204

On page 263, line 4, strike out "apparent" and insert:
a parent

§ 7553 AMENDMENT 205

On page 272, line 34, strike out "as it shall prescribe" and insert:
the court prescribes

§ 7604 AMENDMENT 206

On page 274, line 27, strike out "granting" and insert:
grant

§ 7604 AMENDMENT 207

On page 274, line 32, strike out "parent-child" and insert:
parent and child

§ 7613 AMENDMENT 208

On page 277, line 5, strike out "surgeons's" and insert:
surgeon's

§ 7620 AMENDMENT 209

On page 277, line 35, strike out "The action" and insert:
An action under this part

§ 7660ch AMENDMENT 210

On page 282, line 27, strike out "X" and insert:

5.

§ 7662 AMENDMENT 211

On page 283, line 12, strike out "(a)" and insert:

(1)

§ 7662 AMENDMENT 212

On page 283, line 13, strike out "(b)" and insert:

(2)

§ 7662 AMENDMENT 213

On page 283, line 24, strike out "(1)" and insert:

(a)

§ 7662 AMENDMENT 214

On page 283, line 27, strike out "(2)" and insert:

(b)

§ 7710(d) AMENDMENT 215

On page 287, strike out line 34, and insert:
the conditions the court determines.

§ 7711 AMENDMENT 216

On page 287, line 36, strike out "only be issued if" and insert:
not be issued unless

§ 7805 AMENDMENT 217

On page 291, line 10, after "part" insert a comma

§ 7805 AMENDMENT 218

On page 291, line 13, after "part" insert a comma

§ 7863 AMENDMENT 219

On page 300, line 9, strike out "as"

§ 7870art AMENDMENT 220

On page 300, line 17, strike out the colon and insert a semicolon

§ 7901 AMENDMENT 221

On page 306, between lines 13 and 14, insert:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

§ 7901A2b AMENDMENT 222

On page 307, line 2, strike out "officer," and insert:
or officer

§ 7901A6 AMENDMENT 223

On page 309, line 40, strike out "that: (a) Equivalent" and insert:
that both of the following exist:
(a) Equivalent

§ 7901A6 AMENDMENT 224

On page 310, lines 1 and 2, strike out "jurisdiction, and (b)
Institutional" and insert:
jurisdiction.
(b) Institutional

§ 8548 AMENDMENT 225

On page 317, strike out lines 2 and 3, and insert:
of a child by a stepparent where one birth parent retains custody and
control of the child.

§ 8601 AMENDMENT 226

On page 317, line 16, strike out "cousin-german" and insert:
first cousin

§ 8607 AMENDMENT 227

On page 318, line 40, strike out "3000" and insert:
3010

§ 8702 AMENDMENT 228

On page 326, line 13, strike out the colon and insert a semicolon

§ 8720 AMENDMENT 229

On page 335, line 36, after "parents" insert a comma

§ 8802 AMENDMENT 230

On page 338, line 25, strike out the comma and insert a period

§ 8802 AMENDMENT 231

On page 338, strike out lines 26 to 32 inclusive

§ 8809 AMENDMENT 232

On page 342, line 23, after "or" insert:
the superior court

§ 8812 AMENDMENT 233

On page 344, strike out lines 37 to 40, inclusive, strike out pages 345 to 348, inclusive, and on page 349, strike out lines 1 to 7, inclusive

§ 8818 AMENDMENT 234

On page 353, line 3, strike out the colon and insert a semicolon

§ 8818 AMENDMENT 235

On page 353, line 4, strike out "AGENCY" and insert:
DEPARTMENT

§ 9200ch AMENDMENT 236

On page 365, line 15, strike out "8." and insert:
7.

§ 20000 AMENDMENT 237

On page 375, line 26, strike out "time consuming" and insert:
time-consuming

SEC. 13 AMENDMENT 238

On page 380, line 27, strike out "SEC. 13." and insert:
SEC. 11.

SEC. 14 AMENDMENT 239

On page 381, line 12, strike out "SEC. 14." and insert:
SEC. 12.

contingency provision AMENDMENT 240

On page 381, strike out lines 7 to 11, inclusive

uncod AMENDMENT 241

On page 381, line 12, strike out "SEC. 16." and insert:
SEC. 13.

uncod AMENDMENT 242

On page 381, following line 25, insert:

SEC. 14. Any section of any act enacted by the Legislature during the 1992 calendar year, which takes effect on or before January 1, 1993, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section repealed by this act, shall prevail over this act, whether that act is chaptered before or after this act.

Law Revision Commission
RECEIVED

JAN 1992

File: _____
Key: _____

California Judges Association



301 Howard Street
Suite 1040
San Francisco
California 94105

(415) 495 1999
(415) 974 1209 Fax

MEMORANDUM

TO: Members, CJA Family Law Committee

FROM: Richard Piedmonte, CJA staff

DATE: January 13, 1992

SUBJECT: Proposed Family Code—Committee comments; any further action(s)?

1. The following pages contain the comments and criticisms of CJA Family Law Committee members on their respective Divisions of the California Law Revision Commission's proposed Family Code, where the Committee member found substantive changes or other material worth commenting on.

2. It now appears that when the proposed Family Code is introduced in bill form, it will not be an Assembly Judiciary Committee bill. Instead, Assembly Member Speier will be the individual titular author of the bill.

1991-92 Executive Board

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Hon. Robert I. Weil

Question: What, if any, further action does the Committee wish to take on the proposed Family Code at this time?

Note: See schedule of open hearings on various elements of the proposed Code at #5(b)(2).

Constance Dove
Executive Director



JAMES D. ENDMAN
COURT COMMISSIONER

The Superior Court
LOS ANGELES, CALIFORNIA 90012

JAN 02 1992

TELEPHONE
(213) 974-1234

December 23, 1991

RICHARD S. PIEDMONTE
Legislative Coordinator
California Judges Association
301 Howard St., Suite 1040
San Francisco, CA 94105

Dear Richard:

Pursuant to the CJA Family Law Committee's recent teleconference I am writing to you concerning section 1737.5. The new proposed code seeks to divide up the various sections of the present code. This section divides 7010. I am concerned that the division may give broader "enforcement" restrictions than intended.

Specifically, present 7010(d) is intended to be limited to the retroactive support provisions (CFLP M 0.0.23). The new enforcement section is now separated from the rest of the retroactive considerations of 7010 and may be interpreted to have a life of its own, and be made applicable to all support orders in paternity actions. Thus, read by itself, enforcement of support could be limited by considerations of latches or just "bad faith by either parent." 1737.5(c)(d).

Very truly yours,

James D. Endman

[§M.0.0.23] Retroactive Child Support in Uniform Parentage Act Proceedings

Effective January 1, 1989, CC §7010 was amended to add CC §7010(c)(2) and (c)(3). CC §7010(c)(2) provides that for children born after the effective date, a child-support order may require one parent to pay for the shortest of the following periods prior to the filing of the action: (1) three years, (2) the period from the date the custodial parent mailed the birth certificate or the written notification until the filing of the action, or (3) the period between the date of the parties' separation and the filing of the action. Per CC §7010(c)(3), if paternity has not been legally established or if the parties were married but separated prior to the child's birth, the court may not award retroactive child support per CC §7010(c)(2) unless either the father has received a copy of the birth certificate from the local registrar or the custodial parent has provided the father with written notification (by first-class mail) of his paternity and support duty. In determining whether to make a retroactive support order, the court must consider the custodial parent's diligence in bringing the support action. CC §7010(c)(3) also provides that any support ordered per CC §7010(c)(2) "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 must review the parents' income and expenses for each year (or other relevant period) for which support is requested, and it "may apply its guidelines and the child support laws in effect for each period." (See also §M.21.0.0.1 and M.69 et seq. re retroactive modification of child support in family law proceeding, and §M.1.0.1 re retroactive child support in independent civil actions.)

CC §7010 specifies that, in determining the amount of support to be paid in a parentage action and the period during which support is owed, the court must consider (1) any agreements made between the parents before the action was filed; (2) any previous payments; (3) any bad faith on either parent's part; (4) any undue delay in seeking to establish a child-support order and whether either parent has been prejudiced; and (5) any other factors deemed relevant. CC §7010(d).

H&S C §10061 [birth certificates] provides that the registrar must mail a copy of a birth certificate to the father identified therein, but only upon the mother's written or in person request. The mother, who will be charged a fee (not to exceed the actual mailing cost), must provide a mailing address for the father. In an amendment to H&S C §10125.5, access to confidential portions of a birth certificate are limited to the parent who signed the certificate, specified health officials, and individuals who

have petitioned to adopt the infant. AB 3974 (Stats 1990, Ch 1493).

AB 3974 (Stats 1990, Ch 1493), effective January 1, 1991, amended H&S C §10125.6 [informational notice of right to retroactive support] to require that the State Department of Health Services and the State Department of Social Services cooperate in developing and distributing an informational notice to mothers to advise them of their rights to child support. This notice will be provided to each pregnant woman admitted for delivery by every health facility that provides maternity services. The requirement that the state registrar provide the notice with each original birth certificate is deleted. AB 3974 also amended CC §196(e) [parental duty of support] and 4700(e) [establishment/modification of child support] to repeal, as of January 1, 1993, the retroactive child-support provisions that became effective January 1, 1989.

The Superior Court
OF THE
State of California

CHAMBERS OF
THOMAS ASHWORTH III
JUDGE OF THE SUPERIOR COURT

MAILING ADDRESS
FAMILY COURT BUILDING
POST OFFICE BOX 127888
SAN DIEGO, CA 92101-1848

January 2, 1992

Mr. Richard Piedmonte
California Judges Association
301 Howard Street - Suite 1040
San Francisco, CA 94105

Re: FAMILY CODE

Dear Rich:

I have now had an opportunity to review Division 1 of the new Family Code. This division deals with preliminary provisions and definitions. There is very little substantive law involved and there are no changes.

I also had one of our research attorneys review the proposed new code in some detail. He is experienced in family law and his comments are enclosed. I agree with him that it would be helpful to include some of the Commission's comments as part of the code itself. This is particularly true of (1) through (11) under Section 2.

The Commission asks certain questions by placing them in bold print under the appropriate section. My answers are as follows:

Section 12 - I believe that references to the "Family Law Act" should be eliminated; I prefer "As used in this code, other"

It seems confusing to have references to both the Family Law Act and the Family Code. I also believe that Section 12 more appropriately belongs in Part 2.

Section 50 - I would recommend either using "judgment" uniformly in place of "decree" and "order" or using "judgment (including court order or decree)."

Section 85 - Use of the designation "Family Law Act" should be eliminated. See comment on Section 12, above.

Section 90 - This is a problem area of the first magnitude. We are hearing an increasing number of landlord-tenant disputes as "domestic violence" cases because terms such as "family or household member" are so unclear. At least "cohabitant" has been defined in the cases. I would like to see one term used and to have that term clearly and narrowly defined.

I am very much in favor of the Family Code. The draft is an excellent start. Please let me know if I may be of any further assistance.

Very truly yours,



THOMAS ASHWORTH III
Judge of the Superior Court

TA:czo

Enclosure

JAN 16 1992

REVIEW OF DIVISION 1 OF CALIFORNIA LAW COMMISSION
REVISED "FAMILY CODE"

For: Judge Thomas Ashworth
By: Bob Poulsen
Date: December 9, 1991

GENERAL COMMENTS: As a member of the CJA Family Law Committee, Judge Ashworth has been asked to review the opening division of the proposed Family Law Code (FLC). If adopted, the FLC would bring together all statute sections currently found in other California Codes (i.e., Civil Code, Code of Civil Procedure, etc.) into one, all-encompassing Code to eliminate jumping around to find law relevant to Family Law cases.

Judge Ashworth has been asked to determine if the proposed FLC has any substantive changes from current law as found in these various other Codes, or whether this is a reorganization of current law (or a combination of both).

He was also asked to give his opinion regarding whether or not the proposed changes are an improvement, a cause for confusion or if the proposal is any better or worse than current law. Are the proposed new statutes clear and complete or has something been left out?

DISCUSSION: Division 1 of the proposed FLC is entitled "Preliminary Provisions and Definitions," so there is not much substantive law to discuss.

I have gone through each proposed new section below and listed its name, whether or not it is taken from a current code or is new, and then stated some opinions regarding the inclusion of each.

I am uncertain as to whether or not the Comments as listed in the proposed FLC will remain in the final version, but I am assuming each will. Overall, I believe this would be extremely helpful to attorneys and parties when first viewing the new code. In certain instances, I suggest that the language in the comments be included in the actual statute itself, because some publishers do not include comments with the statute. If these are eliminated or a further search is required, this defeats the purpose of combining everything in one place.

PART 1. PRELIMINARY PROVISIONS

Section 1 -- "Title of code" - This simply names the code as the Family Code.

Section 2 -- "Continuation of existing law" - This section, plus sections 3 and 4 below, are taken directly from, and are exactly the same as, Probate Code sections 2 and 3. (This section is the same as Probate Code § 2(a)). The Probate Code is a good place from which to take material, because that code makes drastic changes rather frequently. These sections clarify how to read the new law and this section in particular tells the reader that the code is not a new enactment, but rather a restatement and continuation of existing law.

I like having this section, plus numbers 3 and 4, right at the beginning of the FLC. There is nothing like it at the beginning of the current Family Law Act.

As noted in the general comments above, West's does not publish the comments with the code and parts 1 through 11 of this particular comment are very helpful in understanding what the drafters are attempting to do. Therefore, for this section I would suggest that these 11 definitions should be made part of the actual section. It is a very good introduction regarding the intent of the FLC.

Section 3 -- "Construction of provision drawn from uniform act" - Same as Probate Code §2(b). Because some of the provisions of the FLC are same or similar to provisions of various uniform acts, this section is added to provide a rule of interpretation. The comment lists those acts, which is very helpful. (Should they be added to the section itself?) This section would supersede CC §§ 253, 5003 and 5301, CCP § 1651 and Ev § 891, all of which are exactly the same and state: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

The wording is a bit different, but the intent remains the same and it is a bit easier to read.

Section 4 -- "Construction of amendments, additions, and repeals" - This is the main transitional section which is identical to Probate § 3. It sets forth the general rules that apply when special rules do not. This is extremely helpful, especially when there is an entirely new body of law with which to deal. There is always confusion when laws change, and this section should minimize the problem. Interestingly, several years ago when the Probate Code made massive changes, section 3 had a one word typo which changed when to use the new or the old and caused great confusion because it did not make sense as written. This is a good point to interject that if and when this FLC is finalized, extreme care should be taken to proofread in the extreme.

Also of note is that in addition to governing other substantive provisions, it also governs itself. It becomes operative on the date the FLC becomes operative and applies to provisions enacted and operative before, on or after that date.

Section 5 -- "Effect of headings in code" - This is a standard provision regarding the effect of code headings, but should definitely be included.

Section 6 -- "Certified mail sufficient compliance with requirement of use of registered mail" - This is similar to current CC § 17, but the language is a bit more clear. Section 17 states "Wherever any notice . . .", where the new section simply states "If a notice. . ."

Section 7 -- "Construction of code" - Standard and further clarifies the code's construction. Good to include, just to further clarify.

Section 8 -- "Reference to statute includes amendments & additions" - Standard provision that is usually included in all enacted codes.

Section 9 -- "Reference to division, part, chapter, article, section or part of section" - This is comparable to current CC § 14(6) and is a standard for new codes.

Section 10 -- "Construction of tenses" - Similar to section 7 above. This is standard and applies unless provision or context of an individual section otherwise requires.

Section 11 -- "Construction of singular and plural" See section 10's comments above.

Section 13 -- "Meaning of 'shall' and 'may'" - This is the same language as current CCP § 1732.

Section 14 -- "Severability of provisions" - Standard and good to include.

PART 2. DEFINITIONS

Section 50 -- "Application of definitions" - A Standard inclusion for new codes. On your printed copy of the code, in boldface, there is a question regarding inclusion of terms. In my opinion, the answer should be that whatever is decided should be uniform and not different in each section. Because of the problems that could come up, I suggest it should be "judgment (including court order or decree)" and this will eliminate the question. As added safety, "unless otherwise stated" could also be included.

Section 55 -- "Abuse" - This is the same as CCP § 542(a), but the scope is expanded to cover entire FLC. Section 542 formerly covered only the Domestic Violence Prevention Act (DVPA).

Section 57 -- "Affinity" - This is same as current CCP § 17(9). By placing it here, it is easier to have all appropriate definitions in one place. Definition itself, stays the same.

Section 60 -- "'Cohabitant;' 'former cohabitant'" - This is same as CCP § 542(c), but the scope is expanded from the DVPA to the entire FLC. I would also like to see added the case law definitions or a variant thereof. As you recall, this is a common and frequent question that needs clarification. Does it include homosexual relationships?

Section 65 -- "'Community property'" - This is the first of many sections in which the comment states: "included for drafting convenience." I spoke with Nat Sterling at the Law Revision Commission and he explained that this means usually a word or phrase is defined here so that the full definition does not have to appear each time that word or phrase is used later in the code. It is analogous to looking up a topic in an index and finding a

referral to another area. At least this lets you know that the author has not forgotten the topic and that something on it will appear elsewhere.

For this section, the comment states that this definition refers to three sections later in the FLC (751, 901, and 760). I would prefer that the full definition be placed here at the beginning since the goal of the FLC is to reduce having to look all over for the pertinent law. In fact, for both this and the section defining separate property, I would like to see the standard definitions at current CC §§ 5108 and 5110. This would eliminate confusion if those definitions were placed right at the beginning.

Section 67 -- "'County'" - Same as now found buried in current CC § 14. It is good they have decided to pull it out and make a separate section - less confusion.

Section 70 -- "'Domestic violence'" - Again, this is expanding the DVPA to cover the entire FLC. It now appears in current CC §§ 4600.1, 4607, 4607.2 and 4608.1. This new section should be read along with FLC §§ 55, 60 and 75. Again, it is good to have this right at the beginning and covering the entire FLC.

Section 75 -- "'Domestic violence prevention order'" - This is for drafting convenience as explained above. It is new and clarifies and defines. It should eliminate most confusion as to when to use it, as at least eight instances are discussed right in the section.

Section 80 -- "'Employee pension benefit plan'" - This is same as current CC § 4363.3, which restricts the definition to the FLA. The new section would expand it to the entire FLC. This should be read in conjunction with new FLC § 755. My same question arises. Should the section 755 definition be included here? Why not have all the definitions in one place?

Section 85 -- "'Family Law Act'" - New section added for convenience. It supersedes current CC § 4000 but does not include Div. 15 (minors) and Div. 16 (adoption). There is a question in the comment re the Family Law Act. I believe Family Law Act may not been needed any more if the FLC is where the FLA plus all other pertinent statutes are included.

Section 90 -- "'Family or household member'" - This is also new for the entire FLC and is same as current Penal Code § 12028.5. I see a potential problem with including the words "person who regularly resides in the household." Remember the question we had recently regarding whether a boarder fits under this definition? Also, what about a third cousin who lives in the house occasionally?

Section 92 -- "'Family support'" - This is same as first and second sentences of current CC § 4811(d). It is good to have this separate right at the beginning. I believe the more definitions supplied, the easier it is to interpret the law.

Section 95 -- "'Income and expense declaration'" - This generalizes third sentence of current CC § 4357.5, which now applies only to expedited support orders. This new section applies the requirement to the entire FLC.

Section 100 -- "'Joint custody'" - This is current definition as used in CC § 4600.5(d)(1), which used to be applied only in the FLA. Now covers entire FLC and refers to new FLC §§105 and 110 (see below).

Section 105 -- "'Joint legal custody'" - Same as current CC § 4600.5(d)(5), but expands it to cover entire FLC.

Section 110 -- "'Joint physical custody'" - Same as current CC § 4600.5(d)(3), but also expanded to cover entire FLC. I like having these placed in separate sections.

Section 115 -- "'Property declaration'" - New section which is an easy reference to Judicial Council form. Good to include.

Section 125 -- "'Quasi-community property'" - This is same as current CC § 4803, but expanded to cover entire FLC. This is included so division of property is not controlled by fortuity of where or when property was acquired. It also clarifies new FLC sections 772, 773 and 781 regarding what is not quasi-community property.

Section 130 -- "'Separate property'" - This is included here for drafting convenience and refers to new FLC § 3515 which defines separate property that is not quasi-community. Again, I would like to see a full definition here, rather than having to jump around. This would be where I would recommend the definition from current CC § 5108, so that there is no confusion.

Section 135 -- "'Sole legal custody'" - This is same as current CC § 4600.5(d)(4), expanded to cover the entire FLC, not just the FLA, as is now the case.

Section 140 -- "'Sole physical custody'" - Same as CC § 4600.5(d)(2), expanded for full FLC.

Section 142 -- "'Spousal support'" - included for drafting convenience so that throughout rest of FLC, this is definition to use, although it is not applicable if a provision or context requires otherwise. It is currently CC § 4350.5.

Section 145 -- "'State'" - This is a new section, taken from CC § 241, and is to be used throughout the FLC. Currently there is nothing similar in the FLA.

Section 150 -- "'Support'" - Inserted for drafting convenience, it is drawn from the old CC § 4390(h). Part of it is also now the new FLC § 5218, but I question why there would be two different definitions in two different places in the FLC.

Section 155 -- "'Support order'" - This is a general definition which is the same as new § 4802(k), which is the URESA section.

CONCLUSION: I am in favor of as many definitions at the beginning as possible so that confusion can be eliminated early. So many of the questions we receive deal with definitions and "what did the legislature mean?" Obviously, it would be impossible to include every definition and it does not appear that any key ones have been left out. I think it is wise that several current subpart definitions have been given their own new section numbers to eliminate unnecessary searching. I would like to see some of the comment material inserted right in the code itself, as noted above. According to Mr. Sterling, this can be done if warranted.

This has been a rather lengthy review, but I believe it is worth it because of the importance of having an entirely new code which encompasses everything (or nearly everything) needed to practice family law.

Please let me know if you would like further review or if you want me to condense your thoughts into a letter to send to the committee.

**THE CONCILIATION COURT
OF THE SUPERIOR COURT
ROOM 241, 111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012**

FACSIMILE TRANSMISSION COVER SHEET

FAX PHONE NUMBER: (213) 680-1043

DATE: 12-23-91 **TIME:** 10:10

Number of pages (including cover sheet): 7

TO: RICHARD PIEDMONTE

AGENCY: CJA

FAX PHONE NUMBER: (415) 974-1209

FROM:

NAME: JUDGE KENNETH A. BLACK

TELEPHONE NUMBER: (213) 974-5563

SUBJECT: _____

FAMILY CODE COMPARISON REVIEW

NOTE:

REVIEW OF THE REVISED FAMILY CODE

DIVISION 3

1. Former Civil Code §4100 which discusses the definition and solemnization of marriage now appears as §300.
2. Former Civil Code §4101(a) which discusses capacity to marry now appears as §301.
3. Former Civil Code §4101(b) and (c) which discusses marriage under the age of eighteen and related counseling now appears as §302. The new section says that the court shall require counseling if it "considers" it to be necessary. The only section said if the court "deems" it necessary.
4. Former Civil Code §4102 which discusses consent of the Superior Court to the marriage of a minor now appears as §303. The new section says that "8" it appears that the minor has no parent capable of consenting ... the old section read "whenever" it appears.
5. Former Civil Code §4103 which discusses proof of consent now appears as The new section reads "a" marriage contracted outside the state is valid ... the old section read "all" marriages ...
6. Former Civil Code §4104 which discusses validity of foreign marriages now appears as §305.
7. Former Civil Code §4212 which discusses actions to determine the validity of a marriage now appears as §306.
8. Former Civil Code §4200 which discusses the procedural requirements of a valid marriage and the effect of noncompliance now appears as §350.
9. Former Civil Code 4216 which discusses the requirements for marriage of members of a religious society now appears as §351.
10. Former Civil Code §4201(a) first section stating the requirement of a marriage license now appears as §360.

11. Former Civil Code §4201(a) last section setting forth the requirements of a license now appears as §361.
12. Former Civil Code §4201(b) first section which discusses the denial of a license to those persons who are insane, an imbecile, or under the influence of drugs or liquor now appears as §362.
13. Former Civil Code §4201(b) first section which discusses underage applicants now appears as §363. The new section reads "If a person applying for a 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

The only section read, "If the person is under the age of 18 years, no license may be issued by the county clerk unless both parties are capable of consenting to and consummating marriage ...

14. Former Civil Code §4201(b) last section which discusses requisite proof for a license now appears as §364.
15. Former Civil Code §4201(c) and (a) which discusses the form of the license now appears as §365.
16. Former Civil Code §4204 first section which discusses expiration of licenses now appears as §366.
17. Former Civil Code §4204 second section which discusses notice of expiration and the obligation of the county recorder now appears as §367.
18. Former Civil Code §4201.5 which discusses the State Department of Health Services brochure now appears as §370.
19. Former Civil Code §4202 which discusses the Certificate of Registry now appears as §400. The new section makes clear that the Certificate of Registry must be filled out by the applicants, §400(b). The old section stated that the certificate "shall be filled out as provided."

The new section provides identical information - but the ideas are broken into separate sections listed as §400(b),(c) and (d). The old section appeared as one long sentence.

20. Former Civil Code §4203 discusses replacement of a lost certificate now appears as §401. The new section reads "if a certificate is lost or destroyed ... the old section read "upon" loss or destruction ...
21. Former Civil Code §4205 which discusses persons authorized to solemnize now appears as §401. Again the new section breaks the information into several short provisions, instead of giving the information as part of one long sentence. §450 begins by stating that marriage may be solemnized by any of the following (1) judge or retired judge, commissioner or retired commissioner, (2) a US judge or magistrate, (3) a priest, minister or rabbi, (4) a judge or magistrate who has resigned. The substance of the section remains the same.
22. Former Civil Code §4205.1 which discusses the county clerk as commissioner now appears as §451. §451(a) identifies the office, §451(b) describes his/her duties. The wording remains the same - but the old section was not divided into (a) and (b).
23. Former Civil Code §4205.5 which discusses official of nonprofit religious institutions now appears as §452.
23. Former Civil Code §§4206 and 4206.5 which discusses elements of solemnization now appears as §460. §460 simply combines the sections, the wording is identical.
24. Former Civil Code §4207 which discusses the correctness of facts in a license now appears as §461. The new section begins "Before solemnizing a marriage..." The old section began "The person solemnizing must first require ..."
25. Former Civil Code §4208(a) which discusses the requirement of a Certificate of Registry now appears as §462.
26. Former Civil Code §4208(b) which discusses the return of the license to the local registrar now appears as §463.
27. Former Civil Code §4210 which discusses the unrecorded marriage now appears as §465. The phrase "previously contracted" has been inserted - instead of "heretofore contracted".
28. Former Civil Code §4214 discussing confidential marriage now appears as §500.

29. Former Civil Code §4213(a) which discusses the requirements for a confidential marriage now appears as §501. The new section states that when an unmarried man and woman have been living together as husband and wife they may be married "pursuant to this chapter," without the necessity of first obtaining a health certificate. The old section did not contain this phrase, but listed the applicable code section.
30. Former Civil Code §4213(a) also discusses the application and issuance of the confidential marriage license. This section now appears as §502.
31. Former Civil Code §4213.1 which discusses the issuance of a license where a party is unable to appear has become §503.
32. Former Civil Code §4213(b) which discusses the issuance of a license upon request of a notary public now appears as §504.
33. Former Civil Code §4213(a)(i) which contains the form of a confidential marriage license now appears as §505. The third paragraph of Civil Code §4213 was divided into separate sections (a),(b),(c),and (d) for clarity. A fifth section (e) was added which shows how the signatures on the affidavit should appear.
34. Former Civil Code §4213(a) fifth and sixth sentences have now been divided into separate sections §506(a) and (b) respectively.
35. Former Civil Code §4213 second paragraph, second sentence now appears as §508.
36. Former Civil Code §4213(g) which discusses the issuance of a certified copy of the certificate now appears as §509.
37. Former Civil Code §4213(h) which discusses replacement of a lost certificate now appears as §510. The new section reads "If a certificate furnished pursuant to this section is lost, damaged or destroyed..." The old section read "In the event that a certificate furnished..."
38. Former Civil Code §4213(c)(1) and (d) now appear as §550.
39. Former Civil Code §4213(c)(2) and (c)(3) which discusses application by a notary for approval to authorize now appears as §551. The new section asks for "the date of birth of the applicant". The old section asked for "his or her date of birth."

40. Former Civil Code §4213(c)(5) which discusses the required course of instruction now appears as §552.
41. Former Civil Code 4213(c)(3) now appears as §553.
42. Former Civil Code 4213(c)(6) now appears as §554(a) and (b). The new section divides two sentences into two new sections.
43. Former Civil Code §§4213(c)(4) and (7) now appear as §555(a) and (b). Note this sentence in §555(a): "If.. It is discovered that the notary public has engaged in any of the actions specified in §8214.1 of the Government Code, the approval shall be revoked, any fees paid by the notary public may be retained by the county clerk. The comment points out that this provision should also be applicable to §555(b) which discusses a notary public who has violated a provision concerning confidential marriages.
44. Former Civil Code §4213(c)(3) now appears as §556.
45. Former Civil Code §4213(a) first paragraph, 4213.2, and 4213(f) now appear as §570(a), §570(b) and §570(c) respectively. The sections are the same and refer to the application by a notary for approval.
46. Former Civil Code §4300(a) first sentence which discusses a physician's certificate as a prerequisite to obtaining a marriage license now appears as §580.
47. Former Civil Code §4300(a) last section If the first sentence now appears as §581. The section is identical and discusses the standard serological test.
48. Former Civil Code §4300(b) which discusses rubella now appears as §582.
49. Former Civil Code §4300(c) and (d) which discuss HIV testing now appears as §583.
50. Former Civil Code §4300(e) first sentence which discusses capacity to consent to tests now appears as §584.
51. Former Civil Code §4300(e) second sentence now appears as §585.
52. Former Civil Code §4301 now appears as §586. The section discusses laboratory statements. The new section breaks up a sentence which listed testing

requirements and makes each requirement a separate section.

53. Former Civil Code §4303 which discusses certificate forms from other states, now appears as §587(a) and (b). The second section of the first paragraph of Civil Code §4303 which discusses certificate forms from the armed forces was made into a separate section §588.
54. Former Civil Code §4304 which discusses standard serological tests, now appears as §589. Again, the content of the section is the same, but the new version divides a long paragraph into several short subsections.
55. Former Civil Code §4305 which discusses submission of laboratory reports now appears as §590. The sections are identical.
56. Former Civil Code §4306 which discusses court waiver of examination and test requirements now appears as §591. §4306 contained 3 long paragraphs, §591 breaks the information into (a), (b), (c), (d) and (e).
57. Former Civil Code §4307 which discusses the filing and destruction of certificate forms and court orders now appears as §592. The sections are identical.
58. Former Civil Code §4308 which discusses "prohibited acts and criminal penalty" now appears as §593. Civil Code §4308 was simply entitled "offenses". The section lists three acts which constitute misdemeanors. Again the old section grouped all three offenses into one paragraph - the new section lists each as (a), (b) and (c).
59. Former Civil Code §4309 which discusses confidential documents now appears as §594. The two paragraphs of §4309 are divided into two sections, (a) and (b).

**Superior Court
State of California**

Santa Clara County Superior Court Building
191 North First Street
San Jose, California 95113



Chambers of
Nancy Hoffman, Judge

TO: CJA Family Law Committee
FROM: Judge Nancy Hoffman
RE: Review of Division 8 - Dissolution of Marriage in
Revised "Family Code"
DATE: December 10, 1991

No substantive changes were noted. However, comment was invited on the following sections. Therefore, I am including them here as these are sections that could change. Even though the time for commenting has passed (October 1), we should comment now if anyone is concerned about any of these sections.

NH:lh
Enclosures

DIVISION 8 - DISSOLUTION OF MARRIAGE

§ 2313 Duty of Support not Affected by Dissolution on Grounds of Insanity

The question is raised whether this should be omitted altogether since the grounds on which the dissolution is granted do not affect the obligation for support and the standard "as the circumstances require" could conflict with the sections governing support. (Section 4320 et seq.)

§ 2330 Petition

The question is raised whether the facts required in a petition for dissolution should also apply in a proceeding for legal separation.

§ 2330.5 Financial Declaration not Required in Certain Default Cases

This section is the same as former § 4364. The question is raised what is the meaning of "financial declaration." The terminology generally used is "income and expense declaration" and "property declaration." Should there be general provisions relating to income and expenses declarations and should § 2330.5 be included in those general provisions?

§ 2338 Decisions; Judgments

The question is raised whether to retain requirement of subdivision (a), that the Court in a proceeding for dissolution of marriage file a decision and any statement of decision as in other cases.

§ 2342 Calculating Permissible Date of Entry of Judgment Where Joint Petition for Summary Dissolution is Revoked

This section appears to expect that the Court will enter a "final judgment" when the time specified in §§ 2339-2342 has run. However, in those provisions, judgment is entered and becomes final when the time runs without further Court action.

Should § 2342 be revised?

§ 2344 Effect of Death of Either Party After Entry of Judgment

The current sections do not appear to be consistent re: whether the Court enters a "final judgment" or the judgment is entered and becomes final when the time specified in §§ 2339-2342 runs without further Court action.

The question is whether this section should be rewritten to read:

- (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.

JAMES H. LIBBEY
FAMILY LAW COMMISSIONER

Superior Court
State of California
COUNTY OF CONTRA COSTA
COURTHOUSE
MARTINEZ, CALIFORNIA 94553



December 18, 1991

Richard Piedmonte
California Judges Association
301 Howard Street
San Francisco, CA 94105

Hon. La Doris Cordell
Judge of the Superior Court
County of Santa Clara
191 North First Street
San Jose, CA 95113

Re: PROPOSED FAMILY CODE

Dear Richard and La Doris:

The following is my analysis of Division 9 (Division of Community Estate (§§2500-2660)) of the Proposed Family Code.

1. For the most part this section simply reorganizes and renumbers existing statutes without substantive changes. Current statutes which are lengthy have been broken up into several statutes.

2. A few statutes have been expanded in scope, such as to include both community and quasi-community property.

The following is my editorial comment on the code.

1. If other sections are similar to Division 9 and simply reorganize and renumber existing sections, what is the point? The confusion that it will create will considerably outweigh its utility. I can already hear lawyers arguing to me that because a particular statute is now a separate statute rather than a subsection of a statute it should be interpreted differently!

2. I do not have a need to memorize new statute numbers.

3. Since someone did a tremendous amount of work to create this document, and since I don't see much point to it, I am

Richard Piedmonte
Hon. La Doris Cordell
December 18, 1991
Page Two

suspicious that there is some hidden agenda that should concern us. If this is part of that movement to increase the prestige of family law (like the move to combine family and juvenile law a couple of years ago) it is a waste of time. The prestige of family law will be increased when more family lawyers are appointed to the bench and when more judicial resources are devoted to family law.

Yours truly,

A handwritten signature in cursive script that reads "James H. Libbey". The signature is written in dark ink and is positioned above the printed name.

JAMES H. LIBBEY
Family Law Commissioner

JHL:cb

FULTON LAW FIRM

Law Revision Commission
RECEIVED

ATTORNEYS AT LAW

1833 THE ALAMEDA

SAN JOSE, CALIFORNIA 95126

ROBERT J. FULTON
A PROFESSIONAL LAW CORPORATION
ROBERT J. FULTON*ASSOCIATED ATTORNEYS
M. DEAN SUTTON
BARRIE A. LAING

January 16, 1992

JAN 16 1992 TELEPHONE
(408) 275-0255
File: F-1000, F-1040 FAX NUMBER
Key: (408) 275-1334

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

Re: Use of "Parenting" and "Custody" in Family Code

Dear Mr. Sterling:

Your letter to me of December 30, 1991 concerned the use of the word "order" and "judgment" in the Family Code. In a recent conversation with Ms. Pamela Hulse of the Judicial Council an oft discussed desirable language change in our codes was revisited. Though I believe she favors it, I will not speak for Ms. Hulse, but will say that a number of certified family law specialists and Family Court Services personnel are of the impression that the word "custody" (to my knowledge a word used in our codes only in the Family Law Act and the Penal Code) should be replaced by "parenting" or other words which refer to the parenting process. I expect there would be difficulty in making that change, yet have no doubt the affect would be positive. In my experience, many of the differences between parents in the dissolution process are related to their preconceived notions of what "custody" means. Seldom, if ever, have I had a mother or father client refer to their parental duties and responsibilities when the issue of the children first arises. Generally, there is either an expression of fear that the other parent will "take the children away from me" or the question "What are my rights to custody of the children?" Viewed dispassionately, those of us who regularly practice in the field know that we are dealing with parental duties and responsibilities and the rights of children far more than we are the rights of the parents. A change in language could do much to remove the "win" factor from the parenting equation. Is eliminating the "c" word something the Law Revision Commission could introduce into the Family Code revisions?

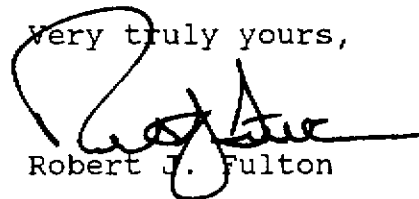
I noted that in a letter to you dated January 10, 1992, Barbara DiFranza, president of the Association of Certified Family Law Specialists (ACFLS), mentioned she has appointed Sandra Blair, CFLS as chairperson to coordinate ACFLS participation efforts in a review of the Family Code. For that reason, I have sent her a copy of this letter as well as a copy of your earlier mentioned letter to me. I did not send a copy of the Family Code draft (partial) with the term "order" highlighted. Perhaps, if you reply affirmatively to President

California Law Revision Commission
Attn: Nathaniel Sterling, Executive Secretary
January 16, 1992
Page 2

DiFranza's request that Chairperson Blair be furnished with a copy of the draft code the "order" highlighted materials could be included.

Concerning the use of the word "declaration", perhaps, that term should be used only, except where it is used in the title of a form, as is defined in Civil Code section 2015.5. Further, I agree that elimination of references to the word "decree" is entirely appropriate. And, though I believe the terms "order" and "judgment" are words of art, I endorse your suggestion that the word "order" be used throughout the Family Code combined with a definition that the word "order" includes the word "judgment", as would be necessary to the context of the language in which it was included. Such a definition would be important, in that the recorder's office will sometimes balk at recording a "order", but must record a "judgment".

Very truly yours,



Robert J. Fulton

RJF:crpclrc
cc: Barbara DiFranza, President ACFLS
Sandra Blair, Esq.
Sandra Clark, Director Santa Clara
County Family Court Services

LAW OFFICES OF
FRIEDA GORDON DAUGHERTY

433 NORTH CAMDEN DRIVE · SUITE 1111 · BEVERLY HILLS, CA 90210
TELEPHONE (213) 275-1554 · (213) 275-1584 · FAX (213) 858-1226FRIEDA GORDON DAUGHERTY*
*CERTIFIED FAMILY LAW SPECIALIST

January 19, 1992

Law Revision Commission
RECEIVEDCalifornia Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739File: _____
Key: _____

Dear Mr. Sterling:

Re: FAMILY CODE

Our ad hoc sub-committee of the Family Law Section of Women Lawyers' Association of Los Angeles has met to discuss both the general issues to bring to the Commission's attention at the hearing next week as well as to address specific comments on the division devoted to support, which suggestions we hope might help the workshop this Tuesday and Wednesday in tightening up the division on support.

Prior to actually stating our recommendations, I would like to take a moment to state the philosophy that is involved in making the recommendations herein. We firmly believe that any revision or modification to the current relevant statutes or to the Proposed Family Law Code must address the real and practical problems faced by family law litigants and their attorneys in their day to day practice of family law, or it will be a tremendous waste of time, talent and energy.

Furthermore, now is the opportunity to modernize the law we work with to ensure that it will survive into the twenty-first century. Let us not rush to consolidate existing law, no matter how confusing, out-of-date, biased or unnecessary it might be, just to make access to the various cumbersome code sections easier, before an opportunity to review and discuss the existing code sections and proposed modifications, deletions and additions has been had by all interested parties!

The following are a few, and by no means exhaustive general issues that are essential for review and discussion:

1. Attorney's fees.

This is a critical area that must be addressed. We suggest the following issues/matters need attention:

(a) Equalization of access by the out spouse (usually the woman) to the liquid assets necessary to retain and continue to pay counsel throughout the litigation.

(b) Much more costly, strict, even Draconian (see Economou) use of attorneys fees/sanctions so that litigants and/or their attorneys who play fast and loose with the settlement process run a realistic and substantial risk of being severely financially punished.

(c) Amendment of CCP §664.6 to allow for enforcement of any settlement that is made on the record with a court reporter regardless of whether it is in the presence of a judicial officer.

(d) Implementation of special rules for family law attorneys to expedite fee collection, including statutory codification of an anti-Droeger rule and possibly special laws/exceptions for family law attorneys which would free them from the absurd restraints currently in existence with regard to the collection of attorney's fees. Such a statute could, for example, mandate that the collection of fees in family law matters be pursuant to binding arbitration only and that all complaints or cross-complaints for malpractice must be heard in said binding arbitration process.

(e) Implementation of a statute giving the court jurisdiction to order that a party pay her or his own attorney, which would provide that attorney with a less cumbersome and more effective method of collection once representation had concluded. As we all know, courts currently do not have jurisdiction to do so, and collection of fees is one of the most serious problem affecting family law litigators today.

(f) Complete elimination of the judicial philosophy currently in existence that Lincoln did not free the slaves, he simply made them divorce attorneys. We refer to the policy in our local courts and with many other judges throughout the State not to grant motions to withdraw as attorney of record in a dissolution action for failure to pay fees because of "proximity to trial", whether the prejudice to the client is real or not. This involuntary servitude is an outrage not found in any other profession. It is certainly an inappropriate remedy for any real or imagined fee abuses by attorneys. The proper forum to remedy alleged fee abuses is by a fee arbitration proceeding, not an order keeping an attorney in a case where he or she is not being paid.

2. Collection of Child and Spousal Support.

(a) There should be a direct right of access for child and spousal support recipients in private actions to attachment of the Federal and state tax refunds as opposed to the current cumbersome process of generally going through the auspices of the District Attorney's office.

(b) A rebuttable presumption should be considered so that a litigant who receives wages in a threshold amount or has income in a threshold amount is presumed to have the ability to pay child support.

(c) Contempt for enforcement of non-payment of support should be statutorily deemed "Civil", thereby avoiding the Feiock problems.

(d) A statute providing for a sentence for contempt should somehow be drafted to avoid the current "revolving door" problem in many urban County Jails, i.e., once you have obtained a sentence for contempt (no easy accomplishment) the over-crowded jail conditions should not result in those sentenced not serving any time. Accordingly, a statute should be passed which prevents any early release for those jailed for failure to pay support.

3. Child Custody.

(a) We need much more specificity and direction as to what joint and physical legal custody actually does and does not mean. They are important phrases that are thrown around as if they have a clear, definitional understanding when practice reveals that they do not.

(b) Notwithstanding the reduction/elimination of the time-share concept in new Civil Code §4720.2 in calculating the amount of child support for the non-custodial parent, we would like to see some mechanism in which reasonable lawyers could agree as to what percentage of time the visitation with the non-custodial parent actually computes to. While we appreciate that there are certain "rules of thumb" to calculate same, a statute or court rule that provides certain mathematical equations to be associated with the calculation would be most helpful. The same should be held true for non-covered health care expenses as additional child support. For example, there is

considerable debate as to what is the appropriate number of hours that overnight visitation adds to the calculation.

(c) As child custody matters are supposed to be given calendar preference, a mechanism shortening the time for court-ordered evaluations should be implemented invoking strict compliance by the evaluation department with a ten-day time limit prior to hearing. Currently, after a sixteen-week waiting period, the ten-day time limit is continuously violated, resulting in last minute receipt of the evaluation, which usually results in the further continuance of the hearing.

As to Division 9 of the December, 1991 Draft of the Family Code, we have the following comments, which are certainly not exhaustive. Please note that we do not repeat problems which may be found in more than one area nor repeat the printed comments where adopted by this group:

Section 3515:

"Separate property" is defined elsewhere in the Family Code. There is no comparable section for community property or quasi-community property. Even as it stands, this section is underinclusive because "separate property" does not include "community property" as well. "Separate property" is never under any circumstances considered "quasi-community property, so why the need for this definition?"

Section 3551:

This section does not distinguish between an exception to the marital testimony privilege as between spouses in the process of divorce, legal separation or annulment and as between new mates of intact marriages. Competing policies exist regarding the support of children and former spouses and the policy of the State of refraining from interfering in the affairs of married couples in intact marriages, particularly as it pertains to marital communications. Which should apply here?

Section 3553:

Regarding change of address notification, this section has no time limitations. Although not the intention, this section could be completely unenforceable without time limits.

Section 3556:

If part of the Welfare and Institutions Code is going into the Family Code, it might be a good idea not to use references to the old code, as those provisions might change.

Chapter 4: Spousal Support During Pendency of Proceeding:

This chapter does not include either formulae for determining (mandatory) child support (although those guidelines are elsewhere under permanent support) or (discretionary) spousal support. Since guidelines do exist, and we have been told not to use the pendente lite formula for spousal support in setting a spousal support award, at least we should have some statutory guidelines.

Section 3652:

Shouldn't this section pertaining to awards of attorneys' fees to prevailing parties in actions to modify or terminate child support also apply to family support orders and spousal support modifications and terminations? And shouldn't all attorneys fees awards be uniform and found in one place in the code?

Section 3654:

Statements of decision, should also pertain to family support orders and child support modifications and terminations.

Section 3655:

This should sunset March 5, 1993, when there are no more children born before that date.

Section 3682:

Ambiguous as to whether the procedure may be used twice during a twelve-month period where one modification is for child support and another is for spousal support. There should be only one shot at the apple.

Section 3684:

This simplified procedure and hearing sets up a separate hearing (modification of support going first) if there are custody issues to be dealt with. This should also apply to family support. Also, duplicate hearings may not be necessary (but are required under this section) and defeat the purpose of the modification. Section (b) is incongruous with the purpose of this expedited support procedure. If support is first determined and then custody modified, there will necessarily have to be another hearing to modify support, and this second hearing will be excluded from the procedure by the once in any 12-month period rule. We agree with the comments that family support should be included here.

Section 3687:

Default modification under the simplified procedure sets up standards for automatic modification of child support (10%) and spousal support (California CPI), but should include family support, and by what formula?

Section 3691:

D.A. Notification when using the simplified procedure should ONLY be necessary where there is an existing file in the D.A.'s office. Sub-section (a) should be scratched. Why would they want to handle unnecessary paperwork? Is this currently implemented?

Section 3692:

It does not make sense that compliance with federal requirements must follow if collection is for child support only for a CHILD receiving public assistance, but for spousal support whether or not the former spouse is on public assistance.

Section 3753:

Unnecessary in light of statewide guidelines.

Section 3760:

There should be a box to check in the petition for health insurance coverage and wage assignment orders.

Section 3900:

In the August Draft, reference was left in as to the obligation for child support by the winner of a duel. Would it not make sense to include a section providing for support by the intentional or reckless killer of a parent to expedite such payment by giving rise to such an obligation within the Family Code, rather than by the traditional wrongful death civil suit?

Section 4011:

This section provides for priority of payment of child support obligations, but how is it enforceable as against third party creditors?

Section 4012:

We agree with the comments to delete this section.

Section 4013:

Since the obligation to pay child support is not dischargeable in bankruptcy, this section should be deleted.

Section 4066:

The operative date has passed and we agree with the comments and further suggest that an ongoing study of factors impacting on statewide guidelines should be implemented with recommendations for revisions and review of the status of the Judicial Council study and reports thereon mandated for review once every four years.

Section 4105:

Reduction of a parent's ability to provide for his or her other children is a given and should really be only one factor to be considered in the statutory scheme of mandatory child support rather than as a separate statute concerning paternity.

Section 4203:

We agree with comments under Section 4352.

Section 4323:

This section on the effect of cohabitation on support discusses only the situation of non-marital cohabitants of the opposite sex. It is about time the state took into account gay and lesbian relationships and non-sexual roommate relationships of either sex.

A more accurate and narrow definition of cohabitation is necessary to avoid lack of statewide uniformity in case law. Since "cohabitation" is presently ill-defined, an argument can be made that due process is denied those whose support is terminated or reduced because they were deemed to have cohabited after the fact when they had no reasonable way to determine its definition retroactively.

Section 4339:

Should include "good cause" requirement from comparable child support provision.

Section 4400:

Duty to support parent who is unable to maintain his/herself by work should be broadened to include relief only where no investment income or other non-welfare sources of support.

Section 4402:

We agree with comments. Omit.

Section 4411:

Requirements for order granting relief should probably include applicable defenses such as consideration of why a parent needs support. What about abandonment for 18 months or a year? What about consideration of an incest survivor's duty to financially support the perpetrator parent?

Section 4613:

Should include other assignable earnings, not just wages.

Section 4614:

Why limit to \$6,000.00 or less? There are many high earners out there. Section on deposit of assets (or bond) should be based on findings on ability to earn and pay support.

Section 4846:

We agree with the comments. Paternity issue in a support action should be modified to be gender neutral in light of surrogacy and other issues.

Section 5100:

Enforcement without prior court approval: as written when a child is 18 he or she may go back 18 years to collect. On his 18th birthday, obligee is restricted to 10 years. Why not be consistent?

Section 5103:

Enforcement against pension plan sub-section (c) does not include spousal support and should, per comments.

Section 5230:

Earnings assignment order: mandatory in all cases. Isn't this a waste of time for self-employed obligors? No exception or alternative mechanism now exists.

Section 5238:

Priority in payments does not address attorneys' fees that may also be collected by assignment.

Section 5290:

Prohibited practices should specify that employer is subject to contempt in THIS proceeding and that a separate action is not necessary.

CALIFORNIA LAW REVISION COMMISSION
January 19, 1992
Page 10

Thank you for the opportunity to provide the above comments. I look forward to working with the Staff and other interested persons in tightening up the Family Code.

Very truly yours,

FRIEDA GORDON DAUGHERTY,
Chair, Family Law Section
Women Lawyers' Association of
Los Angeles

cc: Sally Suchil
Leah Cotwright
Patricia Schnegg
Kim Wardlaw
Linda Brackins
Dianna Gould-Saltman
Betty Rosenfeld
Gretchen Wellman Taylor
Dena Kleeman
Robert A. Adelman
Dorothy Kray
Dvorah Markman

FRIEDA GORDON DAUGHERTY

File: _____

Key: _____

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FRIEDA GORDON DAUGHERTY*
*CERTIFIED FAMILY LAW SPECIALIST

February 6, 1992

JOHN DE MOULY
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: California Law Revision Commission;
PROPOSED FAMILY CODE

Dear Mr. De Mouly:

This letter is written to express some of my concerns regarding Section 5550, of Division 10 of the December Draft of the Proposed Family Code entitled "Prevention of Domestic Violence." As we discussed at the meeting last Saturday, the deletion of a section of Civil Code Section 4359, per your comments that it did not pertain to domestic violence was inappropriate and actually a substantive law change. However, in reviewing the entire Domestic Violence Prevention Act, Code of Civil Procedure, it seems that Section 547 explicitly divides the subsections of Section 4379 which pertain to marital situations from those subsections dealing with non-marital situations, which you have, to my knowledge and understanding, not taken into account. Therefore, I believe the application of the proposed Section 5550 in fact does not consider the legislative intent of the original DVPA and should be revised accordingly.

In addition, as to applying Section 3190 of the proposed FAMILY CODE to non-Family Law Act matters, specifically in the area of domestic violence, let me point out that Bernard Witkin in his Summary of California Law, Ninth Edition indicates that the Domestic Violence Prevention Act was to incorporate applicable portions of both the Family Law Act and the Uniform Parentage Act. Furthermore, the legislature specifically indicated in Code of Civil Procedure Section 549 that the remedies of the DVPA were non-exclusive and cumulative to all other remedies. Section 5750 allows custody orders to be made "upon such conditions as the Court may determine" (Section 5550), giving the Court discretion to use the best interests of the child test (C.C. Section 4608, C.C.P. Section 547.5 and new Section 5513) and thus order counseling in the best interest of the child. There already is a statute (new

Section 5754) permitting an order for the batterer to participate in counselling.

As for my comments on the divisions regarding Marital Property:

As I already mentioned, I believe the current division titles are imprecise. I would suggest changing titles to say "Rights and obligations of Community During Marriage," not "Husband and Wife." Also, it would be easier to locate if you put the two Divisions next to each other, not 4 and 7. I am also not happy with the title "Division of Community Property," because the division also defines and considers separate property. "Division of Property" would be better, in my opinion.

As previously mentioned, Section 1150, Comments stating "see Section 700," wrongly states personal property does not include leasehold interest in real property.

Section 722 should say nullity by Court of competent jurisdiction.

In Section 723, the separation of an alliance entered into before 1958 should be clarified.

Section 750 should indicate that a married couple can also hold title both as joint property and community property. Change or add, "or as husband and wife in joint tenancy."

Should Code of Civil Procedure Sections 370 and 371 be in Family Code?

Section 65 is a ridiculous non-definition of community property which serves no purpose. The definition should be within a section on property and be for all purposes, including marriage, death, divorce, separation and nullity.

Section 125 which defines quasi-community property, contradicts the later definition of community property. This provision was expanded by you into the Proposed Family Code, why not counsel for minors and psychiatric counseling outside Family Law Act?

Section 130 which defines separate property is also nonsense. MAKE ONE DEFINITION.

Why is quasi-community property defined in Division 1 but not community property or separate property?

Section 753 Article 2 on Ex Parte orders is not the only way to exclude a member of a household. This section should be changed to indicate there are other methods of exclusion to be found in the Uniform Parentage Act and Domestic Violence Prevention Act's related code sections.

Section 760 - wrong. Substantive change. Law Revision Commission staff is selecting to change the law to include quasi-community property in definition of community property, which contradicts Section 125. The definition of quasi community property could include that it is community property for all purposes of Division 4 and Section 2501 should be incorporated, therefore permitting only one consistent definition to be used.

Section 771 - Delete comment and related sections.

Section 901 - Conflicting comments and definitions of community estate should be addressed.

Section 902 - Not same meaning as Section 512.030 and not needed because of Sections 910 and 913.

Section 912 not needed.

Section 914 add after "debt" - "under Section 914(1) or (2)."

Section 916 - why not "community estate?"

Do we need Sections 930 and 931?

Section 100(c) - add sub-section.

Sections 1111, 1112, 1113, 1116 should define how procedurally to bring action.

Section 1117 - should provisions from Section 3000 of the Probate Code be here?

Section 1200 - Community estate's real property.

Section 2550 - Nullity should be added.

Section 2640 - Why does it only apply to dissolutions?

Section 2650 mandates change of title of division from community estate.

QUESTION:

California Law Revision Commission
February 6, 1992
Page 4

What do you call property acquired during marriage, outside of California or in, while couple were domiciled elsewhere? That is not addressed in Section 760. But Section 760 is in conflict with Section 2660 which clearly deals with all property subject to division.

Thank you for the opportunity to discuss these concerns with you. I look forward to seeing and debating with you on Monday. Have a nice weekend.

Very truly yours,


FRIEDA GORDON DAUGHERTY

cc: Members ad hoc committee, Family Law Section the Women
Lawyer's Association of Los Angeles
Leah Cotwright, Executive Director, WLALA
Sally Suchil, President, WLALA



OFFICE OF THE
DISTRICT ATTORNEY
KINGS COUNTY

FAMILY SUPPORT DIVISION

NOANNE J. ST. JEAN
Administrator

JULIENNE L. RYNDA
Deputy District Attorney

GARRY R. GONSALVES
District Attorney

MINUTES OF NOVEMBER 16, 1991

SUPPORT NORTH - FAMILY LAW SECTION

Attendance: Patricia Berkowitz
Barbara Thomas
Charles H. Soley
George O. Nielsen (Flex-Com)
Timothy D. Martin
Lynn Fitzer

Comments on Proposed Code Sections of Family Law Code:

Definitions:

1. Should include D.A. as assignee/obligee; (Civil Code Section 4390(f) language regarding D.A.)

Chapter 2

§3550 - Yes. We respond affirmatively to the change.

§3551 - Delete §4400 or pass (Reciprocal legislation is being rewritten.)

§3554 - Delete from general provisions; if accepted, limit to simplified modification sections. Suggested additions:

a) within 10 days unless otherwise ordered by the Court
(i.e. where domestic violence an issue.)

b) nothing herein creates a defense for nonpayment of support.

§3557 - addition: custodial parent cannot deny visitation because of non-payment of support.

§3581 - yes

§3591 - Is "C" a necessary section? It doesn't appear to be relevant any more.

§3600 - (1) yes - good idea for spousal support under separate section. Problem: what is an appropriate spousal support default amount and how determined?

§3603 - addition: except as to any non-modifiable order as spousal support made pursuant to this chapter. Also: pick up language in §3653 re. federal law.

§3621 - "proceeding" substituted for "actions".

§3623 - replace "action" everywhere it appears with "proceeding"

§3624 - change "3" to Income and Expense Declaration for applicant (obligee). Applicant cannot fill out Income and Expense Declaration for opposing party.

§3629 - yes

§3654 - yes

§3660 - yes

§3661 - No; need Judgment and Order because other states may not honor just an order - need judgment.

§3668 - no

§3684 - yes

§3687 - standard should be 10% or CPI, whichever is higher. "Default" should be replaced by "fails to file responsive pleadings."

§3691 - "A" and "B" are too vague. (May want to eliminate "B")

1. In what cases, welfare or ...?
2. "File" means personally served or by First Class Mail

§3692 - should be omitted

§3694 - Judicial Council should always have forms prepared; that should not be omitted.

§3764 - serve by First Class Mail

§3632 - addition: provision of Federal Code "Fail-Safe"

§3634 - no

§3651 - need Federal "Fail-Safe" language; eliminate (a); yes, want family support, not just child support.

§3652 - yes

§3653 - ok, but delete code section if there are changes later.

§3655 - eliminate

§3660 - yes

§3663 - yes; no more than 1 time in a 12-month period for both parties, presuming the documents are received.

§3689 - yes
§3753 - yes
§3771 - yes
§3781 - yes

§3781 - yes

§3805 - the substance of civil code section 4728.5 to be included in this section.

§3900 - No; just eliminate specific reference to dwelling.

§4000 - yes

§4005 - leave "4" and "5" in.

§4006 - Yes, include in 4005 as factor and add language for "health insurance coverage" not "medical insurance."

§4008 - yes, but only with additional language limiting it to "the property of the parents"; leave as is and 4810 as is.

§4009 - a) eliminate "therefore"
b) no; don't need "pending procedure" language.

§4011 - leave in both places; can relate back to the Section.

§4200 - yes

§4201 - yes

§4300 - yes, but eliminate "dwelling".

§4303 - yes

§4331 - yes, should also be applicable to child support; not limited to marriage and dissolution.

§4332 - yes; no

§4333 - close out "therefore".

§4338 - yes

§4339 - good 'cause

§4350 - yes

§4351 - yes; "proceedings"

§4352 - make consistent

§4400 - one member opposes any duty of child to support parents. If this provision remains, it should be joint and several.

§4401 - not void for failure of consideration.

Stopped
§4402 - delete

§4410 - yes, but may have constitutional/due process problem, "minimum contacts".

§4412 - 30 days

§4501 - eliminate second sentence; it defeats deductibility of family support for tax purposes..

§4502 - yes

§4506 - Absolutely!

§4613 - yes, limit to salary/wages.

§4616 - not less than 20 days if mailed or 15 days if personal service (include 5 day mailing requirement of CCP 1005).

§4802 - earnings assignment order.

§4846 - should not apply to mother.

§4849 - yes

§5100 - yes

§5103 - yes

§5104 - "proceeding"

§5206 - conform to earnings assignment order.

§5234 - leave as is; judicial council form may change.

§5239 - this section does not make sense. Delete. It is impossible to comply with this order.

§5240 - Don't know. Good cause cannot exist if there is more than 1 application for earnings assignment, but if there has been more than 1 earnings assignment application which has been denied, it is unfair to have this clause.

§5252 - No. Should not be limited to case where obligor is in default 1 month. Anyone can get an earnings assignment at any time.

§5290 - contempt is sufficient.

Respectfully submitted,

KATHRYN KIRKLAND

California Alliance Against Domestic Violence

Advocating On Behalf Of Battered Women And Their Families

Law Revision Commission
RECEIVED

Feb. 4, 1992

Ca. Law Revision Commission
4000 Middlefield Rd. Suite D-2
Palo Alto, Ca. 94303-4739

File: _____
Key: _____

Dear Ca. Law Revision Commission:

Thank you for sending me the Dec. 1991 Draft of the proposed Family Code for my review. Overall, I think the Code is fine. I do, however, have a few suggestions for improvement and noticed a couple of actual errors.

§ 2042: I agree with expanding the misdemeanor penalty to violations of all orders within a restraining order.

§ 3150: My answer to the question posed in the Note is that this section should apply in any proceeding involving custody or visitation, rather than just dissolutions, annulments, and legal separations.

§ 3159(c): I agree with deleting the word "mutual" in reference to restraining orders.

§ 3190: My answer to the question posed in the Note is that the introductory clause should read, "In any proceeding where custody of, or visitation with, a minor child is at issue,".

§ 5514: The title of this section should be changed to, "Conditions imposed on obtaining mutual restraining orders". The last clause should be changed to read, "may not be issued unless both parties personally appear and each party presents evidence of abuse or domestic violence." This wording clarifies the presumption against awarding mutual orders, which is implicit in this code section.

§ 5515: My answer to the two questions in the Note are: 1) yes, the information required by § 2037 should be included in an order pursuant to this Section. The directions to officers as to how to enforce ex parte orders are essential in domestic violence cases. 2) No, § 5515 should not be limited to "protective orders" -- orders regarding custody, visitation, property control, residence exclusions, etc. all need to be enforced by law enforcement officers.

§ 5518(e): There is a typographical error: "set" should be "sit".

§ 5550: The previous language allowing judges to order parties not to transfer, encumber, hypothecate, etc. property needs to be included. This is the current law, and is a very important part of many domestic violence restraining orders. The parties may not have filed a dissolution or other family law action; they may not even be married. The respondent may dissipate the couple's assets as part of the abuse. In any event, until the court can deal with these issues, the assets need to be frozen.

§ 5652(b): This is an error: this sub-section should not be included at all under emergency protective orders. Such orders expire automatically at the close of business of the second court day (see new § 5603). There is no hearing date, as there is with ex parte temporary restraining orders.

§ 5802(c): It would make sense to duplicate this subsection wherever other code sections in the Family Code referred to serving restraining orders.

§ 7720: I'm curious as to why the parties are referred to as "plaintiff" and "defendant" in this section, the Uniform Parentage Act, while they are called "petitioner" and "respondent" in the Domestic Violence Prevention Law. Shouldn't they be consistent? (Note that the Domestic Violence parties were originally called "plaintiff" and "defendant", which makes more sense than "petitioner" and "respondent", where one party is alleging that the other one was abusive.)

I have also seen a letter to the Commission from a family law attorney suggesting that the Family Code do away with the use of the word "custody" and substitute "parenting". I disagree with this proposal. Many custody orders need to be enforced by police officers, who understand "custody" and may not understand "parenting."

Additionally, "custody" is the word used throughout the U.S. (e.g. in the Uniform Child Custody Jurisdiction Act); changing it would create confusion and lack of uniformity between states.

Thank you for soliciting input from me and other domestic violence advocates. If it is not too much trouble, I would like to be kept informed of any changes made in the proposed Code.

Sincerely,

A handwritten signature in cursive script that reads "Nancy K. D. Lemon". The signature is fluid and elegant, with the first letters of each word being capitalized and prominent.

Nancy K. D. Lemon

Co-Chair

Family Law Legislative Committee

California Alliance Against Domestic Violence

1063 Cragmont Ave.

Berkeley, Ca. 94708

Los Angeles Women's Leadership Network

American Association of University Women (CA) * Asian-Pacific Women's Network, L.A. * Business and Professional Women (CA) * Comision Femenil Mexicana Nacional * Comision Femenil de Los Angeles * Fund for the Feminist Majority * League of Women Voters (CA) * National Council of Jewish Women, L.A. * National Women's Political Caucus, L.A. * National Organization for Women of L.A. * Older Women's League of L.A. * Women For: * Women Lawyers of Los Angeles * Women's Political Committee * YWCA - LA Metro

2447 Century Hill, Los Angeles, CA 90067 / (310) 557-9000 ext. 460

Hon. Terry Friedman
California State Assembly
State Capitol
Sacramento, CA 95814

February 6, 1992
Law Revision Commission
RECEIVED

Dear Assemblyman Friedman:

File: _____
Key: _____

The Los Angeles Women's Leadership Network has grave concerns regarding the staff working draft of the proposed Law Revision Commission's new Family Law Code. It is our understanding that their proposal is intended to be introduced in bill form during this session of the legislature.

Commission staff members have claimed that no substantive code changes are included in their draft, and that only reorganization of current statutes and "minor" modifications have been made.

After studying portions of two sections of their document and attending a Commission staff workshop on February 1 in Los Angeles, we cannot agree that the proposed changes are without substance. When current family law statutes are shifted and split up, sentences moved from their former context, new code references added and important portions of current law discarded, the foundation has been laid for serious mischief and judicial chaos. Two examples will illustrate:

I. Marital Property. The staff document proposes splitting two key portions of the current Civil Code (sections 5103 and 5125 - 5125.1) into four disconnected portions of a new Family Law Code (proposed sections 721, 751, 1110-1116, and 1150 - 1153.)

Sections 5103 and 5125 - 5125.1 of the Civil Code were extensively amended in 1991 for the express purposes of (1) strengthening the law's protection over the property rights of spouses during marriage and dissolution, and (2) clarifying that a spousal fiduciary relationship exists between spouses through marriage and a divorce

proceeding. The legislative vehicle for these reforms, Senate Bill 716 (Roberti), was designed to be easily understood not only by family law attorneys and judges (though respected lawyers and a retired appellate court judge, Betty Barry-Deal, worked on the bill), but by married women who have been unable to understand their rights or to exercise them. During Assembly Judiciary Committee hearings on SB 716, Assembly member Dick Floyd reaffirmed this purpose in giving his reasons for support: "If this bill makes it easier for spouses and their lawyers to understand spousal rights in marriage and divorce, I'm for it!"

As currently written, spousal fiduciary duty has three components: the definition of the fiduciary duty and rights of spouses; restrictions on specific acts of unilateral management of community property; and remedies available to an aggrieved spouse for breach of the fiduciary duty. The statutory changes enacted by SB 716 were designed to treat these three concepts in a unified and sequential manner, so that laypersons and professionals alike could have no doubt as to legislative intent.

The proposed reorganization of 5103 and 5125-5125.1 imposes arbitrary and confusing separations, thereby ignoring the intent of the legislature. The door has been opened to conflicting court decisions, as judges will be forced to guess why one portion of the new Family Code makes reference to spousal interest in property owned "during the marriage relation" (draft Section 751) while another portion refers to spousal interest in property through marriage and dissolution (draft Section 1110). The new Section 751 derives from another re-numbered statute, CC Section 5105, which appears to be an innocuous reference -- except that legislative changes enacted by SB 716 do not refer to Section 5105 at all.

This is no mere quibbling over statutory semantics. Dividing up the marital property statutes and adding new references as the Commission proposes would have very real and negative consequences, creating confusion on the part of both lawyers and judges; the result would be a return to conflicting judicial opinions concerning spousal rights and duties, which SB 716 was designed to ameliorate!

2. Domestic Violence. The Commission staff report's proposed Section 5550 inexplicably chooses to delete from the list of available ex parte orders paragraph (l) of Civil Code Section 4359. This portion of current law, amended in 1991, was intentionally included in the domestic violence law by reference in order to give the court jurisdiction to place all necessary restrictions on behavior by parties involved in an ex parte abuse action, including "restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property ... except in the usual course of business or for the necessities of life")

In rationalizing their decision to omit this existing remedy, Commission staff states: "The order set forth in ... former Civil Code Section 4359 has been omitted because the order does not relate to abuse or domestic violence." This is incorrect. The Legislature correctly perceived that using control over property to maintain control over a victim could be an integral part of a pattern of abuse, and that the Court needed jurisdiction to restrain such behavior. Despite the specific intent of the Legislature to write these restrictions into law, the staff felt free to take them out because they decided the restrictions are irrelevant. This is an unacceptable substantive change.

The above two examples were identified upon a cursory examination of only thirteen pages of a 441 page document.

Our organizations understand the desire of the Legislature to clarify family law, and we support this aim. But the draft proposal does not fulfill this goal. Rather than clarifying, it creates new areas of confusion in at least two portions of current law (noted above). In addition, the frequent claim by Commission staff that no substantive changes are proposed is not supported by the facts.

We find it puzzling that our groups would be expected to approve the enactment of such a deeply flawed document into law for any purpose, including that of providing a blueprint for further tampering through various "cleanup" bills. Under no conditions should citizens be asked to

Friedman from Jonas/Sloane (page 4 of 4)

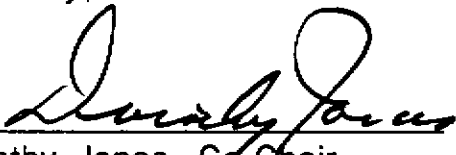
give blanket advance approval, permitting others to make poorly-researched changes in law.

Several recent reforms to family law, sponsored by women's organizations, were designed to further the goals of improving the lives of women and children and strengthening the family. While these goals are not incompatible with simplifying family law codes, it is apparent that the Law Revision Commission staff has ignored contextual realities which made these reforms necessary and has seriously misread or ignored legislative intent.

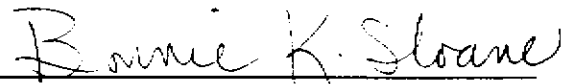
For these reasons, we find the present plan to enact the Law Revision Commission staff's draft proposal into law this session to be unacceptable. This project should not go forward.

Thank you for your responsiveness in this matter. Women's groups are deeply grateful for your continuing commitment to achieving equity for women.

Sincerely,



Dorothy Jonas, Co-Chair
L.A. Women's Leadership Network



Bonnie K. Sloane, Co-Chair
L.A. Women's Leadership Network

cc: Senator David Roberti
Senator William Lockyer
Assemblywoman Jackie Speier
Assemblywoman Marguerite Archie-Hudson

Chairperson Edwin K. Marzec, Esq., Law Revision Commission
Nathaniel Sterling, Executive Secretary, Law Revision Commission

Marilyn Kizziah, Chair, Coalition for Family Equity
Sheila Kuehl, Esq., Managing Partner, California Women's Law Center
Joanne Schulman, Esq., San Francisco Women Lawyers' Alliance
Barbara McCallum, Esq., Women, Family and Work Coalition
Anita Miller, California Women Lawyers
Susan Rose, Santa Barbara Women's Political Committee
Fran Teller, National Council of Jewish Women
Billie Heller, National Women's Political Caucus
Joyce Morrissey, Federation of Business and Professional Women

LAWRENCE M. GASSNER
CERTIFIED FAMILY LAW SPECIALIST
BEVERLY JEAN GASSNER
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MICHAEL J. GASSNER

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January 14, 1992

NATHANIEL STERLING
CALIFORNIA LAW REVISION
COMMISSION
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303-4739

Re: Flexcomm comments on Family Law Code (Adoptions)

Dear Mr. Sterling:

I forward comments from our Standing Committees on Adoption, North and South, for your consideration, with respect to the Family Law Code.

I note your schedule, with respect to meetings on specific subjects within the code. I will distribute that to the executive committee for consideration.

Very truly yours,

GASSNER & GASSNER



LAWRENCE M. GASSNER

LMG/kv

Enclosure

cc: J. Rothschild;
S. Wagner;
D. Breer.
J. Stacks.

**FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA**



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January 4, 1992

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**Law Revision Commission
RECEIVED**

Lawrence M. Gassner
California Law Revision Commission
337 North Vineyard Avenue
Suite 205, Second Floor
Ontario, CA 91764

Re: Family Code
Division 16. Adoption

Dear Mr. Gassner:

The Adoption Standing Committees of the Executive Committee of the Family Law Section of the State Bar of California have reviewed the proposed draft of the Family Law Code, Division 16. Adoption, from page 401 through page 468.

Enclosed you will find the initial comments of FLEXCOM through the Standing Committee North (Northern California, chaired by Jed Somit) and the Standing Committee South (Southern California, chaired by Judith C. Nesburn). Please forward the comments to CLRC.

As you can see, the comments are thoughtful and detailed. Please note that the opinion of the Standing Committees is that Civil Code Section 232 actions should be included in Division 16. Adoptions as should Insurance Code and Penal Code Sections that apply to adoptions.

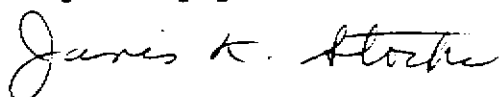
The Standing Committees are prepared to meet with members of the Commission to discuss adoption related code sections or to review future drafts. There is a great deal of interest by adoption

File: _____
Key: _____

Lawrence M. Gassner, Esq.
January 4, 1992
Page Two.

attorneys in the Family Code and, in particular, the Adoptions Division. Please feel free to utilize the expertise available to you.

Very truly yours,

A handwritten signature in cursive script, reading "Janis K. Stocks".

JANIS K. STOCKS, Liaison
Adoption Standing Committees

ccs: John David Rothschild
Donald Breer
Judy Nesburn
Jed Somit

REVIEW AND COMMENTS ON ADOPTION DIVISION OF FAMILY CODE

Re: Point 6 of Lawrence M. Gassner letter of November 6, 1991, regarding whether Free from Custody Procedures should be under adoption statutes. As he notes, some current cases have allowed Civil Code §232 to be employed even when no adoption is contemplated. While this may be appropriate in juvenile dependency cases in order to encourage foster families to accept children with the possibility of an adoption working out, juvenile dependency cases now use alternate statutory procedures to terminate parental rights. Aside from this situation, there is no reason to terminate a parent's right, and thus abrogate the duty of support, unless to aid in an adoption. The child can be protected from vexatious visitation on a lesser showing of simple detriment. Civil Code 4601. Inclusion of termination procedures within the adoption division would make it clearer that such procedures are intended to clear the way for adoption. However, representatives of groups representing mothers who feel the fathers are abusive and/or violent should perhaps be heard on the point of whether termination without an adoption serves a valid purpose.

UPA proceedings, especially under (current) 7017 proceedings, also involve termination of parental rights. However, it would be confusing to dismember the Uniform Parentage Act and scatter its provisions.

This revision will be the second time within three years that the adoption statutes have been "revised" and renumbered, without substantive change. Efforts should be made to make sure that continuity of interpretation persists; it is bad enough to have to relearn all the statute numbers without having to abandon reliance upon prior decisions interpreting the statutes.

This time, attention should be given to a logical or at least coherent ordering of the statutes, grouping related sections together even within Parts, and assigning section number consistently in the different parts.

We agree with Matthew Bender's comment to Section 210 that the extent of general civil procedure rules which apply in family law actions should be addressed. It may be useful to make this determination on a division by division basis, rather than with respect to the entire Family Law Act; certain procedures may properly apply to dissolutions, but not properly to parental terminations or adoptions, etc.

We were not provided with a copy of proposed Section 1750, which may be relevant to adoption issues, especially high technology (ovum donor) surrogate parenting situations. Comments suggest that this is part of the UPA; a review of the major adoption related section (7017) of the UPA is attached.

Similarly, Section 1760-1770 were not sent for review, although the suggestion is to relocate them to the Adoptions Division. We assume that this is the new location of the UPA. It must be recognized that the UPA needs radical rewriting to approach intelligibility; see attached.

Also, sections 1850 and 1881 are adoption related, but not sent for review.

Sections 3200-3295, Freedom from Parental Custody and Control, were not sent for review, although the suggestion is to relocate these sections to the Adoptions Division.

We disagree that the order terminating rights action should be conditional upon the granting of the adoption, as this will leave the parents with parental rights pending the adoption; under Section 232, with the requirements that grounds and "least detrimental alternative" be established, maintenance of such parental rights has already been found to be detrimental. Consideration should be given to whether it serves a valid purpose in 232 actions to terminate parental rights simply to free the child from the threat of any visitation. Termination of parental rights may also be an inducement for a foster family to accept the child with a view to considering adoption in the future. In UPA cases, if the adoption is not granted, upon dismissal of the Petition for Adoption, the termination order should cease to have further effect.

The current UCCJA, Civil Code §5150 et seq. must be included in the Family Law Act. Most of current Civil Code Division 1, Part 1, should also be in the Family Law Act, although other sections should be moved within the Civil Code to sections concerning capacity for contracts. Emancipation of Minors (Part 2.7) should also be within a Family Law Act. The Interstate Compact on the Placement of Children should be within the Family Law Act, perhaps in or near the Adoptions Division. Penal Code §273 should be moved to the Adoptions Division. The guardianship provisions of the Probate Code, or at least those pertaining to guardianship of the person, should be moved to the Family Law Act. The materials provided do not make it clear whether this has been done.

General Comments on Adoption Division.

Matthew Bender may be correct that Kelsey S. will provide guidance on the rights of unwed fathers in adoption situations; however, it must be recognized that California, in adopting the UPA, intentionally omitted Section 4(a)(5), which would have allowed birthfathers to become "presumed", and therefore have virtually a veto power over adoptions, by filing an acknowledgment of paternity notwithstanding a birthmother's desire to place a child for adoption. California subsequently amended its version of the UPA to make it clear that the lesser rights accorded by 7017 would apply in a 7006 action if a 7017 action were also filed concerning the same child and father. Finally, California amended 7017 to provide that Section 4600 (meaning 4600(c)) would not apply. Even if Matthew Bender is correct about the unconstitutionality of the present provisions for unwed fathers in

adoption situations, it is not clear the Commission is empowered to reverse all these Legislative choices.

The revision should not carry forward the haphazard placement of provisions. Similar provisions in the different chapters should have identifiable section numbers (i.e., use the same last two digits); sections dealing with similar topics (consents, reports, records, withdrawals and dismissals) should be grouped together. This would not require any substantive changes.

Part 1. Definitions.

It would be better to move the definitions into Part 2, so that there is no need to worry if the definitions are consistent with adult adoptions. Adult adoptions have almost nothing in common with adoption of minor children.

7500: What of words defined elsewhere in the Family Law Act but not here? Is the general definition section appropriately worded to apply such definitions in this Division notwithstanding this section?

7503: Decree, apparently, is disfavored, although it is the most common usage. "Judgment" would probably be a better choice here, since the "order of adoption" finally determines the proceeding.

7509: The person submits an application "to" the department or agency; it is awkward to say someone adopts "from" an agency. This section, although a definition, gives the department or agency too much power in blocking an "application" by a foster parent, whom the agency is not "considering".

7512: what is meant by biological parent? Note the recent case of Anna J. v. Mark C. 91 Daily Journal D.A.R. 12433, which defined "mother" as the "genetic" mother, on a tortuous reading of the UPA. Does this definition of birth parent, or use of "biological parent" square with the methodology of establishing "parent child relationships" under the UPA. How does this definition treat "presumed" fathers in the UPA, who may not be biological fathers, but who, under Evidence Code §621, may be conclusively presumed to be the person with the legal father-child relationship.

In many places later, this definition seems to engender confusion.

7521: This definition hardly belongs here, but rather belongs in the licensing provisions for adoption agencies, probably in the Welfare & Institutions Code.

7527: The reference to federal law remains vague. The language, "includes completion of the adoption", is awkward, and should be "includes adoptions which are completed", so that the reference is to a form of adoption, not to the conduct of completing.

If the intent is to permit a "re-adoption" here of a child adopted in a foreign country, to obtain local adoption papers and a California Birth Registration, why not say so directly? Certainly, there is not much in the chapter on Intercountry Adoptions that establishes the need for a separate procedure.

7533: See 7521.

7536: many petitions may be filed in connection with an adoption. "Petitioner", if used, should be "Adoption Petitioner" or "Petitioner for Adoption" to differentiate from a petitioner seeking to terminate parental rights or applying for other order within the adoption action; this other petitioner may or may not be the same person as the adoption petitioner, even though the ancillary petition may be filed in the same action.

7539: If retained, this should be moved to the independent adoption subdivision, and combined with Section 7801, governing a proper placement. See further comment there. Note that placement is defined as the "selection" of adoptive parents, which implies that a placement can occur well before birth. This section is better eliminated, as it uses "placement" in a way confusing to most adoption practitioners.

7542: this can replace the definition of "petitioner". How can one determine an "intention" to file? This definition should include an "applicant" if that definition is retained. The language "who has been or who is to be placed in the person's physical care" should be omitted. That would imply one cannot adopt a permanently hospitalized child.

7545: Is this definition needed here, or only in those sections of the ZZZ code concerning financial aid for such children?

7548: The Comments are logical. However, it may be better to omit the requirement of a marriage from Section 8000, and simply provide that a stepparent adoption is one in which one birth parent retains custody and control. The continuity of rights of one parent, not the marriage, is the hallmark of a stepparent adoption, and justifies the procedural differences.

7600: This continues the current ambiguity. Since the singular includes the plural, this section gives no guidance as to whether one, two, three or more people can adopt a minor, and what relationship can or must exist between the adoptive parents.

7601: Here we start using "parents", as if the singular does not (any longer) include the plural.

(b) now seemingly restricts adoptions by more than one person to spouses. What is a cousin-german? Is stepparent defined? What of de facto or foster parents? Since all adoptions must be in the best interests of the child, is this restriction necessary?

7602: Should consent be necessary "to" or "for" the adoption? One consents "to", but the "to" goes with "necessary" here.

7603: what do we mean by "lawfully separated"? Is this defined in the Act? Is this provision necessary?

7604(a): since "birth parent" is this Division is not defined in the same way as "parents" under the UPA, this section can be read to require the consent of a casual inseminator notwithstanding the existence of a irrebuttably presumed father. Perhaps what is meant is that the consent of the "presumed father and birth mother" is required. This section should also say "except as provided herein", to make it clear that subsections (b) and (c) apply when there is a presumed fathers, and not generally to all adoptions.

-(b) it is not clear that a parallel procedure to Section 232 is really appropriate. Why not simply require termination of rights of a presumed father or a mother under (prior) Section 232, if the parent does not consent or relinquish the child? Section 232 has withstood constitutional challenge and has expansive case law.

In California, where custody is divided into legal and physical, what exactly do we mean by "sole" custody? If an abandonment in fact has taken place, why should the section require a pre-existing court order or agreement? The abandonment is even more egregious in the absence of such a restraint on custody.

-(c) This modifies (b) but not (a); perhaps this section should be reorganized.

Compare to 7605. It would appear that one section should deal with requirements of consents for parents, with subsections for presumed fathers and for mothers, and perhaps even for nonpresumed fathers. Another section (if a parallel procedure is retained) could contain the exception and the presumption; this section might be combined with 7606.

7605: See above comments. There hardly seems a need for a reference to a presumed father. Why is the reference to "mother" rather than "birth mother"? The two references to "mother" (undefined) boil down to: "A child cannot be adopted without the consent of the birthmother [which includes adoptive mother in a prior adoption], if alive", with appropriate exclusions for termination of rights, as in 7606. It should also be made clear that a relinquishment is a consent.

7606(a): this could replace 7604(b) and (c).

(c) this provision cannot be simply put here, without any procedural basis for obtaining such a finding. Note that a termination of rights could be obtained satisfying (a) in this case, and thus this can be omitted as surplusage.

(e) Note that in some other jurisdictions a birthparent can, without a judicial hearing, terminate parental rights, without relinquishing to an agency. Perhaps the reference should be to situations in which the birthparent's rights are terminated under the law of another jurisdiction with significant contacts to the

birthparent or the child, or which is the birthparent's residence or domicile at the time of the termination. (The jurisdictional restrictions are needed to prevent forum shopping for the fastest way to terminate birthparents' rights.)

7607: note Chapter 372 of 1991 Statutes, which amends Civil Code Section 221.30, the basis for this statute. The phrase "and authorizing these other persons to obtain medical care for the infant" is not necessary; the AD22 is sufficiently defined without it. This section probably belongs in the Welfare and Institutions Code, as it does not provide any information to practitioners of family law or family law judges, but contains instructions to the Department of Social Services.

7608: This section probably belongs in the Welfare and Institutions Code, as it is a directive to licensed agencies and the department and does not provide any information to practitioners of family law or to family law judges.

7609:(a) Is this section necessary? Constitutional? Note that it is easily avoided (by offering information about adoption), and currently ignored in any event.

(b) If this is compared with 7539, a conviction becomes impossible in independent adoptions, since "place for adoption" is an act by a birthparent, and birthparents are exempt from this section. Since "place for adoption" is not defined except with respect to independent adoptions, a conviction other than in independent adoption seems impossible. The department should be consulted to ascertain the exact behavior they believe should be criminalized, so some sense can be made of this provision.

7610(a): "prospective adopting parent or parents" would work as well as "petitioners", if that word is to be eliminated.

The copy of this section reviewed is improperly offset, so that it cannot be ascertained where the subdivisions begin. Subdivision (c) should simply delete the requirement for stepparent adoptions, rather than repeat the definition of a stepparent adoption.

7611: As noted, page 410 is offset incorrectly; not all words can be read. Invitees of the prospective adopting parents should be permitted to attend the final hearing, which is normally a picture taking event. Families should not otherwise be permitted in contested adoption hearings, except as necessary for emotional support of young parties. Note reference in 7815(d) to holding hearings in "chambers", which probably has the same purpose as this section.

7612(a): Just what is the court examining the parties for?

(b) "parent" --- "their child" does not align.

(c): "Judgment" is more appropriate than order.

7613: Considering that no "examination" actually takes place at the final adoption hearing, this entire section could be replaced with authority to the court to dispense with personal appearance when such appearance is burdensome or impractical, or simply for good cause.

(c) "petitioner" should be replaced by "prospective adoptive parent".

(d) This section should not be stuck here in a section otherwise dealing with excuse from personal appearance; perhaps it should be added to added to 7612, further requiring that these forms be filed at or before the final hearing.

(e) This is ambiguous; as above, it can be readily replaced by allowing the court to dispense with personal appearance for good cause.

(f) The code is silent about the child executing any document; the closest provision 7602, requiring consent of a child over 12. If this is what the reference is to, the whole point is lost if the child's decision can be replaced by an act of counsel selected by the prospective adoptive parents. The child should sign the consent, unless incapacitated by some reason other than minority.

(g) These reports are normally required before the hearing will be set whether or not the parties will appear. This section is probably unnecessary, and would be so if (d) is moved and changed as suggested.

7614: Why "shall" not the certificate state the name of the birth parents? This should be optional for the adopting parents, at least in an independent adoption where such names are known anyway. Many adoptive parents would want the birthparents' names on the certificate.

The "birth parents" here is confusing, since this section contemplates that the judgment (order) has been entered; under 7512, birthparent may now mean the adoptive parent! "Birth date" not "birthday".

7615: Ok. Consideration should be given to allowing the adoption to be granted notwithstanding the death, rather than just faking the birth certificate.

7617: Again, note use of "birth parents" when, "from the time of the adoption" this may include the adoptive parents under 7512. This section should make clear that this provision does not prevent the enforceability of a visitation or contact agreement. Perhaps that issue is better handled by legislation such as the proposal attached.

7618: The section should make it clear that the adoptive parents have the right to name the child in the judgment, at least with respect to infants. The language suggests a choice given to the child, but unless this intent is made explicit, the choice is exercisable only by the legal parents. If so, state this directly.

AGENCY ADOPTIONS.

Please see attached legislative proposal for additional provisions which are necessary to allow agencies to conduct directed placements and open adoptions among consenting participants.

7700(a): For what purposes is the relinquishment "prima facie evidence"? Does this legitimate a fraud? Allow the agency to dispense with the required inquiry into facts concerning the birthfather and/or presumed father?

(c) This is not clear. Does this mean that a birthparent who resides out of state can acknowledge her relinquishment before a notary public rather than follow the procedure of (a)? This should not apply if the nonresident birthmother is in California at the time of relinquishing, since the agency staff is available.

(d) Note that case law expands grounds upon which a relinquishment can be rescinded to include most situations in which contractual consent is considered absent: fraud, mistake, undue influence, menace, etc.

(e) For the signing parent.

7701: The ban on identifying information should not be absolute, but waivable: "unless the adoptive parents have waived anonymity in writing".

Is there a parallel section which requires the agency to provide this information to be given upon proper demand?

See attached proposal to allow alternate procedures among consenting parents.

7702:(a) The communication should be to both the birth parents and the prospective adoptive parents. What is meant by "calculated to ensure the confidence of the birth parents in the integrity of the adoption process"; certainly this cannot be a roundabout way of endorsing closed records, which would have exactly the opposite effect.

This section is a mixture of prescribing the content of the communication, and what should be an operative provision: (a)(4), (a)(5).

(a)(1) should use the word "discovers" rather than simply "develops", to hint that genetic dispositions are at issue.

(b) Again, some confusion in the use of "birth parents". The notice should conclude "disclosed at that time:".

7703: Does this also apply to situations in which the consent of an alleged father is not needed, or in which a petition to terminate his parental rights is dispensed with? Most courts require an order "terminating" his rights in this situation, but the UPA does not expressly say rights are terminated.

7704(a): awkward. "The department or licensed adoption agency to whom custody of the child has been awarded in an action under (232) or to whom the child has been relinquished." This avoids the undefined "freed for adoption". In actuality, the agency may

exercise parental rights before a complete "freedom" is obtained, e.g., when a birthmother has relinquished, there is no presumed father, but the potential rights of the alleged father have not been terminated.

The provision for termination of placement is not consistent with (b), which limits discretion once the petition has been filed.

(b) This should read that a petition by such persons shall be given a preference. Why should an adoption by others, if in the child's best interest, be foreclosed? This problem is somewhat ameliorated by (c) and (d), but this still leaves open the situation of de facto but not "foster" parents, who are seemingly excluded from consideration.

(c) "detrimental" is the applicable term throughout custody analysis; it should not be changed to "seriously detrimental" here.

(d) The action should be able to be brought by anyone (except a terminated parent) with whom the child has substantial emotional ties. Again, a showing of detriment is all that is normally required; the adoption decision should be in the best interest of the child, which, by case law, means a choice among available alternatives.

(e) This should be deleted. The subsection insulates from attack placements which are necessarily "seriously detrimental" to the child. The child's best interest, arising from substantial emotional ties to certain persons and detriment in removal from such persons is hardly affected by a status as a dependent child of the juvenile court. Bureaucratic efficiency hardly should dictate adoptions. The agency actually receives more protection than a parent does, since a parent's custody can be terminated (under current Civil Code Section 4600) on a showing that parental custody would be detrimental to the minor and nonparental custody is necessary to serve the child's best interest.

It should be noted that this entire section conflicts with current section 4600, which In Re B.G. recognized as a uniform approach to custody determinations. Suddenly, here it becomes more important to protect agencies from any challenge to their arbitrariness, except by giving limited rights to foster families, than to demand that adoptive placements actually be consistent with the child's best interests.

7705 (a): ok. But some hint should be given as to what should happen if such relatives appear and contest an adoptive placement.

(b) If a guardian of a person has been "appointed", and not merely nominated, why does the agency have custody? If this means a nomination was made, but has not yet ratified by the Court by the appointment of a guardian, why is the mere nomination given great weight here, when in the Probate Code it is simply "considered" by the Court, and not accorded any greater influence?

The reference, as the note suggests, should be changed to the "department and licensed adoption agencies".

7706(a): to prevent disagreements over the contents of the report (which arise in tort actions based upon concealment or nondisclosure and in actions to set aside the adoption on the basis of development problems unknown at the time of placement), perhaps the report should be filed with the Court.

7707: This provision should be removed from the Family Law Act and placed in regulations concerning duties of the department and licensed adoption agencies.

"Legally freed" could be replaced with language indicating that all rights and obligations of custody and control are in the department or licensed adoption agency.

7708: an abomination. An abomination. An abomination. An abomination.

Neither this section nor 7709 gives much weight to continuity for the child, or for preserving custody in a home in which the child has lived in a wholesome and stable environment; compare to current 4600(c); perhaps 7709(d) is meant to allow this, but that subsection carefully avoids mentioning continuity, de facto parents, or any other language giving deference to 4600(c) situations. Intimating that the child's best interest is likely to be met by giving greatest priority to color coordination is bad law, bad policy, and an abomination.

What is the "religious background" of an infant? Must deference be given to the religion practiced by the terminated birthparents?

7709(c): It may take a few months or a year to "legally free" the child; then stability must await at least 90 more days. Yet, if the home in which the child has happily lived is not color coordinated with the child, this section directs removal; further, it then warns social workers who might believe that letting the child remain would be beneficial, that "documentation" will be necessary to invoke an exception. This provision hurts most the very children it was designed to help: the non-white adoptable children. The lack of available matched ethnic homes is well known; children are generally placed in non-matching home only for this reason. Under this provision, though, no continuity or stability can be promised to a child, or to prospective adoptive parents, because the placement must be later re-evaluated.

Imagine the outcry if this were a 100 year old statute which bluntly said no white child could be placed in a coloured family, except on the same exceptions.

7710: This should be moved to the W&I code in the section governing duties of adoption agencies. Note the paranoia that agencies are purposefully trying to avoid finding families of similar ethnic background to the children they seek to place; that is patently not true. The problem continues to be a lack of ethnic families wanting to adopt amidst a surfeit of ethnic children needing to be placed. How long is the placement of such children

kept insecure, and the foster parents told not to bond, while this diligent search is being made. The 90 days runs from an event which may be months or years into the child's homelessness, so the 90 days does not really set a limit.

7711: Is this necessary? The foregoing statutes are in the agency adoption section, so they should not apply in independent adoption in any event.

7712: (a) (b) Does the criminal record include convictions removed under Penal Code Section 1203.4?

(c) "applicant" = prospective adoptive parents? The language after "hardship to the prospective adoptive parents" is not necessary.

7713. (a) This general right to file a petition to adopt is correct, and the inconsistent 7704(b), limiting who may petition, should be deleted. There should be a requirement that the agency join in the Petition or be notified of its filing, and thus, the name of the agency should be contained in the petition.

(b) 7506 does not require a joinder, but allows the agency alternately to be a "party".

(c) Probably, the petition should also reference any pending juvenile court dependency action, or any pending termination of rights action affecting a parent-child relationship with the child.

(d) The decision to omit the name the child had prior to the adoption should be given to the prospective adoptive parents, unless necessary to preserve anonymity of the birth parents when they have insisted upon this.

7714(a): why does this apply to children "relinquished", rather than to children placed for adoption by an agency or otherwise become freed for available?

7715: compare to 7613(g), which suggests this report is not routinely filed.

7716: The language after "hardship to the prospective adoptive parents" is not necessary.

7717: the language "If any report" suggests the report is optional, but 7715 makes a report mandatory.

7618 hardly seems necessary in light of 7612.

7719: Perhaps the agency should be notified as well.

7720: (a) if the petitioners do not wish to adopt and withdraw the petition, there is nothing to hear with respect to the adoption petition.

(b) should be a ", " after "birthparents". How does the court know the address of the birthparents, who are not parties to the action?

(c) The section should make clear that this does not prevent the court from appointing counsel to represent the child. Often, the agency, especially the department, is more concerned about its own policies, or protecting the decision making rights of its social workers, than the particular child.

Independent Adoptions.

7800(d)(1): The \$500 attorney's fee must be in the notice, but where does the law impose an affirmative obligation on the prospective adoptive parents to pay this?

Many adoption attorneys avoid dual representation; however the usual result of this is that only the prospective adopting parents are represented. The notice requirement and offer of \$500 towards the birthparent's attorney's fees should apply equally here.

(d)(2) They can also be unrepresented.

(e) Note that this section is silent as to how the attorney is paid.

(f) But here, the court may award attorney's fees. Is this only when the birthparent retains his or her own attorney, as the placement suggests? The final sentence be placed in a separate subsection so that it is clear that the power to award attorney's fees and costs according to ability applies generally.

7801: Sections 7539 and 7609(b) should be combined with this section to make clear how a proper placement occurs and what conduct is illegal.

(a) Who needs to have this knowledge? Logically, only a birth parent with a right of custody, who has a right to "select" adoptive parents. Yet the wording would include mere alleged fathers, even unknown fathers, or biological fathers whose rights have been terminated.

7802(a): Again, this deftly avoids the issue of how many people, and what relationships, can petition to adopt.

Note comments to 7713.

It would greatly increase efficiency and order if sections which are repeated in the different adoption chapter, e.g., "Petition and Order", have the same number in the different chapter, e.g., number this 7813 here, as section 7713 concerns the Adoption petition and order in agency adoptions.

7803: [This could be numbered 7814 for convenience, or renumber the agency section to 7703.]

7805: The lack of punctuation may affect the law: there should be a comma after "or if the court dismisses the petition". The commitment of the child to the department or delegated agency should only happen if the child is not returned to the birthparents in all three situations, not just the last. Unless the birthparents' rights have been terminated, any Consent becomes ineffective once the petition is withdrawn or dismissed, and all rights of care and custody revert to the birthparents. If the

birthparents refuse care and custody, then a relinquishment should be sought or a dependency action filed. The agency should not obtain the parental rights of care and custody unless they obtain a relinquishment, or the child is effectively abandoned by the birthparents' refusal to accept custody. As presently worded, the section suggests, for example, that the court could simply commit the child to the agency upon the agency's recommendation against the petitioners.

7806: What is meant by a mandatory duty to "accept the consent of the birth parents"? The department properly refuses to take a consent from a birthmother who is not ready, or overly depressed. More practical wording would be to require the department to interview the birthparents if practicable, explain the nature and effect of a consent, and ascertain if the birthparent wishes to sign a consent. This section should be combined with 7808.

See note to 7820.

7808: Filing a copy of the petition with the required information "at the same time" as filing the petition is virtually impossible, since the department wants a file-endorsed copy. The language should be "promptly after".

7809(a): The beginning language is superfluous. Start with "[I]f ...".

Omit the "and," after the first "Section 7808".

Probably better to omit the final sentence, and in 7814, say "Except as provided in 7809 ...".

(b)(2) This defines "promptly" for purposes of amending 7808 as suggested.

(d) should be omitted, since the Family Law Act is not likely to be in effect prior to 1/1/93.

7810(a): End after "hardship to the prospective adoptive parents".

(b)-(c): Probably better placed in other codes.

(d) Should be omitted; by now, virtually all pre 9/1/89 independent adoptions are final or dismissed.

(e) Should be omitted, as in 7809(d).

7811: Another section which needs parallel numbering.

(c) Should end after "hardship to the prospective adoptive parents".

7812 [Fast Track]

(c) "as specified in this subdivision" should be omitted.

"prior to the placement of the child for adoption" should follow "given".

Another problem with the definition of "placement." If "placement" is the "selection" of adoptive parents, and the advice must precede placement, who is going to pay for the advice?

(d) "a birth father whose consent for .."

By "a representative" or "persons": inconsistent.

At the request of the "birth parent".

Again, it appears that the act of giving temporary possession of the child for adoption planning, rather than selection of prospective adopting parents, seems to be intended by the use of the term "placement".

(i) "Any relationship" is vague and overbroad.

(k)(4) End after "hardship to the prospective adoptive parents"

(l)(m)(n)(o) This should go to sections detailing the general duties of the department.

In reply to the Note: the Language is different in this section since it is a recent enactment and reflects more contemporary jargon.

7813: Again, aligning the placement of this section in the independent and agency chapters would be helpful.

Unnecessarily maintaining the similarity between this section and its agency counterpart creates confusion.

(a) is confusing. The child must have been "placed": this is an act the signing birth parent took part in. If that adoption fell through, the birth parent would have to have been contacted: on a mere consent to adoption by specific petitions, the agency or department never has a right to custody, as in an agency adoption.. If the adoption was not completed or vacated, the birthparents' rights are restored.

(c) Who gave the department or court any right to "consider" adoptive placement is the adoption is not completed without obtaining the birth parents' relinquishments or new consent?

7814(a): Should be filed "in the adoption action".

(b) This is virtually meaningless, and to the extent that it isn't, attempts to deprive the other birthparent of due process; it is also inconsistent with the UPA. This section should be omitted.

(c) "Signed before" is awkward, since notaries have no duty or knowledge to review the papers. The Consent should be "acknowledged before a notary or other ...". This is consistent with what notaries know how to do.

The portion dealing with the "consent of the department" should be omitted. The department will already recommend in favor or against the adoption, and the court will hear the matter. If the department refuses to "consent", the court simply hears the matter. The requirement of consent adds nothing to the duty of recommendation.

7815:(b) in the ordinary course, no address for birthparents is "shown in the proceeding", nor does the petition contain the address of the adopting parents. This information was provided to the department or delegated county agency.

(c) It should be made clear that the court can still appoint independent counsel for the child, as the department may have a conflict between seeking to enforce its regulations and protecting the interests of a specific child.

(d) Hearings are confidential under 7611; "The hearing shall be held in chambers" should be omitted.

7816: Again, "consent" by the department is unnecessary; the department will in any event file a report and the matter will be heard by the court. The language here suggests that if the department doesn't file its consent, there can be no hearing on the petition. However, an "appeal" under 7820 would seem to be identical.

See note to 7820

7818: See comments to 7702, and general comments regarding consistency of numbering, grouping of sections.

7819: what happens when the rights are not "terminated" under the UPA or 3200 et seq., but the case falls into one of the exceptions of the UPA when no petition to terminate needs to be filed (e.g., failure to file a paternity action after service of a notice of alleged paternity)?

7820 "(a)" seems to be missing.

"Appeal" is not the right word. "Review", as in 7822, is better.

(1) 7806 says the department "shall" accept the consent. Here, it is clear they can refuse to accept the consent. The intended meaning is better conveyed in 7806 by: "the department or delegated county agency may accept the consent if the circumstances indicate the birth parent understood the meaning and effect of the consent."

[In response to the Note, the appeal may be filed upon the later of 180 days from the filing of the petition or the expiration of any extension (beyond that period) granted by the court.]

(2) The department's giving of a consent is, or should be, unnecessary. In any event, 7816 says the department "shall" consent. The intended meaning is better conveyed in 7816 by the wording: "the consent of the department is necessary".

(c) The court should also be allowed to accept a signed consent of a birthparent, which the department refuses to accept, rather than invariably requiring the distant birthparent be hauled into court to sign a new consent.

7822: This "review" and the section 7820 appeal should be combined into one section for "review" of unfavorable actions of the department.

(a) if "the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied": deny the petition before they withdraw it? Why?

(b) The address of the "birth parents" will not be shown in the proceeding, unless the birthparents are contesting and thus have entered an appearance, or, by chance, the address is in a report filed by the department. These addresses will have been supplied to the department; the reference to "in the proceeding" thus may hinder sending notice to the last known address. (c) Again, without prejudice to the court's appointing independent counsel.

7823: If this refers to the final hearing (although one can hardly tell), this is unnecessary in light of 7612, or should be put into 7612.

Intercountry adoptions.

7900-7902, 7904-5, 7907. Should be with other statutes regulating licensing of intercountry adoption agencies.

7908: See comments to 7712, 7811.

Doesn't it seem strange that the code is repeating some sections now for the third time? Part 2 Chapter 1 could be expanded to contain: Investigation of adoptive parents; Adoption petition, order; Appearance; Report to Court; Copy of Report; Notice to department; Unfavorable recommendation.

Expanding the general section to eliminate repeated provisions would virtually eliminate this chapter.

7809(a): This section applies to some children already "adopted" in the foreign country by the prospective adoptive parents. The department can hardly refuse to "place" the child for lack of a medical report.

Stepparent Adoptions.

8000:(a) "Stepparent" is not defined. Isn't it just as clear to say, "A person desiring ...".

(d) is especially inappropriate here, since in a great number of cases the child will have had the former name for many years, and may have had a long and rewarding relationship with the other parent. The adopting parents should have the election of whether the child's prior name appears in the certificate.

8002: "Hardship" is sufficient.

8003(a) if both birthparents sign consent, how does one birthparent retain custody and control under 7548? Perhaps this section combines two different "consents": one terminates parental rights; the other is a simple consent to a spouse's adoption under 7603.

The consent should be filed in the action.

(b) The consent should be "acknowledged" before a notary.

(c) See prior comments this provision.

8005: See comments to 7815.

(a) Does this apply equally to both types of consent noted in comment to 8003(a)?

(d) This seems to transplant independent adoption factors into a different setting. correct. In an independent adoption, a birthparent withdrawing consent is invariably seeking custody and control. In a stepparent adoption, the birthparent withdrawing consent may only wish to preserve a right to visitation. The court should be considering whether maintaining the pre-existing relationship between the child and the birthparent is in the best interest of the child.

8007: The appearance of the spouse should be necessary. Adoption is a family affair, and the court is creating a new family.

Vacation of Adoption.

8100(c) The department may have been involved in the placement; it may thus be accused in the petition of withholding information. The court must be given the power to appoint a disinterested representative and counsel for the child.

8101(b): "The county of the court issuing the order of adoption", rather than "county in which the proceeding for adoption was had".

Disclosure of Information:

8200(a): This provision should be waivable for those adoptive parents and birthparents so wishing. If contact can be arranged under 8204(a), why cannot the court records be made available?

(b): Awkward wording. Do they mean that "if a petition is filed under (a), any party may move to delete ..." or, "if a petition is granted under (a), the names of the child's birth parents shall be deleted."?

(c): This is unnecessary in light of 7614.

8203(a)(1): "indicated consent" = "consented"

(2) "if the adult adopted has consented in writing".

(c) Does this add anything to the requirement within (a) of consent to disclosure?

(f) remove "present"; put a comma after "8204"; "to inform the public effectively" or some other non-split infinitive. This section would be removed from this division and put in the Welfare & Institutions Code.

8205: is "biological sibling" defined? Remember, rarely with "siblings" be full blood.

(e) correct the split infinitive "to effectively inform".

8206(b): why not remove all identifying aspects of the photograph, too? "Notwithstanding ..." seems to imply that such removal is made even when all parties have consented to release of identifying information. Remember, most of the adoptions were independent

adoptions, in which identifying information was exchanged at the outset. It would be terrible if a beautiful poem or letter written by a birthmother were censored and disfigured unnecessarily.

The Note to this section is good. To determine which "notwithstanding" trumps which, it is necessary to trace the legislative history: the later enacted trumps the earlier.

Adoption of Adults and Married Minors.

8300: "An adult or married minor may be adopted by an adult as provided in this part."

8301: What does "lawfully separated" mean? Why is this provision necessary, since the possibility that the community would be subject to a duty of support is practically nil.

8302(a): Why is the consent of a spouse to one's parents necessary?

8303: "biological sibling" undefined: see 8205.

(b) Adopted by whom? By the petitioner or his spouse? Or either? Or by someone else, but at least an adopted sibling?

The Note is good. I doubt there is a policy issue in any of this, just reaction to some unfortunate situation in the past.

8304: Who makes this choice? In 7618, it was clear that the parent did, since naming a child is a parental right. But here the child is an adult, and there is no parental right to name an adult child.

8306: This section could be profitably used to substitute indigent "parents" for children unable to support themselves for whom a duty of support would therefore persist past majority (Civil Code 241(d)).

Procedure for Adult Adoption.

8320(a): Most of this belongs in 8300, defining who can adopt and be adopted.

Procedure for Terminating Adult Adoption:

8340: When this relationship is terminated, the rights and obligations of the prior parents remain terminated (8306), so we truly have a "parentless child".

COMMENTS ON ADOPTION DIVISION OF FAMILY CODE

SECTIONS 7800 - 7811

SECTION 8001

7800(d)(1): Language that the birth mother's attorney's fees "may be required" is unclear. The law does not specify how or when they are required.

(d)(2): The notice should say that the birth parent can also be unrepresented.

7801: The law in this area is ambiguous as to who must have personal knowledge, it seems that this section has been interpreted by practice properly to include birth mothers and to exclude alleged natural fathers. However, inserting language limiting the necessity of giving personal knowledge only to those with the right of custody makes sense.

7805: Section is overbroad in turning the child over to the Department. The section could be clearer so that this is the last resort if the child is not returned to the birth parents.

7810(a): Fee adjustment should be based on economic hardship to the adoptive parents only and not on being detrimental to the child. This change would be consistent with the standards for fee waiver in an adoption or guardianship, or any other case, where detriment to a child is not required.

7811(c): Language after "welfare of the adopted child" should be deleted since the other language is normally inapplicable to an independent adoption.

8001: Language regarding stepparent adoption home studies should have a time limit. In Los Angeles County, working without a legislative time limit allows the workers to take one to two years to finish a home study. This delay cannot be in the best interests of children.

Adoptions Standing Committee South would like to ensure that Chapter 3 - Independent Adoptions will encompass all the sections pertaining to independent adoptions so that not only attorneys who regularly practice adoption law, but also other practitioners, who do not regularly practice adoption law will be assured that by looking at that one chapter, they will be able to see all applicable law. This objective can be accomplished either by putting all the adoption sections together, including (and repeating) such sections as the insurance provision and the penal code provisions (PC 273), in Chapter 3 or by referring to the other applicable sections in other codes in Chapter 3.

There is general agreement by Adoptions South with the comments expressed by Adoptions North.

COMMENTS ON ADOPTION DIVISION OF FAMILY CODE SECTIONS 7812-7823

- 7812(a) change "prospective adoptive family" to "prospective adoptive parent or parents" because adoptive parent (not adoptive family) is defined in Section 7542
- (b) change "licensed county adoption agency" to "delegated county adoption agency" to be consistent with other parts of this section; a delegated county adoption agency is a licensed county adoption agency (section 7515)
- (c) meaning of "placement" is not clear - "place for adoption" is defined in Section 7539 as the selection of a prospective adoptive parent or parents by the birth parent or birth parents - does placement mean selection of an adoptive parent or parents or does it mean the child's being placed in the custody of the adoptive parent or parents?
- (d) first sentence: add "whose" after "birth father"
fourth sentence: change "prospective adoptive parents" to "prospective adoptive parent or parents"
change "birth parents" to "birth parent or birth parents"
last sentence: meaning of "placement" is not clear
- (g) change "adoptive family" to "adoptive parent or parents," "licensed adoption agency" to "delegated county adoption agency," and "adoptive parents" to "adoptive parent or parents"
- (h) first sentence: change "adoptive family" to "adoptive parent or parents"
last sentence: change "family" to "adoptive parent or parents"
- (i) "any relationship" is too broad and the meaning is not clear
- (j) change "families" to "adoptive parents and birth parents"

- (k) change "licensed" to "delegated"
 - (1) change "parents" to "parent or parents" and "birth parent" to "birth parent or birth parents"
 - (2) the meaning of "placement" is not clear
 - (3) change "licensed" to "delegated"
- 7814(a) change "petitioners" to "petitioner or petitioners" and "petitioner's residence" to "residence of the petitioner or petitioners"
- 7817(c) change "parents" to "parent or parents"
- 7818(a)(1) change "parents" to "parent"
 - (3) change "name and address" to "names and addresses"
- (b) change "name and address" to "names and addresses"
- 7820 add "(a)" at the beginning of the first sentence and add "or petitioners" after "petitioner"
- 7822(a) change "petitioners" to "petitioner or petitioners" and "consents" to "consent or consents"
 - (b) change "petitioners" to "petitioner or petitioners" and "parents" to "parent or parents"
- 7823 change "parents" to "parent or parents"

JANIS K. STOCKS
ATTORNEY AT LAW
CERTIFIED FAMILY LAW SPECIALIST

1992 FEB 08
File: _____
Key: _____ 1450 FRAZEE ROAD, SUITE 409
SAN DIEGO, CA 92108
(619) 296-6251

February 4, 1992

Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middle Field Road, Suite D-2
Palo Alto, California 94303

RE: Family Law Code

Dear Stan:

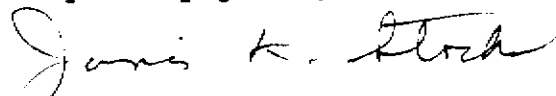
It was a pleasure speaking to you today. I appreciate your consideration in adding me to the Adoptions Referral Sources for the Law Commission.

I had advised you that some Certified Family Law Specialists in San Diego County had sent me some comments with regards to other provisions of the Code. In lieu of retyping those letters, I am enclosing the following:

- 1) A letter from Michael Shea with regards to Code §§ 3752-4201;
- 2) Suggested revisions from James Hennenhoefer for §§ 4300-4332; and,
- 3) Correspondence from Nancy Stassinopoulos and Michele Sacks Lowenstein regarding **Freedom from Custody and Control Petitions**.

All of these attorneys are Family Law Specialists and their comments are considered and thoughtful and I hope that they will aid the Commission in creating the new Family Law Code.

Very truly yours,



JANIS K. STOCKS

lct

Enclosures

cc: Michael C. Shea, CFLS
James A. Hennenhoefer, CFLS
Nancy Stassinopoulos, CFLS
Michele Sacks Lowenstein, CFLS

TO: JANICE STOCKS

FROM: NANCY STASSINOPOULOS
MICHELE SACKS LOWENSTEIN

RE: LAW REVISION COMMISSION STUDY F-1000, "FAMILY CODE"

The following are our comments regarding Division 10, Parts 3,4 and 5.

Part 3 - Freedom from Parental Care, Custody and Control (FFCC)

Inasmuch as these code sections are part of the law concerning adoptions, we believe that these code sections should be placed near the chapter dealing with adoptions. Currently these statutes are in close proximity to the adoption statutes.

1. Sections 3202 and 3220 are virtually identical. Section 3202 should be deleted inasmuch as 3220 states that parental rights may be terminated if the child comes within any of the descriptions set out in the Chapter.

2. Regarding the comment to section 3220 which questions whether there should be a general requirement that all petitions under the Family Code be verified, we believe that there should not be such a requirement. Petitions for dissolution are currently not verified and we do not see any need to implement this additional requirement. In addition, if petitions were required to be verified, then the responses would also have to be verified. In addition, what would constitute a "petition" under the Family Code? Would that include all motions in domestic proceedings as they are actually "petitions" to the court for certain relief.

3. Subdivision (b) of Section 3282 requires the father or mother to appear whereas Section 3281 states that the parents may appear at the time and place stated in the citation. We believe that there should not be a requirement for the parent to attend the hearing. Current, as well as the proposed legislation, mandate that any person having care and custody of the minor is required to bring the child or children to the court. This should not change. We do believe, however, that there should be a judicial council form which notifies the parent that he or she must appear in order to object to the petition. The creation of a judicial council form would relieve counsel from the task of having to redraft citations to conform to local rules. In addition, a uniform citation would avoid any appeals wherein an FFCC proceeding was reversed on due process grounds because of deficiencies in the citation.

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4. Section 3270 states that the matter shall "be set for trial not more than 45 days after filing notification therefor and completion of service ..." There is no definition of the phrase "after filing notification therefor". Does this mean after issuance of the citation? If so, then it should be clearly stated. We do not agree with the suggestion in the Commission's note to 3270 that "not more than after 45 days after completion of service..." be substituted for the language in question. The intent of the present code sections, although far from clear, appears to be that the citation shall be heard not more than 45 days after it is issued. If the intent is that citation hearing be held within 45 days after service, the code section should so state.

5. Section 3292(c) should be deleted. That subdivision apparently creates a requirement that prior to taking testimony by a child in chambers outside the presence of the parents that the court find by clear and convincing evidence that one of the following exists:

A. That the testimony in chambers is necessary to truthful testimony.

B. That the child is likely to be intimidated by a formal courtroom setting.

C. That the child is afraid to testify in front of his or her parent or parents.

Both the Welfare and Institutions Code and the Penal Code permit the taking of testimony by children in chambers in certain circumstances. There is no authority, either by statute or case law which requires a finding by clear and convincing evidence that testimony in the courtroom would be detrimental to the minor. On the contrary, the trend in the law is to favor out of courtroom testimony for minors and to give great discretion to the judge presiding over proceedings where minors may testify. We do not believe that the drafters intended to create this exception. Subdivision (c) of section 3292 was derived from Civil Code section 232(c). In the original, the clear and convincing evidence requirement is intended to apply to the entire 232 proceeding. This is now found in section 3221.

6. Of great concern to us section 3294 which is simply a codification of Civil Code section 238. These sections state that after making the order and judgment, freeing a minor the court has no power to set aside, change or modify same. It is appalling that this code section exists. We are surprised that the constitutionality of this section has not been challenged.

Although we understand that it was not our function to review these statutes with an eye to change substantive law, we feel we must bring this section to the attention of any reviewing committee. We believe that this statute violates not only the due process rights of the parents but the due process rights of minors. It is well settled that the right of a parent to the companionship, care, custody, and management of his or her children is compelling, ranked among the most fundamental civil rights. It is an interest that warrants deference and absent a powerful countervailing interest, protection. (In re B.G. (1974) 11 Cal. 3d 679-689; Stanley v. Illinois (1972) 405 U.S. 645,651). Indigent parents involved in FFCC proceedings are entitled to free transcripts on appeal (Crespo v. Superior Court (1974) 41 Cal. App. 3d 115). They are also entitled to appointed counsel on appeal (In re Jacqueline H. (1978) 21 Cal. 3d 170). Certainly these parents are entitled to bring set aside motions under Civil Code section 473. On the other hand, there may be a case where the best interests of the minor would be better served if the court were to set aside its orders or modify same. To suggest that parents and minors in these proceedings do not have the same rights as civil litigants to bring not only set aside motions, but motions to vacate judgments, etc. boggles the mind. This is especially true now that fewer FFCC proceedings are being brought which involve children who are dependents of the court inasmuch as these are becoming governed with greater frequency by 366.26 of the Welfare and Institutions Code. That code section applies to minors who were adjudged dependents on or after January 1, 1989. We foresee that FFCC proceedings will primarily be brought by private individuals where the parents have be convicted of a felony or are mentally disordered. Additionally, stepparent adoptions would fall under this category. Thus, one can envision scenarios where the lines are really not so clearly drawn inasmuch as the children involved have not been court dependents because of abuse or neglect.

7. We did not comment on the section regarding the Interstate Compact inasmuch we felt that the team reviewing the adoption statutes would be better suited to the task.

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8. As to the provisions regarding the UCCJA, we noted that they were lifted verbatim from the current Act. We believe that it would be preferable for section 3402 to be rewritten to reflect current case law which holds that the UCCJA governs the following proceedings:

A. Guardianships (Guardianship of Donaldson (1986) 178 Cal. App. 3d 477.

B. Stepparent Adoptions (Souza v. Superior Court (1987) 193 Cal. App. 3d 1304)

C. Actions to terminate parental rights (In re Gloria F. (1981) 121 Cal. App. 3d 576.

MICHAEL C. SHEA
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San Diego, California 92159

JAN - 2 1992

(619) 697-2548

December 30, 1991

Janis K. Stocks
Attorney at Law
1450 Frazee Rd, Suite 409
San Diego, Ca 92108

Re: Law Revision Commission

Dear Jan:

I have finished reviewing the draft of the proposed Family Law Code which you sent to me. Boy was that fun! Maybe next we can do a revision of the Welfare and Institutions Code. I'm just sorry that I finished before New Year's Eve. Now I won't know how to spend December 31. Stanwood Johnson and I never got together to discuss this, so what you get are my thoughts only. It's probably my fault, but when you're having so much fun you often forget the little details.

It is my understanding that it was the intent of the review to be certain that there were no substantive changes in the language of the proposed code in so far as will take the place of existing Civil Code sections. My review of Sections 3750 to 4203 do not find any significant changes. The sections as proposed primarily restate the existing code sections, though they have done so by taking a portion of one section and adding it to a portion of another section in many cases.

I would make the following specific comments concerning some of the sections:

1 3752 provides that if the district attorney is the assigned payee for child support the parent shall notify that entity regarding health insurance. I wonder if this covers San Diego. Isn't the Department of Revenue & Recovery the "assigned payee?"

2, 3760 includes "health insurance plan" twice. Apparently a typo.

3. 3762(b) provides that the notice of intent to seek an assignment shall be given at least 15 days before the filing of the application. This language appears added, though it appears appropriate.

4. 3763 has an (a) and a (c), but no (b).

5. 3764(a) does not provide the manner of service upon the employer. The section should probably provide that the service shall be by either certified mail or in person upon the employer or other person providing health insurance.

6. 3764(b) provides that the employer shall deliver a copy of the order together with a "statement of the obligor's rights", but nowhere is it provided that the employer is to be served with a copy of those rights. If the form of the order contains a copy of those rights then this is obviously not a problem, however we should make sure that the order so provides.

7. 3765(a) has deleted the phrase "alleged to be in default" following the word "obligor". The motion to quash appears only intended following an order entered by default.

8. 3771 should be expanded to include "other person providing health insurance". The other question posed at the end of the section is simply a question of semantics.

9. 3781(a) would limit assignment rights to proceedings brought under the Family Law Act. This would appear to constitute a change. Any proceeding where child support is in issue should be subject to the section.

10. 3782 does not provide how notification is to take place.

11. 3800 does not change existing statutory law, but does create a potential problem with orders which provide for "primary place of residence" of a child rather than physical custody.

12. 4000 asks the question as to whether we should use "bring and action" or "bring a proceeding"--I'm not sure we care as long as they define the phrase. "Bring an action" sounds better to me if they don't define things.

13. 4005 questions whether or not (4) and (5) should be included. (4) seems an appropriate factor to consider for child support, but (5) does not. I would also note that under Section 4700.5 length of the marriage is a factor to consider, but is not

Janis K. Stocks
December 30, 1991
Page 3

included under 4005. I don't see what relation that has to child support, but dropping it is a change. Other questions are asked at the conclusion of the section. The factors enumerated should be considered in any proceedings for child support, and the section should be corrected to provide that "health insurance coverage" should be substituted for "medical insurance coverage."

14. 4007 provides that upon the happening of a contingency, notification shall be given to the obligor or the attorney of record. Once a final decree has been entered is there an attorney of record? Shouldn't notification only be given to the obligor?

15. 4009 asks the question "What is the meaning of an 'order to show cause'". We probably need to define a motion to include an order to show cause. (I'm concerned that the people writing this may not know what an OSC is!!).

16. 4201 provides for payment of support to a person having custody of a minor child "of the marriage". Is it intended that the section only applies to children of marriages?

Finally the most significant question posed by the drafters is whether or not Civil Code Section 3347 should be repealed. This relates to a obligation of a person who maims or kills a person in a duel, and the obligation of that person to provide for the minor child of the killed or slain person. I makes you wonder what these people have to do with their time if they can sit around and worry about whether or not they should repeal a code section which would benefit minor children, and would probably take away a valuable civil cause of action.

Should you have questions or comments, please do not hesitate to contact me.

Very Truly Yours,


MICHAEL C. SHEA

LAW REVISION COMMISSION STUDY F-1000 "FAMILY CODE"

SUGGESTED REVISIONS
JAMES A. HENNENHOEFER
12/5/91

Section 4300

No change.

Suggestion: Delete CC §3347. This provision is obsolete. Appropriate personal injury remedies are available.

Section 4301

This statute should state whether or not a right of reimbursement exists if a party uses separate property to support a spouse while living together. It is suggested that the statute be amended to reflect:

"There shall be no right of reimbursement to the supporting spouse from the supported spouse or the community property estate."

It is also recommended that the words "when there is no community or quasi-community property" be deleted. It is recommended that the words "when necessary" be inserted before "a person". There seems to be no rational premise for the requirement that community property or quasi-community be exhausted before the duty arises.

What about situations where the separate property estate consistently subsidizes the community property estate? The law should clearly define the result and reciprocal rights associated with this situation.

Section 4302

No change.

Section 4303

Recommendation: To avoid confusion, use "civil action", not proceeding, throughout.

Section 4320

(i) Delete "immediate and specific". This is obsolete "Fonstein" language. Suggest insert "relevant". The court should be free to determine what tax consequences it should consider without the fetter of the proposed language.

Section 4321

No change.

Section 4322

Recommendation: Delete the word "shall". Reword the sentence to provide that the court may order no support or may decide not to continue support. Shall seems to indicate the court has no discretion even to reserve jurisdiction on support.

Section 4323

Recommendation: Add the words "or terminate" after the word modify in the second sentence. The court should have the power to terminate upon proper circumstances.

Section 4330

Delete the words "based on the standard of living established during the marriage".

What about situations where the standard of living is artificially high because of fiscal improvidence/borrowing, etc.?

The conditions and considerations for making a spousal support order are set forth at Section 4320.

Section 4331

Add language requiring that the movant advance the costs associated with the examination subject to the court's continuing jurisdiction to allocate the costs amongst the parties upon proper motion.

Section 4332

Recommendation: The words "with respect to other circumstances" are overbroad. What circumstances? Suggest it be revised to: "with respect to the past and present earnings of the parties and the parties' other financial circumstances".

Section 4333

No change.

Section 4334

No change.

Section 4335

No change.

Section 4336

No change.

Section 4337

No change.

Section 4338

No change.

Section 4339

No change.

Section 4350

No change.

Section 4351

No change.

Section 4352

Revise to make the statute consistent with Section 4203.

Section 4360

Recommendation: Add the wording "or pledge assets in an amount sufficient to provide reasonable security to the supported spouse".

Section 4400

Recommendation: Delete unconstitutional provision.

Section 4401

Recommendation: Needs a complete revision. This should be severely limited or deleted.

Section 4402

Recommendation: Delete, see 4400.

Section 4403

Recommendation: Delete unconstitutional.

Section 4404

Recommendation: Delete unconstitutional.

Section 4405

Recommendation: Delete unconstitutional.

Section 4410

No change.

Section 4411

No change.

Section 4412

Recommendation: Change notice requirement to 20 days. This is not an unlawful detainer. There is little likelihood that "speed" is needed or even desired.

Section 4413

Recommendation: Delete this provision, not needed.

Section 4414

No change.

Section 4500

No change.

Section 4501

Recommendation: Add:

"Whether made pendente lite or as a part of the court's judgement of dissolution/legal separation."

This would end the controversy over whether or not family support orders can be made at the time of judgment.

Section 4502

Recommendation: Delete last sentence. It is surplusage.

Section 4503

No change.

Section 4504

No change.

Section 4505

No change.

Section 4506

Recommendation: Revise to reflect this section applies to child support, spousal support and family support.

Section 4600

No change.

Section 4601

No change.

Section 4602

No change.

Section 4603

No change.

Section 4604

No change.

Section 4604

No change.

Section 4610

No change.

Section 4611

No change.

Section 4612

Recommendation: Add a provision:

"(j) Obligor has been denied custodial or visitation access to the children as a result of the concealment of the children's whereabouts from obligor by obligee."

Delete (i). This opens the door to almost any claim as an "emergency".

Section 4613

No change.

Section 4614

The court should have the discretion to require production of assets equal to the lesser of \$15,000 or three years support. Three years support at \$300 a month is \$10,800. An one year support award deposit simply permits a person to borrow \$6,000 to satisfy the court without pledging any meaningful amount as security. The amount is not much greater than the limit on the average credit card.

Section 4615

Recommendation: Change this to three years or \$15,000.

Section 4616

No change.

Section 4617

No change.

Section 4620

No change.

Section 4630

No change.

Section 4631

No change.

Section 4632

No change.

Matthew Bender

Key: _____

Matthew Bender
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415 446-7100

February 10, 1992

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

Attention Pamela Mishey:

I am accepting your invitation to comment in writing on Part 3 of Division 12 of the proposed Family Code, which is primarily the current Uniform Parentage Act, Civil Code § 7000 et seq. I also hope to submit separate written comments on Part 4 of Division 12, which covers freedom from parental custody and control under current Civil Code § 232 et seq.

§ 7501: I suggest changing the title of the statute to "Motion for blood tests to rebut presumption of paternity." I further suggest reorganizing subsections (b) and (c) and enumerating the parties who may bring the motion, thus:

(b) A notice of motion for blood tests may be filed only by one of the following:

- (1) The husband;
- (2) The mother, but only if a declaration of the child's alleged biological father acknowledging paternity is attached to the notice of motion;
- (3) The child through a guardian ad litem, but only for the purpose of establishing the paternity of a man other than the husband;
- (4) A presumed father within the meaning of Sections 7611 and 7612, but only for the purpose of establishing the paternity of a man other than the husband.

(c) The notice of motion must be filed not later than two years from the child's date of birth.

Part 3. Uniform Parentage Act: I have previously expressed my opposition to the view that the UPA must be kept in tact. Particularly, I continue to advocate moving what is currently Chapter 5 of Part 3 of Division 12 (termination of parental rights; current Civil Code §§ 7017-7017.2) to Division 13 and incorporating it into adoption law.

§ 7611 Presumption of paternity: This is a level 3 comment, highly controversial, but I believe that any man who admits his paternity and files an action to establish it within 30 days of learning of the birth of the child should be afforded presumed father status and be entitled to block a proposed adoption.

§ 7631: The lead in language, "Except as to cases coming with the provisions of Part I," (current Evidence Code § 621) is left over from the days when the presumption of § 621 was truly conclusive. As it currently reads, a 7631 action could not be brought in a 7500 case, even if a motion for blood tests is available under 7501 (b) or (c). A motion for blood tests is available to an alleged father if the mother or the child's guardian ad litem wants to establish actual paternity. I suggest the following revision: "Except as to cases coming within Section 7600 for which no motion under Section 7601 may be brought, a man who is not a presumed father..." etc.

The comment should then say something like, "Section 7631 continues subdivision (d) of former Civil Code Section 7006 without substantive change. The first sentence has been revised to clarify that a proceeding under this section is barred by the presumption of Section 7500 only if the presumption is conclusive. If the presumption is rebuttable by a motion for blood tests under section 7501, for example, if the child by a guardian ad litem elects to move for blood tests to establish the paternity of the alleged father and not of the husband, then the alleged father is not barred from proceeding under this section."

§ 7635(b), notice provision: Because the notice provisions of current Chapter 5 have problems, I suggest setting forth the basic notice requirements in a paternity action directly in Chapter 4 and not by cross reference to Chapter 5. I would move Section 7666 to either follow or be incorporated into 7635. Then, in Chapter 5, as I will discuss below, if the basic notice requirement applies, I would cross refer back to Chapter 4.

§ 7637(c), child support provisions: Federal regulations (45 C.F.R. § 302.56) require a single child-support-amount standard for all child support orders no matter under which law the matter proceeds. Thus, this subdivision should not refer to a determination of the amount of support. I see no immediate problem with leaving it as it is and limiting it to determining the period during which support is owed by deleting the words "the amount to be paid by a parent for support of the child and." There should then be a subdivision (d), which should state that "The amount of any child support to be ordered in the judgment shall be determined according to Division 9." I realize that this is probably a second stage revision. I will advise Senator Hart's office of the problem with the hope that they will amend Civil Code 7010(c) in Senate Bill 370.

§ 7642, modification: should probably clarify that only the custody and support provisions of the judgment are subject to modification. The adjudication of paternity is not subject to modification even if advanced blood-test technology now excludes somebody who was previously determined to be the father.

§ 7660, the text of (2): The substitution of "law" for "prior law" is improper. The concept of legitimacy existed only under the law before the UPA. The UPA substituted presumptions of paternity for legitimacy. A child cannot be legitimate under current California law, only under prior law. Given the fact that the UPA has been around since 1975, by the time the Family Code is operative there will no longer be any children governed by prior law; hence, (2) can be limited to the law of another jurisdiction.

§§ 7660 and 7661: The grammar of the last sentence in each statute is amiss. But there is really no need to limit the operation of the first part of the sentence by the words that begin with "unless." The provisions of Part 2 of Division 3 include the loss of parental rights through relinquishment, consent, and prior determination. How about adding ", subject to the limitations on those rights set forth therein." after "Division 13" in each statute?

§ 7661, CLRC Note: I think this statute clarifies that a mother has the same status as a presumed father, and the ensuing provisions cannot be used to terminate the parental rights of a mother. Since the statutes are not gender neutral, there isn't much of a case that a father can give up a child for adoption and then proceed under the UPA to terminate the parental rights of the mother. But 7661 makes it clear that the use of the masculine in the ensuing statutes means what it says, and they cannot be read as gender neutral.

§§ 7662-7668 (current Civil Code § 7017(b)-(f), 7017.1, 7017.2): Yuck. This is both an organizational and linguistic mess. First, there is a chronological problem. The inquiry to identify possible fathers (proposed § 7663) occurs first. Then the notice of alleged paternity (hidden in proposed §§ 7662 and 7664) should be given. Then a termination proceeding must be initiated if required (addressed primarily in proposed § 7664, but affected in numerous places). Then hearings must be set (proposed § 7667) and continuances addressed (proposed § 7668). Finally, the standards for terminating parental rights (proposed § 7664) and judgments of termination (proposed §§ 7665 and 7665) must be addressed.

As to the linguistic problems, current 7017(b) is a grammatical nightmare. I challenge anyone to diagram the sentence that is this subsection (proposed § 7662). First, there is the same issue as to legitimacy under prior law as in 7660.

Then there is the language "or if a child otherwise becomes the subject of an adoption petition and the alleged father, if any, has not in writing denied paternity..." etc. As written, without a comma after the word "proceeding," the things that a father may have done that obviate the further operation of the statute (like deny paternity) apply only if the child otherwise has become the subject of an adoption petition; that is, other than by consent or relinquishment. In a case of consent or relinquishment (99.9 percent of the cases), under the language as punctuated, the petition would have to be filed even if the father has done one of the things in the list that otherwise would obviate the operation of the statute. This absolutely is not the legislative intent. The short fix is simply to stick in a comma after "proceeding." But the statute is such a linguistic disaster, that it really should be rewritten entirely.

Then there is the "notice of the proceeding" problem between proposed §§ 7662 and 7664. § 7662 sets forth a notice of alleged paternity that may, but doesn't have to be given. The effect of the notice is to trigger a duty on the part of the man notified to bring a UPA proceeding to establish paternity under § 7630. If the notice is given and the man doesn't file for paternity, then no further petition to terminate his parental rights need be brought, according to § 7662. Presumably, his parental rights are then terminated by operation of law by the decree of adoption, as if he had given written consent to the adoption. But proposed § 7664 (current 7017(d)) says that no "notice of the proceeding" need be given under the same circumstances. What proceeding? If this refers to a special proceeding to terminate parental rights, as is most likely, it makes no sense because if the notice of paternity was given and the man did not respond, no such proceeding is required at all as per 7662. Perhaps the proceeding referred to in 7664 is the adoption proceeding, but nowhere in this entire scheme is it clear whether the termination petition is to be filed within the adoption proceeding or separately. My understanding is that in practice, it is done both ways. Often it is necessary to bring the termination petition before the child may be placed for adoption, so that there is no adoption petition pending when the termination petition is filed.

Finally, there is the problem of the reference in proposed § 7664(c). The current statutory reference is to the section in which it is located, that is, all of current § 7017. You have broadened it to Part, which is the entire UPA. This is to say that the UPA, in which the presumptions of paternity are set forth, does not change the rights of presumed fathers; not exactly true, since the UPA establishes the rights of presumed fathers. I think the legislature meant the statement to refer to the UPA termination of parental rights proceeding, which is what § 7017 is basically about. Hence, I think the proper reference is to Chapter 5, in which case, I think the best location of the reference is in Section 7660. The language that I have included in § 7664(a) below could be moved to 7660.

Here is my effort at reorganizing and simplifying these statutes so that somebody can figure out what is going on. In drafting this language, I have not intentionally made any substantive changes whatever, but have simply tried to reorganize and recast the current law, as I understand it, using different sentences.

7662. Effort to identify natural father
(currently proposed § 7663)

7663 Notice to alleged father

(a) As used in this section, an "alleged father" is any man who alleges to be or is alleged to be the father of a child who has no presumed father under Section 7611, or any man who is identified to the satisfaction of the court pursuant to the investigation required by Section 7662 to be a possible natural father of such a child. A man to whom the child is legitimate under the law of another jurisdiction is not an alleged father under this section. (Obviously, this could/should? be made a generally applicable definition to at least all of the UPA and probably all of adoption law too.)

(b) If a mother has voluntarily relinquished her child for adoption under Chapter 2 of Part 2 of Division 13 or has voluntarily consented to the adoption of the child under Chapter 3 or Chapter 5 of Part 2 of Division 13, or the child has otherwise become the subject of an adoption proceeding, written notice of alleged paternity may be given to any alleged father of the child. The notice must allege that the man notified is or could be the natural father of the child and that the child has been placed or relinquished, or will be placed or relinquished, for adoption. The notice must be served in the manner as provided in Section (hopefully, 7635).

7664. Petition and notice of proceeding to terminate parental rights.

(a) Except as provided in subdivision (c), a petition to terminate the parental rights of any alleged father, as defined in Section 7663, must be brought under this Section, and the man's parental rights must be terminated under either Section 7667 or Section 7668, before the child may be adopted without the consent of the alleged father. Nothing in this Chapter changes the rights of a presumed father.

(b) The petition may be brought by any of the following:

- (1) the agency to whom the child has been relinquished for adoption;
- (2) the mother of the child;
- (3) any other person having custody of the child. (note, there is an issue as to whether this language encompasses the prospective adoptive parents. In an independent adoption, legal custody remains with the birth mother until the adoption is decreed.)

(c) No proceeding to terminate parental rights under this Section need be brought in any of the following situations:

- (1) the alleged father has, in writing, denied paternity;
- (2) the alleged father has, in writing, waived notice of all proceedings with regard to the adoption of the child;
- (3) the alleged father has voluntarily relinquished the child for adoption under Chapter 2 of Division 13;
- (4) the alleged father has voluntarily consented to the adoption of the child under Chapter 3 or Chapter 5 of Division 13;
- (5) the father-child relationship has been previously terminated by a court or adjudicated not to exist;
- (6) the alleged father was served with the notice as provided in Section 7663, and failed to bring an action for the purpose of declaring the existence of the father-child relationship pursuant to subdivision (c) of Section 7630 within 30 days of the date of service of the notice or of the date of the birth of the child, whichever is later.

(d) If a petition to terminate parental rights must be filed, notice of the proceeding on the petition must be given in accordance with Section (7635, hopefully) to the alleged father whose rights may be terminated. If a petition for adoption of the child has also been filed, notice of the adoption proceeding must also be given in accordance with Section (7635).

(e) There shall be no filing fee for any petition filed pursuant to this Section.

7665. Setting for hearing; preference for trial
(currently proposed § 7667)

7666. Continuance of hearing
(currently proposed § 7668)

7667. Order terminating parental rights in uncontested proceeding

(a) (currently proposed § 7665; except change the word "custodial" to "parental.")

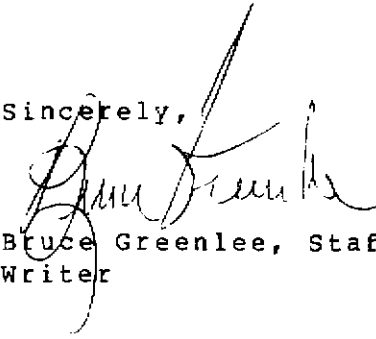
(b) If any alleged father who has been given notice of the proceeding under Section 7664 fails to appear, or if appearing fails to claim parental rights, his rights with reference to the child shall be terminated.

7668. Standards in contested proceeding

If any alleged father appears and claims parental rights, the court shall first adjudicate his paternity. (then follow with the rest of of what is currently proposed § 7664(b). Of course, from a policy point of view, I think it's unconstitutional. I think that if the man has been given the notice of paternity and files his own action to establish his paternity, or otherwise asserts his parental rights within a reasonable period of time after the birth of the child, the constitution requires that he be afforded an opportunity to have a parental relationship with the child. But that is a battle for another day, probably to be resolved by the United States Supreme Court.)

I again thank you for the opportunity to participate in this process and make my views known to you.

Sincerely,



Bruce Greenlee, Staff
Writer

pc. Steve Revell