

Memorandum 93-11

Subject: Study L-659.01 - Parent and Child Relationship for Intestate Succession

Attached is a revised staff draft of a recommendation on *Parent and Child Relationship for Intestate Succession*. This draft includes the revisions to Section 6451 (effect of adoption) suggested at the last meeting by several Commissioners and by Professor Halbach.

The staff recommends the Commission approve the recommendation for inclusion in the Commission's 1993 legislative program.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

RECOMMENDATION

**Parent and Child Relationship
for Intestate Succession**

January 1993

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

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports ____ (1993).

STATE OF CALIFORNIA

PETE WILSON, Governor

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January 28, 1993

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation clarifies the statute on parent-child relationship for purposes of intestate succession. It makes clear that natural siblings of the adoptee do not have a broader right to inherit from the adoptee than the adoptee has to inherit from them, and that adoptive siblings in the adoptee's family of origin may inherit from the adoptee to the same extent as the adoptee's natural siblings. Other clarifying changes include treating a prior adoptive parent and child relationship as a natural parent and child relationship, and simplifying the "open and notorious" requirement to establish paternity after the death of the alleged father.

This recommendation was prepared pursuant to Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall
Chairperson

PARENT AND CHILD RELATIONSHIP
FOR INTESTATE SUCCESSION

In general, natural relatives of an adopted person may not inherit from or through the adoptee, except that the adoptee's issue, a wholeblood¹ brother or sister of the adoptee, or the issue of that brother or sister, may still inherit from the adoptee.² But if the adoption is by a stepparent, natural relatives may inherit from or through the adoptee (and the adoptee may inherit from natural relatives), provided that certain requirements are satisfied to show that the adoptee had been part of the natural family.³ Must these familial ties also be established in order for the adoptee's wholeblood siblings or their issue to inherit from or through the adoptee in the case of a nonstepparent adoption?⁴

Although practitioners have had difficulty with this question, if the adoption was either by a stepparent or after the death of a natural parent, a wholeblood sibling of the adoptee may inherit from or through the adoptee only if the

1. "Wholeblood" means that the siblings have both natural parents in common. *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923). The exception in Probate Code Section 6408(c), permitting wholeblood but not halfblood siblings of the adoptee to inherit if the requirements of subdivision (b) are satisfied, was based on the assumed likelihood that a halfblood sibling may be in the custody of another family and not have close family ties with the adoptee.

2. Prob. Code § 6408(c).

3. Prob. Code § 6408(b)(1). The natural parent and adopted person must have lived together at any time as parent and child, or the natural parent must have been married to or cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child. *Id.*

4. The question is whether the provision in subdivision (c) of Probate Code Section 6408 for inheritance by wholeblood brothers or sisters of the adoptee and their issue is independent of the requirements of subdivision (b), or whether subdivision (c) is subject to subdivision (b). If subdivision (c) is subject to subdivision (b), in order for wholeblood siblings of the adoptee to inherit not only must the adoption be by a nonstepparent and the requirements of familial ties be satisfied, but the adoption must be after the death of a natural parent. This the only case in which both subdivisions (b) and (c) can apply.

requirements of familial ties are satisfied.⁵ If this were not true and a wholeblood brother or sister could inherit from or through the adoptee without satisfying the requirements of familial ties, the adoptee's wholeblood siblings would inherit from the adoptee in cases where the adoptee would not inherit from them. This would be anomalous, and cannot be justified on policy grounds.

The Commission recommends the statute be revised to make clear that an adoptee's wholeblood siblings may inherit from or through the adoptee in the same cases the adoptee would inherit from them — where the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.⁶

Use of the term "wholeblood"⁷ to describe siblings who may inherit from or through the adoptee notwithstanding the one-way inheritance provision may prevent children adopted by the adoptee's natural parents from inheriting from or through the adoptee. And there may be a question about the effect of successive adoptions. If there are successive adoptions, the first set of adoptive relatives should be cut off from inheriting from or through the adoptee the same as if they were natural relatives.

5. This is because inheritance is based on a "relationship of parent and child." See Prob. Code §§ 6408(a), 6402. The relationship of parent and child does not exist between the adoptee and the natural parent if the adoption is neither by a stepparent nor after the death of a natural parent. Prob. Code § 6408(b). Natural relatives of the adoptee, including a wholeblood brother or sister, may inherit from or through the adoptee only if a parent and child relationship exists with the natural parents, i.e., the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.

6. This revision would be a clarification of existing law, and would not be a substantive change.

7. See *supra* note 1.

The Commission recommends adding a provision to the statute to say that, for the purpose of the effect of adoption on inheritance, a prior adoptive parent-child relationship is treated as a natural parent-child relationship. This will also permit children adopted by both of the adoptee's parents in the adoptee's family of origin to inherit from or through the adoptee, the same as wholeblood natural siblings.

The present statute⁸ is lengthy, with seven subdivisions. This makes it difficult to use and understand. The Commission recommends the present statute be repealed and its substance reenacted in a series of shorter sections. Technical and minor substantive changes would be included in the recodification.⁹

8. Prob. Code § 6408.

9. The only significant change would simplify proof of paternity after death of the alleged father by requiring that he "openly" rather than "openly and notoriously" held out the child as his own. See Prob. Code § 6408(f)(2). Elimination of the "notoriously" requirement will simplify proof and better serve the purpose of the statute to ensure the child will inherit from or through an alleged father where the father was aware of the child's existence and believed the child to be his own. *Cf.* *Estate of Sanders*, 2 Cal. App. 4th 462, 475, 3 Cal. Rptr. 2d 536 (1992) (unfairness to child born out of wedlock where mother fails to bring paternity suit during father's lifetime).

RECOMMENDED LEGISLATION

Chapter heading immediately preceding Section 6400 (added)

CHAPTER 1. INTESTATE SUCCESSION GENERALLY

Prob. Code § 6408 (repealed). Parent and child relationship

~~6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:~~

~~(1) Except as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her natural parents, regardless of the marital status of the natural parents.~~

~~(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.~~

~~(b) The relationship of parent and child does not exist between an adopted person and the person's natural parent unless both of the following requirements are satisfied:~~

~~(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabitating with, the other natural parent at the time the child was conceived and died before the birth of the child.~~

~~(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.~~

~~(c) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.~~

~~(d) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that~~

~~natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:~~

~~(1) The parent or a relative of the parent acknowledged the child.~~

~~(2) The parent or a relative of the parent contributed to the support or the care of the child.~~

~~(e) For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and his or her foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.~~

~~(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:~~

~~(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.~~

~~(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.~~

~~(g) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.~~

Comment. Former Section 6408 is superseded by Sections 6450-6455.

Prob. Code §§ 6450-6455 (added). Parent and child relationship

CHAPTER 2. PARENT AND CHILD RELATIONSHIP

§ 6450. Parent and child relationship

6450. Subject to the provisions of this chapter, a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(a) The relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents.

(b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

Comment. Section 6450 continues subdivision (a) of former Section 6408 without substantive change. The language "[s]ubject to the provisions of this chapter" is placed in the introductory clause because Sections 6451, 6452, and 6454 modify the relationship of parent and child between an adopted person and the person's adopting parent or parents, as well as the relationship of parent and child between a person and the person's natural parents. See also Section 6453 (establishing natural parent-child relationship). In former Section 6408, application of the "except" clause was limited to the relationship of parent and child between a person and the person's natural parents.

The definitions of "child" (Section 26), "issue" (Section 50), and "parent" (Section 54) adopt the rules set out in this chapter. See also Section 6152 (construction of wills).

§ 6451. Effect of adoption

6451. (a) An adoption severs the relationship of parent and child between an adopted person and a natural parent of the adopted person unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) Neither a natural parent nor a relative of a natural parent (except for a wholeblood brother or sister of the adopted person or the issue of that brother or sister) inherits from or through the adopted person on the basis of a parent and child relationship between the adopted person and the natural parent that satisfies the requirements of paragraphs (1) and (2) of subdivision (a), unless the adoption is by the spouse or surviving spouse of that parent.

(c) For the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship.

Comment. Section 6451 continues the substance of subdivisions (b) and (c) of former Section 6408.

In case of an adoption coming within subdivision (a), the adopted child may inherit from or through the adoptive parent, and also from or through the natural parent who gave up the child for adoption or through the natural parent who died preceding the adoption. The following examples indicate in various situations whether an adopted child or the issue of an adopted child may inherit from or through the child's natural parent.

Example 1. Child never lived with either mother or father. Both parents relinquish child for adoption. The adopted child's relationship with both natural parents' families is severed. The requirements of subdivision (a)(1) are not satisfied.

Example 2. Child's mother and father were married or lived together as a family. Child lives with mother and father. Father dies. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of subdivision (a) is satisfied because the adoption was "after the death of either of the natural parents."

Example 3. Child's mother and father were married or lived together as a family until father died. Child lives with mother but not father because father died prior to child's birth. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family because the father died before the birth of the child (satisfying the subdivision (a)(1) requirement) and the adoption was after the death of the father (satisfying the subdivision (a)(2) requirement).

Under subdivision (a), a non-stepparent adoption severs the relationship between the adopted person and his or her natural "parent." Thus, for example, if a person is adopted by only one adopting parent, that severs the parent-child relationship between the adopted person and his or her natural parent of the same gender as the adopting parent. The parent-child relationship continues to exist between the adopted person and his or her other natural parent.

In case of an adoption described in subdivision (b), the natural relatives cannot inherit from the adopted child, even though under Section 6450(a) the child could inherit from the natural relatives.

In subdivision (b), the reference to inheritance on the basis of a parent-child relationship "that satisfies the requirements of paragraphs (1) and (2) of subdivision (a)" is added to make clear that, for a wholeblood brother or sister to inherit from or through the adoptee, the requirements of these two paragraphs must be satisfied. Under these two paragraphs, the relationship of parent and child does not exist between an adopted person and the person's natural parent unless the living-together or other requirements of paragraph (1) of subdivision (a) are satisfied, and the adoption was after the death of either natural parent. If the adoption was by the spouse of either natural parent, by its terms subdivision (b) does not apply. This is a nonsubstantive, clarifying revision, since that was the intent of subdivisions (b) and (c) of former Section 6408.

Subdivision (b) omits the reference to the adoptee's "issue" that was in the parenthetical "except" clause in subdivision (c) of former Section 6408. The former reference to "issue" was unnecessary. Issue of the adoptee do not inherit from or through the adoptee on the basis of a parent-child relationship between the adoptee and the

adoptee's parents. Rather they inherit from or through the adoptee on the basis of the parent-child relationship between themselves and the adoptee.

Subdivision (c) is new, and makes clear that, for the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship. Thus, for example, if a person is adopted by one set of parents, and later is adopted by a second set of parents, the second adoption severs the parent-child relationship between the adoptee and the first set of adoptive parents unless paragraphs (1) and (2) of subdivision (a) are satisfied, substituting "adoptive" for "natural" in those paragraphs. This is a clarification, and may be a change in prior law.

"Wholeblood" relatives were defined in *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923), to mean persons having both natural parents in common. One effect of subdivision (c) is to broaden "wholeblood" in subdivision (b) to include adoptive siblings in an appropriate case. For example, assume a person, *P*, is born to two parents, a brother, *B*, is born to the same two parents, and a half-sister, *S*, is born to the mother and later adopted by the father. *B* is a wholeblood sibling of *P* because they have both natural parents in common. For the purpose of inheritance, *S* is treated as a wholeblood sibling of *P*, because under subdivision (c) the effect of the adoption is to treat *S* as the natural child of the adopting father. If *P* is later adopted by two adopting parents, under subdivision (b) the adoption cuts off inheritance by most of *P*'s natural relatives, except that both *B* and *S* may inherit from or through *P* if the requirements of paragraphs (1) and (2) of subdivision (a) are satisfied.

§ 6452. Effect of birth out of wedlock

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent (except for a brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

Comment. Section 6452 continues the substance of subdivision (d) of former Section 6408.

The parenthetical "except" clause in Section 6452 omits the reference to the adoptee's "issue" that was in subdivision (d) of former Section 6408. The former reference to "issue" was unnecessary. Issue of a child born out of wedlock do not inherit from or through that child (their parent) on the basis of a parent-child relationship between the out-of-wedlock child and the child's parents. Rather they inherit from or through the out-of-wedlock child on the basis of the parent-child relationship between themselves and that child.

Also omitted in the parenthetical "except" clause is the former reference to a "natural" brother or sister of the out-of-wedlock child. This recognizes that an adoptive brother or sister of the out-of-wedlock child may inherit from or through that child. See Section 6450(b).

Section 6452 requires both acknowledgment and contribution to the support or care of a child born out of wedlock before a parent or a relative of a parent may inherit from or through the child, except that the issue of the child or a brother or sister of the child or the issue of such brother or sister may inherit from or through the child even though these requirements are not satisfied. For the purpose of Section 6452, it is sufficient if a relative of the parent acknowledges the child and contributes to the support or care of the child. If the child born out of wedlock is adopted, inheritance from or through the child may be precluded under Section 6451, even where the requirements of Section 6452 are satisfied.

§ 6453. Establishing natural parentage

6453. For the purpose of determining whether a person is a "natural parent" as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless either (A) a court order was

entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly held out the child as his own.

Comment. Section 6453 continues the substance of subdivision (f) of former Section 6408, except that former Section 6408(f)(2) required the father to have "openly and notoriously held out the child as his own." Subdivision (b) of Section 6453 omits "and notoriously," and merely requires the father to have "openly held out" the child as his own.

§ 6454. Inheritance involving foster child or stepchild

6454. For the purpose of determining intestate succession by a person or the person's issue from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements are satisfied:

(a) The relationship began during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent.

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

Comment. Section 6454 continues the substance of subdivision (e) of former Section 6408. Section 6454 applies, for example, where a foster child or stepchild is not adopted because a parent of the child refuses to consent to the adoption. See also *Estate of Lind*, 209 Cal. App. 3d 1424, 257 Cal. Rptr. 853 (1989); *Estate of Claffey*, 209 Cal. App. 3d 254, 257 Cal. Rptr. 197 (1989).

In the introductory clause of Section 6454, "issue" is substituted for "descendants" in former Section 6408(e). This change is nonsubstantive, and is for consistency with other provisions in this part. See, e.g., Sections 6401, 6402, 6402.5, 6451, 6452, 6455.

Even though the requirements of Section 6454 are satisfied, the natural parent may continue to inherit from the child under Section 6450(a). The foster parent or stepparent may not inherit from the child: Subdivision (b) of Section 6450 does not apply because the adoption was not completed, and Section 6454 does not apply because the section applies only to inheritance by the foster child or

stepchild or the child's issue "from" or "through" a foster parent or stepparent, not to inheritance "by" a foster parent or stepparent. The child, however, may inherit both from the natural parent under Section 6450(a), and from the foster parent or stepparent under Section 6454.

§ 6455. Equitable adoption

6455. Nothing in this chapter affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or the child's issue.

Comment. Section 6455 continues the substance of subdivision (g) of former Section 6408. "Issue" is substituted in Section 6455 for "descendants" in former Section 6408(g). This change is nonsubstantive, and is for consistency with other provisions in this part. See, e.g., Sections 6401, 6402, 6402.5, 6451, 6452, 6454.

Concerning equitable adoption, see *Estate of Wilson*, 111 Cal. App. 3d 242, 168 Cal. Rptr. 533 (1980).

CONFORMING REVISIONS

Prob. Code § 1207 (technical amendment). Exceptions to notice requirement involving parent-child relationship

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 6454 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

Comment. Section 1207 is amended to revise a cross-reference.

Prob. Code § 6406 (technical amendment). Relatives of halfblood

6406. Relatives *Except as provided in Section 6451,* relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.

Comment. Section 6406 is amended to recognize the exception in Section 6451. This amendment is clarifying.