First Supplement to Memorandum 93-48

1993 Legislative Program: Revised Comments to Enacted Legislation

Parent and Child Relationship for Intestate Succession

Attached as an Exhibit (pp. 1-2) is a proposed Report of the California Law Revision Commission on Chapter 529 of the Statutes of 1993 (AB 1137). It sets out revised Comments to two sections in the Commission recommendation *Parent and Child Relationship for Intestate Succession*. to take account of amendments to the bill in the Legislature and to overrule a recent case, *In re* Estate of Reedy. A copy of the decision is attached (pp. 4-11).

The Commission's recommendation was primarily to deal with confusion under Probate Code Section 6408(c) on the effect of adoption on inheritance. This provision was reenacted as Section 6451, operative January 1, 1994, with language to solve the constructional problem.

The *Reedy* case construed the soon-to-be-repealed provision the way the Commission sought to preclude by the new language. Counsel has petitioned the California Supreme Court for hearing, but we will probably not know whether it will be granted until mid-December or later. Nonetheless, the staff would like to make clear in the eighth paragraph of the Comment to Section 6451 that the result in *Reedy* would be changed by the new law:

> 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. This changes the result in *In re* Estate of Reedy, 22 Cal. Rptr. 2d 478 (1993). 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, because that was the intent of subdivisions (b) and (c) of former Section 6408.~~

If the Commission approves rejecting the *Reedy* case in the Comment to Section 6451, the attached Report should be approved for inclusion in the Commission's 1993 Annual Report.

Deposit of Estate Planning Documents With Attorney

Attached as an Exhibit (p. 3) is a Report of the California Law Revision Commission on Chapter 519 of the Statutes of 1993 (AB 209). It sets out revised Comments to three sections in the Commission recommendation *Deposit of Estate Planning Documents With Attorney* to take account of amendments to the bill in the Legislature. The Report should be approved for inclusion in the Commission's 1993 Annual Report.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

Exhibit

Parent and Child Relationship for Intestate Succession

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 529 OF THE STATUTES OF 1993 (ASSEMBLY BILL 1137)

Chapter 529 of the Statutes of 1993 was introduced as Assembly Bill 1137 by Assembly Member W. J. "Pete" Knight on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 529 are set out in the Commission's recommendation *Parent and Child Relationship for Intestate Succession,* 23 Cal. L. Revision Comm'n Reports xxx (1993). These comments remain applicable to Chapter 529, except for the revised comments set out below which reflect amendments to the bill made during the legislative process.

Prob. Code § 6451. Effect of adoption

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 and of the relinquishing mother's family. Child remains a member of 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. This changes the result in *In re* Estate of Reedy, 22 Cal. Rptr. 2d 478 (1993). If the adoption was by the spouse of either natural parent, by its terms subdivision (b) does not apply.

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.

Prob. Code § 6453. Establishing natural parentage

Comment. Subdivision (a) and paragraphs (1) and (2) of subdivision (b) of Section 6453 continue 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." Paragraph (2) of subdivision (b) of Section 6453 omits "and notoriously," and merely requires the father to have "openly held out" the child as his own.

Exhibit

Deposit of Estate Planning Documents With Attorney

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 519 OF THE STATUTES OF 1993 (ASSEMBLY BILL 209)

Chapter 519 of the Statutes of 1993 was introduced as Assembly Bill 209 by Assembly Member Paul V. Horcher on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 519 are set out in the Commission's recommendation *Deposit of Estate Planning Documents With Attorney,* 23 Cal. L. Revision Comm'n Reports xxx (1993). These comments remain applicable to Chapter 519, except for the revised comments set out below which reflect amendments to the bill made during the legislative process.

Gov't Code § 26827.6 (added). Fee for receiving and storing estate planning document

Comment. Section 26827.6 is new.

Gov't Code § 26827.7 (added). Fee for searching estate planning document

Comment. Section 26827.7 is new.

Prob. Code § 732 (added). Termination by transferring document to another attorney or superior court clerk

Comment. Section 732 is new. The depositor's last known address may be shown in a notice and acknowledgment under Section 715, in the depositor's advice of change of address to the attorney, or otherwise.

Section 732 provides one way an attorney may terminate a deposit. An attorney may also terminate a deposit as provided in Section 731 or, if applicable, Section 734.

By permitting an attorney to transfer a document to another depositary, Section 732 departs from the common law of bailments under which a depositary ordinarily has no authority to transfer the property to someone else. See 8 Am. Jur. 2d *Bailments* § 97 (1980).

Under Section 732, if an attorney transfers estate planning documents to another attorney, all documents must go to the same attorney. Presumably, the transferring attorney will use this procedure at the time the transferring attorney retires or ceases to practice in the estate planning area. See also Bus. & Prof. Code §§ 6180, 6180.1 (notice of cessation of law practice required when attorney goes out of practice).

For the fee to transfer an estate planning document to the superior court clerk under subdivision (c), see Gov't Code § 26827.6. See also Sections 1215-1217 (mailing of notice).

In re Estate of Edna Clara REEDY, Deceased.

Karyn STORY, Petitioner and Appellant,

v.

Sherry E. Farrow HARVEY, Objector and Respondent.

No. E009967.

Court of Appeal, Fourth District. Division 2.

Sept. 1, 1993.

Grandchild petitioned for letter of administration claiming that she and her siblings were entitled to inherit from their natural grandmother even though their mother, who had been born out of wedlock and put up for adoption, would not have been entitled to inheritance. The Superior Court, Riverside County, No. P-61523, William H. Sullivan, J., held that those grandchildren were entitled to letters of administration. Grandchild through nonadopted children appealed. The Court of Appeal, Hollenhorst, Acting P.J., held that children of adopted child were entitled to inherit from grandmother.

Affirmed.

Descent and Distribution ⇐25.1

Children of an adopted child could inherit from their natural grandmother by intestate succession, even if adopted child could not. West's Ann.Cal.Prob.Code § 6408.

Geller and Senter and Erika W. Senter, Santa Ana, for petitioner and appellant.

George Hugh Savord, Temecula, and Richard J. Pinto, Capistrano Beach, for objector and respondent.

OPINION

HOLLENHORST, Acting Presiding Justice.

The sole question presented by this appeal is whether the biological grandchildren of the deceased are entitled to inherit by intestate succession from their biological grandmother when their mother was born out of wedlock and formally adopted by an unrelated adoptive family shortly after birth.

The parties agree that the answer to this question is found in Probate Code section 6408.[1] That section defines the relationship of parent and child for intestate succession purposes.

Appellant Story, claiming through the mother's surviving brother and sister, claims that she is entitled to letters of administration, and to inherit decedent's estate, because the adoption eliminated a parent/child relationship between decedent and decedent's natural daughter. There being no such relationship, she contends that the grandchildren cannot take through their mother.

Respondent Harvey, claiming through the adopted mother, claims that she is entitled to letters of administration, and to inherit decedent's estate, even though there was no parent/child relationship between decedent and decedent's daughter. She contends that her rights as a grandchild are unaffected by her mother's adoption.

The trial court held that respondent Harvey, the granddaughter claiming through her adopted mother, was entitled to letters of administration.[2]

1. The trial court's decision was made under Probate Code section 6408.5. In 1990, the Legislature repealed that section, effective July 1, 1991, and incorporated it into Probate Code section 6408 without substantive change. Since the changes were not substantive, we will focus on the current text. The current text was also amended in 1992, effective January 1, 1994, to reflect adoption of the Family Code. (Stats. 1992, ch. 163, § 132.) Unless otherwise indicated, all further statutory references are to the Probate Code.

2. An order granting or denying letters of administration is an appealable order under section 7240. Section 8461 provides that grandchildren of the decedent are entitled to priority in the appointment as administrator over issue of

We agree with the trial court's interpretation of section 6408. We therefore affirm the trial court's determination.

FACTS

Edna Clara Reedy died without a will in January 1991. She left a natural daughter, Norma Collene Maddox, a brother and sister, and numerous offspring of living and deceased brothers and sisters, including appellant Karyn Story. Karyn Story filed a petition for letters of administration on February 25, 1991.

Norma Collene Maddox was born to the deceased out of wedlock in 1927 and given up for adoption. She was formally adopted by the Smith family. Mrs. Reedy consented to the adoption.

Mrs. Maddox had three children who now claim Mrs. Reedy's entire estate because they are the biological grandchildren of Mrs. Reedy. One of the grandchildren, Sherry E. Farrow Harvey, petitioned for letters of administration on this ground. She contends that she and her siblings are entitled to inherit from their grandmother even though their mother could not.

DISCUSSION

Section 6408 defines a parent/child relationship for intestate succession purposes. Subdivision (a) of section 6408 states the general rules that the relationship of parent and child exists between a child and his or her natural parents and between an adopted person and his or her adoptive parents.[3]

Subdivision (b) deals with the relationship between an adopted person and that person's natural parent. It provides that there is no such relationship unless two circumstances set forth in that section exist.[4] Those circumstances did not exist here, and thus there was no parent/child relationship between the adopted daughter, Mrs. Maddox, and her natural mother, Mrs. Reedy.

Respondent contends that the biological grandchildren of the decedent can inherit from her even if their adopted mother could not. She relies on subdivision (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."

Respondent contends that the parenthetical clause of this subdivision establishes a specific statutory exception for the purpose of "protecting the rights of grandchildren of deceased, without regard for the status of decedent's child as being born out of wedlock or adopted."

Respondent cites the recent case of *Estate of Corcoran* (1992) 7 Cal.App.4th 1099, 9 Cal.Rptr.2d 475. In *Corcoran*, the deceased had been born out of wedlock. Her father never acknowledged her, and he subsequently married and had two other children. The two other children were

brothers and sisters. Section 8462, subdivision (a) limits priority to relatives entitled to take by intestate succession. Section 6402 specifies the sequence of intestate succession.

3. "(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."

4. "(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 cohabiting 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."

therefore a biological half brother and half sister to the deceased. The court held that they were entitled to inherit from the deceased because the statutory term "natural brother or sister" included a half sister and a half brother.[5]

Relevant here is that court's rejection of appellant's argument that the half sister and the half brother could not inherit through their father because the father could not inherit from his natural daughter, the deceased.[6] The court decided that the argument "ignores the plain meaning of the statute, which provides an exception to the usual rule that the parent of a child born out of wedlock must acknowledge and support the child. The exception is where the child has brothers or sisters, *regardless of the conduct of the parent.*" (*Estate of Corcoran, supra,* 7 Cal.App.4th 1099, 1102, 9 Cal.Rptr.2d 475.)

Thus, even though the statutory language precluded the parent from inheriting from his child born out of wedlock, the parenthetical exception clause "(except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister)" was held to create a statutory exception allowing the biological half brother and half sister to inherit.

Respondent urges that the almost identical parenthetical clause in subdivision (c) should similarly be interpreted to recognize a statutory exception allowing the adopted child's children to inherit from their natural grandmother, even though the adopted child could not herself inherit from her natural mother because the conditions of subdivision (b) were not met.

We agree that the parenthetical clauses should be interpreted to be consistent with each other. More importantly, we find that the only way to give meaning to the parenthetical clause in subdivision (c) is to interpret it as creating an exception to the rule of noninheritance in the adoption situation.

The subdivisions governing adoption are subdivisions (b) and (c) of section 6408. Subdivision (b) states the general rule that the parent/child relationship is legally severed by adoption, except for stepparent adoptions. Subdivision (c) provides that the relative of a parent *cannot* inherit from or through the child if the child has been adopted.

The parenthetical exception clause in subdivision (c) modifies the phrase "relative of a parent." If the parenthetical exception clause is to have any meaning, it must mean that relatives of a parent who are the issue of the child, wholeblood brothers or sisters of the child, or the issue of those brothers and sisters, *can* inherit "from or through a child on the basis of the relationship of parent and child" *even if* the child has been adopted. The grandchildren of the deceased are, of course, relatives of a parent and issue of the child.[7]

The relationship of a natural parent and an adopted child is defined in subdivision (b) to exist only in the stepparent adoption situation. Subdivision (c) precludes the natural parent and relatives of the natural parent from inheriting from or through the child in the third-party adoption situation.

Since the parenthetical clause excludes issue of the adopted child from the definition of relative of the natural parent, we construe this language to mean that issue of the child can inherit through the child

5. Section 6408, subdivision (d) is applicable to out of wedlock children. It provides, in language nearly identical to section 6408, subdivision (c), that the parent or relative of a child born out of wedlock does not inherit from or through that child unless the parent or relative acknowledged the child and contributed to the support of the child. It contains a parenthetical exception clause nearly identical to subdivision (c).

6. Appellant was represented by the same counsel in *Corcoran* as appellant here.

7. Appellant argues that respondent is not within the class of persons covered by the parenthetical exception because, as a result of the adoption, she is no longer a relative of a parent. We agree with the *Corcoran* court that the biological link is sufficient in this situation to make respondent a relative of her biological grandmother. More importantly, appellant does not suggest any alternative meaning to be given to the parenthetical exception clause.

even if the child has been adopted by a third party.

THE STATUTORY AND LEGISLATIVE HISTORY

Appellant contends that the legislative history of the intestate succession law demonstrates that adoption results in a complete substitution of parents and extinguishes the natural parent-child relationship.

While the general principle is well established, exceptions to it exist, and we find the statutory and legislative history inconclusive on the question of whether the Legislature intended to provide an exception to the general rule in this situation.

Historically, the question of inheritance by or from an adopted child was separated from the question of inheritance by or from the relatives of an adopted child.

Under the 1872 Code, a legal relationship of parent and child was established by adoption. (Former Civ.Code, § 228, now §§ 221.74, 230.14.) The natural parents were relieved of all parental duties and responsibilities, and had no further rights over the child. (Former Civ.Code, § 229, now §§ 221.76, 230.16.)

The leading case of *Estate of Calhoun* (1955) 44 Cal.2d 378, 282 P.2d 880 summarized the statutory changes and case law up to 1955 in considering whether a natural brother or foster sister was entitled to inherit from the adopted decedent's estate. The court summarized the case law and statutory changes, including *In re Darling* (1916) 173 Cal. 221, 159 P. 606, which held that an adopted child *could* succeed to the estate of his natural grandparent because the statute only cut off the right of natural parents to inherit from the child.

Former Civil Code section 257, enacted in 1931 (Stats.1931, ch. 281, § 1700, p. 687) codified the *Darling* rule. Since the adopted child's status with regard to his or her other natural relatives was unchanged by statute, the right to inherit from them was not cut off by adoption. Similarly, the adopted child's family, other than the adoptive parents, had no right to inherit by intestate succession. Accordingly, *Calhoun* held that there was no right of inheritance between the adopted child and his foster brothers or sisters.

In a strong dissent, Justice Traynor argued that "[o]nly by treating the adoptive child as a natural child for all purposes of inheritance is that objective [of having the child become a member of the family of his or her adoptive parents] obtained." (*Estate of Calhoun, supra*, 44 Cal.2d 378, 392–393, 282 P.2d 880 (dis. opn. of Traynor, J.).)

Following *Calhoun*, the statute was promptly amended to provide that the adopted child *did not* have the right to inherit from a relative of the natural parent, and the relative of the natural parent had no right to inherit from the child. (Former Civ.Code, § 257, adopted Stats. 1955, ch. 1478, § 1, p. 2690.) Under former Civil Code section 257 the relationship to the natural parent and blood relatives was completely cut off, and the relationship to the adopting parent and his or her blood relatives was fully created. (*Estate of Garey* (1963) 214 Cal.App.2d 39, 29 Cal. Rptr. 98; 12 Witkin, Summary of Cal.Law (9th ed. 1990) § 144, pp. 179–180.) Accordingly, the adopted child is a lineal descendant and issue of the adoptive parent, and is not a lineal descendant or issue of the natural parent. (*Id.*, at § 145, pp. 180–181.)

The question then becomes whether or not the clear intent of this change has been substantially altered by later statutory changes.

In 1982, the California Law Revision Commission proposed, as part of a general revision of California probate law, to adopt a new code, including a provision relating to the rights of adopted persons.[8] The

8. In the absence of any other legislative history, we rely on the statements of the California Law Revision Commission to explain the intended effect of Probate Code amendments and revisions in this complex technical area. "The Comments are entitled to substantial weight in construing the new code. See, e.g., *Milligan v. City of Laguna Beach* [1983] 34 Cal.3d 829, 831–832 [196 Cal.Rptr. 38, 670 P.2d 1121] . . ." (20 Cal. Law Revision Com.Rep. (1990) p. 1006.) In

Commission report summary states: "Ordinarily an adopted person inherits from or through the adoptive parents but not from or through the natural parents who gave the person up for adoption. The proposed law permits a person who is adopted in a stepparent adoption to continue to inherit from and through the natural parents as well as the adoptive parents." (16 Cal.Law Revision Com.Rep. (1982) p. 2313.) The full text makes it clear that the Commission was concerned with inheritance rights in stepparent adoptions, but did not recommend changing the rule for third-party adoptions.[9] (*Id.*, at p. 2340.) As the Commission noted, a similar provision is also contained in section 2–109 of the Uniform Probate Code, and the statutory revision was intended to generally follow the uniform rule. (*Id.*, at p. 2305.)

The recommended principle was adopted in a different form in 1983, operative January 1, 1985, by former sections 6408 and 6408.5. (Stats.1983, ch. 842, §§ 55, 58, pp. 3049–3092.) Former section 257 was repealed at that time and replaced by former sections 6408 and 6408.5. (Stats.1983, ch. 842, § 55, pp. 3049–3092.)

Former section 6408.5, as adopted in 1983, began with the phrase "Notwithstanding Section 6408." Section 6408.5, subdivision (a) then read as follows: "Except for the issue of the child or a whole-blood brother or sister of the child or the issue of such brother or sister, neither a parent nor a relative of a parent inherits from or through a child on the basis of the relationship of parent and child between that parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent." (Stats.1983, ch. 842, § 55, p. 3084.)

The available legislative history consists of the Commission reports, quoted above, and the Senate Journal comments reflecting the view of the Senate Committee on the Judiciary.[10] (Sen.Com. on Judiciary Rep. on Assem. Bills 25 and 68 (1983); 3 Sen.J. (1983–1984 Reg.Sess.) pp. 4882–4883.) Referring to former section 6408, the comment discusses the change allowing the child to inherit from both the natural parent and the adoptive parent in stepparent adoptions. It then states: "In some cases the natural relatives cannot inherit from a child adopted by another, even though under Section 6408 the child could inherit from the natural relatives. See Section 6408.5." (*Id.*, at p. 4882.)

It thus appears that former section 6408.5 was intended to state the general rule that natural relatives could not inherit from a child adopted by another person, and the parenthetical exception clause declared the inapplicability of this rule to issue of the adopted child. The comment to section 6408.5 states: "Section 6408.5 is new and provides for cases where natural relatives may not inherit from or through an adopted child or a child born out of wedlock, even though the child may inherit from the natural relatives under Section 6408." (3 Sen.J. (1983–1984 Reg.Sess.) p. 4883.)

The rationale for the parenthetical exception was not discussed. (See discussion in *Estate of Sanders* (1992) 2 Cal.App.4th 462, 473, 3 Cal.Rptr.2d 536.) However, it

particular, the Report of Senate Committee on Judiciary on Assembly Bills 25 and 68 (1983) specifically states that the Commission's comments represent the intent of the Senate Judiciary Committee in approving former sections 6408 and 6408.5 in 1983. (3 Sen.J. (1983–1984 Reg.Sess.) p. 4867.)

9. The recommended language of section 6408, subdivision (a)(3) stated: "The relationship of parent and child does not exist between an adopted child and its natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent." (*Id.*, at p. 2459.)

10. The parties do not cite any other legislative history underlying the adoption of section 6408.5. The review of new legislation in the Pacific Law Journal notes that the chapter provides that "a natural parent or relative of a parent cannot inherit from or through the parent's child on the basis of the parent-child relationship, if the child has been adopted by someone other than the natural parent's spouse or surviving spouse." (Selected 1983 Cal. Legislation, Administration of Estates (1983) 15 Pacific L.J. 423, 442.) It notes the exception in a footnote, but does not discuss the reason for the exception. (*Id.*, at fn. 214.)

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does not clearly appear that the Legislature intended to alter the rule of former section 257 with regard to nonstepparent adoptions.

Former section 6408.5 was amended in 1984, prior to the January 1, 1985 effective date of the revised code, to read as follows: "(b) 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 such 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." (Stats.1984, ch. 892, § 42, p. 3001.)

Although the Law Revision Commission reviewed the newly enacted code, and suggested technical changes, it did not propose this change. (17 Cal.Law Revision Com. Rep. (1983) p. 582; see, also, "Communication of Law Revision Commission Concerning Assembly Bill 2290" 18 Cal.Law Revision Com.Rep. (1986) pp. 89–90.)

The Law Revision Commission did specifically review the question presented here in a 1985 recommendation entitled "Effect of Adoption or Out of Wedlock Birth on Rights at Death." (18 Cal.Law Revision Com.Rep. (1986) p. 293, et seq.) This report focuses on the stepparent adoption situation and recommends "that the new statute [§ 6408.5] be amended to permit the adopted child to inherit from relatives of the natural father where the natural father was married to or cohabiting with the child's mother at the time the child was conceived and died before the birth of the child." (*Id.*, at p. 295.) A specific amendment is proposed and the Comment states that "The effect of the amendment is to expand the situations where inheritance is allowed." (*Id.*, at p. 302.)

Although the Comment does not discuss the exclusion of subdivision (b), relating to adopted children, presumably because no changes were recommended for that subdivision, it did recommend changes in subdivision (c), relating to out of wedlock children. The commission states: "Subdivision (c) is amended to permit inheritance from or through a child born out of wedlock if a relative of the parent acknowledges the child and contributes to the support or care of the child. In addition, subdivision (c) is amended to permit the issue of the child or a brother or sister of the child or the issue of such brother or sister to inherit from or through the child even though the requirements of paragraphs (1) and (2) of subdivision (c) are not satisfied. If the child born out of wedlock is adopted, inheritance from or through the child may be precluded under subdivision (a) or (b), even where the requirements of subdivision (c) are satisfied." (18 Cal.Law Revision Com.Rep. (1986) p. 303.)

The sections were subsequently amended in accordance with these recommendations. (Stats.1985, ch. 982, § 22.) At the same time, the introductory clause was amended to state "Notwithstanding subdivisions (a) and (b) of Section 6408." Respondent argues that this change shows an intent to make an exception to those paragraphs of former section 6408.[11]

In 1990, the Law Revision Commission proposed a new probate code. While admitting that the sections were complicated and their interrelationship could be confusing, the Commission recommended consolidation of sections 6408 and 6408.5 without substantive change. (20 Cal.Law Revision Com.Rep. (1990) p. 1046.) However, in its comment to section 6408, the Commission interpreted the previous law as follows: "In case of an adoption coming within subdivision (b), 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*

11. The argument is not persuasive because at that time the referenced subdivisions were those stating the general rule (subd. (a)) and the rule for intestate succession through a foster parent or stepparent (subd. (b)). (Stats.1985, ch. 982, § 21.) The rules relating to adoption were contained in section 6408.5, subdivisions (a) and (b) at that time. (*Id.*, at § 22.)

adopted child may inherit from or through the child's natural parent." (*Id.*, at p. 1468, emphasis added.) In the examples given, a failure to meet the requirements of subdivision (b) is held to have severed the relationship between natural parent and adopted child. The statement, and the examples, therefore support appellant's position that the issue of the adopted child can only inherit in the stepparent adoption situation, not in the third-party adoption situation.

With regard to subdivision (c), relating to the out of wedlock situation, the Comment states that "the natural relatives cannot inherit from the adopted child, even though under subdivision (a)(1) the child could inherit from the natural relatives." (20 Cal. Law Revision Com.Rep. (1990) p. 1469.) In describing the 1985 amendment to subdivision (c), the Comment states: "In addition, the amendment permitted the issue of the child or a brother or sister of the child or the issue of such brother or sister to inherit from or through the child even though the requirements of paragraphs (1) and (2) of subdivision (c) are not satisfied." (*Id.*, at p. 1471.) This statement supports respondent's position that the issue of the adopted child can inherit through the adopted child in the third-party adoption situation.

We therefore conclude that the legislative and statutory history is inconclusive on the question of whether the Legislature, in adopting former section 6408.5 and subsequently amending it further, intended to change the rule of former section 257 in the third-party adoption situation.[12]

Appellant also presents a strong argument that the adoption statutes and the Uniform Parentage Act (Civ.Code, § 7000 et seq.) carry out the legislative intention to have the adoptive relationship completely substitute for the natural relation in the case of third-party adoptions. The only post–1983 case cited, *Huffman v. Grob* (1985) 172 Cal.App.3d 1153, 218 Cal.Rptr. 659, supports appellant's position. In that case, grandparents sought visitation rights with an adopted grandchild. The court denied the request, saying "[t]he purpose of the laws severing old family ties after adoption is to permit the new, adoptive family ties to solidify and to confer upon the new parent(s) discretion to provide for the best interests of the adopted child without interference from the former relatives." (*Id.*, at p. 1157, 218 Cal.Rptr. 659.) If grandparents cannot visit the adopted child, should the adopted child be able to inherit from them under the laws of intestate succession?

The general principle that adoption cuts off ties with the natural parents, and relatives of the natural parents, is well established. However, that general principle does not help us in giving meaning to the parenthetical exception of section 6408, subdivision (c). As noted above, that parenthetical exception states that issue of an adopted child can inherit from their biological grandparents, despite the adoption of the child.

CONCLUSION

If the parenthetical clause in section 6408, subdivision (c) is to be given any meaning at all, it must mean that children of an adopted child are able to inherit from their grandparents. Since the canons of statutory construction require us to give effect to every word or phrase of a statute whenever possible, we conclude that the statute has the meaning ascribed to it by respondents. (*Estate of Sanders, supra*, 2 Cal.App.4th 462, 470, 3 Cal.Rptr.2d 536; *Estate of Garey, supra*, 214 Cal.App.2d 39, 41, 29 Cal.Rptr. 98.) Accordingly, here the children of the adopted child are entitled to inherit from their biological grandmother.

12. The secondary authorities are not particularly helpful. One states only that "An adopted child's natural parents or relatives do not succeed to the child's estate if someone other than that parent's spouse or surviving spouse has adopted the child." (3 Cal. Decedent Estate Practice (Cont.Ed.Bar 1992) § 24.2, pp. 24–4 to 24–5.) Mr. Witkin states: "Prob.C. 6408.5 delineates circumstances in which natural relatives may not inherit from or through an adopted child or a child born out of wedlock, even though the child may inherit from the natural relatives under Prob.C. 6408...." (12 Witkin, Summary of Cal.Law (9th ed. 1990) § 153, p. 186.)

The trial court was therefore correct in its decision that Mrs. Harvey was entitled to letters of administration.

DISPOSITION

The judgment is affirmed.

TIMLIN and McKINSTER, JJ., concur.