Study L-659.02 January 9, 1996

Second Supplement to Memorandum 96-7

1996 Legislative Program:
Inheritance From or Through Child Born Out of Wedlock

The Commission has approved a recommendation to make siblings of a child born out of wedlock and their issue subject to the same conditions for inheritance from or through the child as other relatives of the child — the parent or a relative of the parent must have acknowledged, and contributed to the care or support of, the child. The proposed legislation would delete the "except" clause from Probate Code Section 6452:

> 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.

The recommendation is based on the assumption that it will usually approximate the intent of a deceased intestate child born out of wedlock. It was originally urged by several practitioners. The Tentative Recommendation was supported by the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, by Professor Edward Halbach, and by individual practitioners. There was no opposition to it.

We have a recent communication from Judge Arnold Gold for the California Judges Association, who says the recommendation

> is overly simplistic, assuming (without any statistical data to support it) the frequency or infrequency of various sorts of fact situations. Suppose the parent or a relative of the parent did not acknowledge or contribute to the support or care of the child, but the child and a sibling of the child who is also a child of the same

> parent lived in the same household for years. Shouldn't that sibling be able to inherit from the child? Not according to the proposal.

The staff agrees that, in Judge Gold's hypothetical, the sibling should inherit from the deceased out-of-wedlock child, but it is unlikely the sibling would be precluded from inheriting in this hypothetical. A full sibling will inherit through the other parent if that parent is not disqualified. Only a half sibling will be precluded by Section 6452 from inheriting from a deceased out-of-wedlock child, and only if the shared parent is the one who fails to acknowledge or support the child. In most cases, this will probably be the father, since the blood relationship between mother and child will not be in doubt. Where a half sibling has the same father as the deceased out-of-wedlock child but a different mother, it seems unlikely the half-sibling and deceased out-of-wedlock child would have shared the same household as in Judge Gold's hypothetical. Admittedly, we do not have statistical data to support this assumption, but the practitioners who reviewed this recommendation support it. Intestate succession law

> should not attempt to provide for all of the complex alternatives that might be covered by wills. Because succession statutes provide the estate plan for the majority of persons, such statutes should be comprehensible to any intelligent person and should provide for a distribution that the average decedent probably would have wanted if an intention had been expressed by will.

Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 200 (1979).

The staff believes the recommended legislation does this and is satisfactory as drafted, but would add the following to the Comment:

> Although a sibling may not inherit from a deceased out-of-wedlock child through a parent who has failed to acknowledge or contribute to the support of the deceased child, the sibling may nonetheless inherit through the other parent if that parent is not disqualified.

Respectfully submitted,

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