

Admin.

November 25, 1998

Second Supplement to Memorandum 98-56

New Topics and Priorities

Child Custody, Visitation, and Support (Memo. 98-56, p. 20)

In Memorandum 98-56, the staff notes the letter of Robert M. Allen, of San Jose, who urges repeal of Family Code Section 4071.5. Under that section, a parent is not eligible for reduction of the parent's child support obligation in hardship situations, if any welfare payments are being made on behalf of any child of the parent. Mr. Allen argues that the provision is unfair, discriminatory, either ambiguous or illogical, and probably unconstitutional.

The staff has recommended against the Commission becoming involved in this matter, which is of a type continually before the Legislature and politically charged.

In response, Mr. Allen sends news that the Court of Appeal has now held the statute unconstitutional. *County of Orange v. Ivansco*, 98 Daily Journal D.A.R. 10897 (Oct. 20, 1998). "I would recommend that the Law Revision Commission reconsider this matter and recommend repeal of Family Code Section 4071.5 because of its unconstitutionality." Exhibit p. 1.

The Commission is mandated by statute to recommend the express repeal of all statutes held unconstitutional by the Supreme Court of the state. Gov't Code § 8290. The staff is informed that the Attorney General does not presently intend to seek a hearing in the Supreme Court. However, the same issue is currently pending in two other appellate districts, and has already been briefed in one of them. The staff will continue to monitor the activity in this area.

Exhaustion of Administrative Remedies (Memo. 98-56, pp. 30-31)

In Memorandum 98-56 the staff suggests that the Commission pursue enactment of individual provisions from its recommendation on judicial review of agency action that would make a significant improvement in the law.

We have recently received communications from Jack W. Golden, a deputy county counsel in Orange County, who notes that during the last three years he has been involved in the "labyrinthine" superior and appellate court writ

procedures involving CEQA and the coastal act. He also notes that he is in a situation right now where there are three superior court CEQA suits and one appeal on the same project with the same city petitioners. "It is a ludicrous waste of public resources to be defending four proceedings when it could be streamlined into one." He offers his assistance to the Commission in improving the law in this area, if the Commission will continue to champion revisions. Exhibit pp. 2-3.

Derivative Actions (Memo. 98-56, p. 35)

We noted in previous memoranda the possibility of an amicus brief for the Supreme Court in *Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n*, 72 Cal. Rptr. 906 (1998) (applicability of business judgment rule to homeowner association's duty of repair and maintenance).

We have now received a copy of such a brief submitted for filing by Curtis C. Sproul of Sacramento. The brief notes that the case provides the court an opportunity to clearly state the elements of the business judgment rule. The brief refers both to the recommendation of the Commission and the background study prepared by Professor Eisenberg for the Commission.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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Law Revision Commission
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October 26, 1998

File: _____

California Law Revision Commission
4000 Middlefield Road, #Rm. D-1
Palo Alto, CA 94303-4739

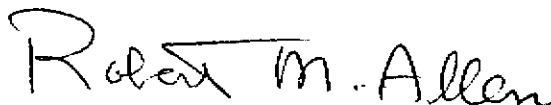
Re: Family Code Section 4071.5 (Child Support)

To Whom It May Concern:

This is a follow-up to my January 9, 1998 letter and to my receipt of a copy of your staff memorandum 98-56 dated September 3, 1998 (page 20). It was the staff's recommendation against becoming involved in my complaint against Family Code Section 4071.5.

Enclosed please find a copy of the published Court of Appeals' decision in the case of County of Orange vs. Ivansco (October 20, 1998) finding Family Code Section 4071.5 unconstitutional for reasons cited in my January 9, 1998 letter. I would request that the Law Revision Commission reconsider this matter and recommend the repeal of Family Code Section 4071.5 because of its unconstitutionality.

Very truly yours,



Robert M. Allen

RMA:ca

Enc.

From: "Golden, Jack" <jgolden@coco.co.orange.ca.us>
To: "'webmaster@clrc.ca.gov'" <webmaster@clrc.ca.gov>
Subject: Judicial Review of Agency Action
Date: Thu, 19 Nov 1998 10:51:39 -0800
MIME-Version: 1.0
X-Rcpt-To: webmaster@clrc.ca.gov

Please forward this message to the staff person most knowledgeable about the status of the Commission's recommendations on Judicial Review of Agency Action and on whether the fact that SB209 was defeated in committee is the death knell of this project, or whether the Commission will continue to champion revisions.

I did not participate in the process during the last three years because I did not have the expertise to be of any assistance. During that time period I have been involved in labyrinthine superior and appellate court writ proceedings concerning CEQA and the Coastal Act. I now believe I do have enough experience in this field to be of some assistance to the commission in improving the law in this area. If the project is not dead, please include me on any mailing list, meeting notice list, etc. Thanks.

Jack W. Golden
Deputy County Counsel
County of Orange
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(714)834-3357, fax 834-2359

From: "Golden, Jack" <jgolden@coco.co.orange.ca.us>
To: "'sterling@clrc.ca.gov'" <sterling@clrc.ca.gov>
Subject: Judicial Review of Agency Actions
Date: Fri, 20 Nov 1998 16:47:04 -0800
MIME-Version: 1.0
X-Rcpt-To: sterling@clrc.ca.gov

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Thanks for your note. I've been unable to download the non ".doc" files from your site. Could you mail to me or e-mail to me the final revised report of the commission on this subject. Second, is there a concise document that lists what the objections to the project were?

I am in a situation right now where there are 3 superior court CEQA suits and one appeal on the same project with the same city petitioners. It is a ludicrous waste of public resources to be defending four proceedings when it could be streamlined into one.

Thanks.

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