

Leg. Prog.

June 18, 1999

Memorandum 99-26

1999 Legislative Program: Status of Bills

Attached to this memorandum is a chart showing the status of bills in the Commission's 1999 legislative program. Exhibit p. 3. This memorandum supplements the information in the chart. Additional aspects of the bills are also addressed in Memorandum 99-29 (trial court unification), Memorandum 99-37 (administrative rulemaking), Memorandum 99-38 (health care decisions), and Memorandum 99-40 (Uniform Principal and Income Act).

Eminent Domain Valuation Evidence

This recommendation would merely clarify some confusing language found in Evidence Code Section 822(a)(1):

Evid. Code § 822 (amended). Matter inadmissible as evidence

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:

(1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain, ~~except that the~~ The price or other terms and circumstances of an acquisition of property that at the time of acquisition was already appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain was already appropriated. As used in this paragraph, "property appropriated to public use" has the meaning provided in Section 1235.180 of the Code of Civil Procedure.

(2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which such property or interest was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision

permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

(3) The value of any property or property interest as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.

(4) An opinion as to the value of any property or property interest other than that being valued.

(5) The influence upon the value of the property or property interest being valued of any noncompensable items of value, damage, or injury.

(6) The capitalized value of the income or rental from any property or property interest other than that being valued.

(b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable.

~~(c) The amendments made to this section during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988.~~

The Commission's recommended clarification was added to two different bills dealing with eminent domain issues — AB 321 (Wildman) and SB 634 (Kelley) — but has since been deleted from SB 634 on the assumption that AB 321 will take care of the matter.

The Assembly Judiciary Committee consultant who analyzed this proposal was unhappy with the clarification, asserting that it was just as confusing as the previous language:

The latter paragraph is intended to clarify the former one. CLRC recommended this "clarification" after an appeals court misinterpreted Evidence Code Section 822. While the CLRC proposal may make perfect sense to attorneys that specialize in eminent domain litigation, this section also needs to be understandable to non-specialists and the public. The proposed revision is as obscure and filled with legalese as the existing law, which makes it just as vulnerable to misinterpretation in the future.

The California Department of Transportation, which sponsored the 1987 legislation that added the problem language, supports the Commission's proposed clarification. However, CalTrans has come to the conclusion that a better fix is simply to delete the confusing language and restore the law to its pre-1987 state. The problem the special rule seeks to address occurs so rarely, and the confusion caused by it is so great, that it is better just to leave the matter to general principles:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:

(1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain, ~~except that the price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain.~~

The staff agrees with the CalTrans proposal, as does the Assembly Judiciary Committee consultant. The staff believes that general evidentiary principles are adequate to handle the matter. See Section 823 ("Notwithstanding any other provision of this article, the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.")

Assemblyman Wildman's office has informed us they plan to amend AB 321 to delete the objectionable language from Evidence Code Section 822 before the bill is heard in the Senate. If this is acceptable to the Commission, the staff proposes to revise the Commission's Comment accordingly, to read:

Comment. Section 822(a)(1) is amended to clarify its meaning. See Code Civ. Proc. § 1235.180 ("property appropriated to public use" in Eminent Domain Law means property already in use for, or set aside for, public purpose). The amendment reverses the interpretation of the provision in *City and County of San Francisco v. Golden Gate Heights Investments*, 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467 (1993) delete the special exception, in reliance on general evidentiary principles. See, e.g., Section 823 ("Notwithstanding any other provision of this article, the value of property for which there

is no relevant, comparable market may be determined by any method of valuation that is just and equitable.”).

Subdivision (c) is deleted as obsolete.

Inheritance by Step or Foster Child

This recommendation would resolve a conflict between courts of appeal on the proper interpretation of Probate Code Section 6454. That statute, enacted on recommendation of the Commission, treats a step or foster child as an adopted child of the step or foster parent for purposes of inheritance if a number of conditions are satisfied, including that the step or foster parent “would have adopted the person but for a legal barrier.” (The typical legal barrier is refusal of the natural parent to consent to the proposed adoption of a minor child.)

The question of interpretation is whether the legal barrier must have existed throughout the joint lives of the step or foster parent and child or only at the time the adoption was attempted. The Commission’s recommendation would resolve the conflict by making clear that the legal barrier must have existed only at the time the adoption was attempted:

Prob. Code § 6454 (amended). Foster child and step child inheritance

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 existing at the time the adoption was contemplated or attempted, other than that person’s refusal to consent or agree to the adoption.

While we were seeking a legislative vehicle for this recommendation, several significant events occurred:

(1) The Supreme Court acted to resolve the conflict between courts of appeal by adopting a rule that the legal barrier must have existed throughout the joint lifetimes of the parties. See *Estate of Joseph*, 17 Cal. 4th 203 (1998). This interpretation effectively writes the statute out of existence for most purposes.

(2) We received communications from a prominent probate litigator (Lyn Hinojosa) objecting to the Commission's recommendation. His position is that the proposal creates undue litigation and injustice because it gives leverage to an opportunistic person who would not otherwise have a claim to the estate, enabling that person to extort a settlement.

(3) The Executive Committee of the State Bar Probate Section has informed us it is no longer supportive of the Commission's recommendation. See Exhibit pp. 1-2.

(4) A legislative author who had tentatively agreed to include the Commission's recommendation in pending probate legislation decided against it in light of the foregoing developments.

The staff believes we ought to discontinue our effort to enact this particular Commission recommendation. The thrust of the recommendation is to resolve a conflict in the courts of appeal; this has now been done by the Supreme Court, obviating the need for legislation. While we would have preferred that it be resolved the other way, this is a minor proposal in any event and it will be difficult to obtain an author in light of the anticipated opposition.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

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RECEIVED

JUN - 3 1999

Re: Inheritance by Stepchild or Foster child
Estate of Joseph
Probate Code §6454

File: _____

Dear Nat:

I enjoyed speaking to you at the State Bar Community Property Institute program in San Francisco in April about the legislative proposal to amend Probate Code §6454. With apologies for this delayed "official" response, I am writing to explain the position of the State Bar Estate Planning, Trust & Probate Law Section with respect to the proposed change to reverse the holding of the California Supreme Court in *Estate of Joseph* (1998) 17 Cal 4th 216.

The proposed change would add the language "existing at the time the adoption was contemplated or attempted, other than that person's refusal to consent or agree to the adoption" after the language in Probate Code §6454(b), so that the subsection would read as follows:

"(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 existing at the time the adoption was contemplated or attempted, other than that person's refusal to consent or agree to the adoption." Recommendation: Inheritance by Foster Child or Stepchild (Oct 1997) 27 Cal Law Revision Comm Rep (1997).

The change would result in the creation of intestate succession rights for unadopted stepchildren and foster children who were not adopted during their minority because of the opposition of a natural parent and were not adopted as adults even though the natural parent's opposition would not be a legal barrier at that time. In other words, contrary to the holding in *Estate of Joseph* (and similar to the holding in *Estate of Stevenson* (1992) 11 Cal App 4th 852), the legal barrier to adoption would be required to exist only at the time of the attempted adoption and not throughout the joint lifetimes of the child and the foster parent or stepparent.

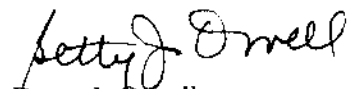
The litigation committee of the Section studied the CLRC's proposal as well as the persuasive arguments in both the majority and dissenting opinions in *Estate of Joseph* and recommended opposition to the proposed amendment for the following general reasons:

- (1) The proposed change would increase litigation by expanding the class of unadopted step and foster children as potential heirs;
- (2) The proposed change is contrary to most people's expectations about inheritance by intestate succession and thereby presents a significant danger of imposing an unintended estate plan.; and
- (3) The proposed change would require a person to write a will to disinherit an unadopted stepchild or foster child, rather than, as is now the case, to write a will to include an unadopted stepchild or foster child in his or her estate plan.

Although the Section had considered and voted to oppose this proposal in the past, we discussed it again, in response to your request, at our recent annual retreat in mid-April. After considerable debate, the Section voted to adhere to its earlier position. There was very limited support for reopening a full study of the proposed change. If you have empirical data that any of our assumptions about public expectations with respect to intestate succession are not justified, the Section will be glad to reconsider the proposal in the light of such data.

As always, we look forward to working with you on this and other legislative proposals.

Sincerely yours,



Betty J. Orvell
Legislation Chair

cc: Susan House
James Ellis
Robert Temmerman
Mary Gillick
Larry Doyle

Status of 1999 Commission Legislative Program

As of June 18, 1999

		AB 321	AB 486	AB 846	AB 891	ACR 17	SB 210		Budget
First House	Introduced	Feb 8	Feb 18	Feb 24	Feb 25	Feb 25	Jan 20		Jan 8
	Last Amended	Jun 2	Apr 5	Jun 15	May 27	—	May 6		—
	Policy Committee	May 11	Apr 7	May 11	Apr 20	May 11	Mar 16		Feb 24
	Fiscal Committee	—	Apr 29	—	May 19	May 26	—		Apr 27
Second House	Passed House	Jun 4	May 13	May 20	Jun 1	Jun 2	Mar 23		Apr 29
	Policy Committee	<i>Jun 29</i>	<i>Jul 6</i>	<i>Jun 29</i>	<i>[Jul 13]</i>	<i>Jun 30</i>			Mar 8
	Fiscal Committee	—		—			—		May 25
	Passed House								May 27
Concurrence									Jun 16
Governor	Received					—			
	Approved					—			
Secretary of State	Date								
	Chapter #								

Index: AB 321 (Wildman): Eminent Domain Valuation Evidence
 AB 486 (Wayne): Advisory Interpretations and Consent Regulations
 AB 846 (Ackerman): Uniform Principal and Income Act
 AB 891 (Alquist): Health Care Decisionmaking for Adults Without Decisionmaking Capacity

ACR 17 (Wayne): Continuing Authority To Study Topics

SB 210 (Senate Judiciary Committee): Trial Court Unification Cleanup

Budget Bill (AB 135 & SB 160)

Inheritance by Stepchild or Foster Child (not yet introduced)

KEY

Italics: Future or speculative
 “—”: Not applicable