

Memorandum 92-32

Subject: Study F-1000 - Family Code (Amendments to Assembly Bills 2641 and 2650)

The Family Code bills have passed the Assembly and will be heard in the Senate in June. (Copies of AB 2641 and AB 2650 are attached to this memorandum.) Both bills need to be amended and reprinted before the hearing in the Senate Judiciary Committee.

Attached to this memorandum is a set of draft amendments to the Family Code bill, Assembly Bill 2650, as amended in the Assembly on March 23. (See attached amendments, pp. 1-12.) These amendments make additional technical corrections and resolve issues raised by several commentators. The amendments do not make substantive changes.

Also attached are some technical amendments of the conforming revisions bill, Assembly Bill 2641, as amended in the Assembly on March 19. (See attached amendments, pp. 13-15.)

We do not intend to review the attached amendments in detail at the meeting. If a Commissioner wants to consider any of the points raised in any of the attached exhibits or in the amendments, the staff will be happy to respond.

Due to the legislative schedule, it may be necessary to include some additional technical amendments without an opportunity for prior Commission approval. Any such amendments will be submitted to the Commission at the next meeting and necessary changes can either be made by amendment on the Senate floor or in the follow-up bill in the 1993 session. The staff would not, of course, accept any substantive changes.

Also attached as exhibits are letters from a number of people:

Exhibit 1 (pp. 1-3): Nancy K. D. Lemon, Co-Chair of the Family Law Committee, California Alliance Against Domestic Violence.

Exhibit 2 (pp. 4-5): Senator David Roberti to Assembly Member Phil Isenberg.

Exhibit 3 (pp. 6-7): Lawrence M. Gassner, on behalf of the Executive Committee of the Family Law Section of the State Bar. This letter responds to a series of issues the staff faxed to Mr. Gassner at his request for consideration at FLEXCOM's meeting. (See Exhibit pp. 8-9.)

Exhibit 4 (pp. 10-11): Robert A. Chrisman, State Bar Family Law Section Executive Committee, to Larry Doyle. This is the first report of FLEXCOM under the procedure outlined in Mr. Gassner's letter in Exhibit 3.

As you review the amendments, you will notice that there is an italicized entry, usually a section number in the Family Code, preceding the amendment number. This is provided for convenience in locating items in the amendments and relating them to the bill. Where a number is followed by "ch" or "art" or "pt," the amendment relates to a chapter, article, or part heading that precedes the indicated section.

The staff has the following comments on the proposed amendments:

Spousal fiduciary standards. The Commission will recall the discussion at the March meeting of the concerns expressed by Dorothy Jonas and Bonnie Sloan, Co-Chairs of the Los Angeles Women's Leadership Network, as to the reorganization of the statutes concerning fiduciary relations between spouses. (See also the letter from Senator Roberti in Exhibit 2, pp. 4-5.) Amendments 31-32 and 34-36 restore the language of existing Civil Code Sections 5103, 5125, 5125.1, 5127, and 5128, with a few minor editorial changes that have been agreed to by the concerned persons. The changes are (1) using "situated" instead of "situate" in Family Code Section 1102, (2) correcting a typographical error in existing Civil Code Section 5125.1 (Family Code § 1101) where "community interest" was used instead of "community estate," (3) replacing "him or her" with "one spouse" in Family Code Section 721, and (4) dividing Family Code Section 1102 (Civ. Code § 5127) into subdivisions. Amendments 11, 26, and 33 move two miscellaneous provisions to more logical locations and thus help unify the part of the Family Code concerning the relation of husband and wife.

Factors for determining amount of support. FLEXCOM suggests that the statute make clear that the factors for determining the amount of spousal support under Family Code Section 4320 (Civ. Code § 4801) apply only to permanent orders and not to temporary orders pendente lite

under Family Code Section 3600 (Civ. Code § 4357(a)). See Exhibit 3, p. 7.) The bill does not apply the permanent order factors to temporary support orders, but due to some changes in language and splitting up long sections, the staff can see that doubt might arise. Accordingly, the staff would revise the introductory clause of Section 4320 to read: "In ordering spousal support under this part" See Amendment 43.

Solemnization of marriage. Amendment 28 adds a reference to "rabbi" in Family Code Section 422(c). This is a technical, conforming change suggested by Robert Chrisman on behalf of a FLEXCOM subcommittee. (See Exhibit 4, pp. 10-11.) (The other suggestions in this letter should be deferred. One is admittedly substantive and the service rules are something we need to examine comprehensively.)

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

FC300
05/07/92

AMENDMENTS TO ASSEMBLY BILL 2650
AS AMENDED IN ASSEMBLY MARCH 23, 1992

§ 55 AMENDMENT 1

On page 6, line 35, strike out "in person" and insert:
to that person

§ 75(c) AMENDMENT 2

On page 7, lines 38 and 39, strike out "paragraph (1), (2), or (3)
of subdivision (a) of Section 5550" and insert:
subdivision (b), (c), or (d) of Section 2035

§ 75(c) AMENDMENT 3

On page 8, line 1, strike out "Law" and insert:
Act

§ 75(d) AMENDMENT 4

On page 8, line 6, strike out "Law" and insert:
Act

§ 75(e) AMENDMENT 5

On page 8, line 12, strike out "Law" and insert:
Act

§ 75(e) AMENDMENT 6

On page 8, lines 8 and 9, strike out "paragraph (1), (2), or (3)
of subdivision (a) of Section 5550" and insert:
subdivision (b), (c), or (d) of Section 2035

§ 100 AMENDMENT 7

On page 8, between lines 34 and 35, insert:
100. "Judgment" and "order" include a decree, as appropriate
under the circumstances.

§ 240(c) AMENDMENT 8

On page 14, line 16, strike out "Law" and insert:

Act

§ 273 AMENDMENT 9

On page 18, line 12, strike out "3.5" and insert:

5

§ 291 AMENDMENT 10

On page 19, line 34, strike out "Chapter 5" and insert:

Chapter 7

§ 295 AMENDMENT 11

On page 19, following line 40, insert:

PART 7. TRIBAL MARRIAGES AND DIVORCES

295. (a) For the purpose of application of the laws of succession set forth in the Probate Code to a decedent, and for the purpose of determining the validity of a marriage under the laws of this state, an alliance entered into before 1958, which, by custom of the Indian tribe, band, or group of which the parties to the alliance, or either of them, are members, is commonly recognized in the tribe, band, or group as marriage, is deemed a valid marriage under the laws of this state.

(b) In the case of such marriages and for the purposes described in subdivision (a), a separation, which, by custom of the Indian tribe, band, or group of which the separating parties, or either of them, are members, is commonly recognized in the tribe, band, or group as a dissolution of marriage, is deemed a valid divorce under the laws of this state.

§ 301 AMENDMENT 12

On page 20, line 13, strike out "over" and insert:

older

§ 301 AMENDMENT 13

On page 20, line 14, strike out "over" and insert:
older

§ 302 AMENDMENT 14

On page 20, strike out line 25 and insert:
person to marry, obtained on the showing the court requires.

§ 303 AMENDMENT 15

On page 20, line 26, strike out "(a)

§ 303(b) AMENDMENT 16

On page 20, strike out line 34 and insert:
304. As part of a court order granting permission to marry under
Section 302 or 303, the

§ 304 AMENDMENT 17

On page 21, line 10, strike out "304." and insert:
305.

§ 305 AMENDMENT 18

On page 21, strike out line 13 and insert:
306. Except as provided in Section 307, marriage must

§ 306 AMENDMENT 19

On page 21, line 19, strike out "306." and insert:
307.

§ 306 AMENDMENT 20

On page 21, lines 20 and 21, strike out "or entering the marriage
relation"

§ 306 AMENDMENT 21

On page 21, line 23, after "marriage" insert:
or entering the marriage relation

§ 306 AMENDMENT 22

On page 21, line 25, after "make" insert:
, sign,

§ 306 AMENDMENT 23

On page 22, strike out line 5 and insert:
ceremony.

§ 307 AMENDMENT 24

On page 22, line 6, strike out "307." and insert:
308.

§ 308 AMENDMENT 25

On page 22, line 9, strike out "308." and insert:
309.

§ 310 AMENDMENT 26

On page 22, between lines 12 and 13, insert:
310. Marriage is dissolved only by one of the following:
(a) The death of one of the parties.
(b) A judgment of dissolution.
(c) A judgment of nullity.

§ 400 AMENDMENT 27

On page 25, line 26, strike out "over" and insert:
older

§ 422 AMENDMENT 28

On page 27, line 15, after "minister," insert:
rabbi,

§ 506 AMENDMENT 29

On page 29, line 27, strike out "the performance of"

§ 593 AMENDMENT 30

On page 37, line 7, strike out "the applicant's" and insert:
his or her

§ 721 AMENDMENT 31

On page 38, line 7, strike out "a" and insert:
any

§ 721 AMENDMENT 32

On page 38, line 28, after the period, insert:
Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

§ 722-723 AMENDMENT 33

On page 38, strike out lines 33 to 40, inclusive, and on page 39, strike out lines 1 to 18, inclusive

§ 755 AMENDMENT 34

On page 40, line 10, strike out "1110 and" and strike out line 11 and insert:
1100, if

§ 755 AMENDMENT 35

On page 40, line 29, strike out "1110 and" and strike out line 30 and insert:
1100, if

§ 1100-1202 AMENDMENT 36

On page 51, strike out lines 22 to 40, inclusive, strike out pages 52 to 55, inclusive, on page 56, strike out lines 1 to 14, inclusive, and insert:

1100. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply to gifts mutually given by both spouses

to third parties and to gifts given by one spouse to the other spouse.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) Except as provided in subdivisions (b) and (c), and in Section 1102, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction.

Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 1101. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

(e) Each spouse shall act with respect to the other spouse in the management and control of the community property in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.

1101. (a) A spouse has a claim against the other spouse for a breach of the fiduciary duty imposed by Section 1100 or 1102 that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(1) A partnership interest held by the other spouse as a general partner.

(2) An interest in a professional corporation or professional association.

(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.

(4) Any other property, if the revision would adversely affect the rights of a third person.

(d) (1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse as set out in Section 721 shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. However, in no event shall interest be assessed on the managing spouse.

(h) Remedies for the breach of the fiduciary duty by one spouse when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

1102. (a) Except as provided in Sections 761 and 1103, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses, either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) Nothing in this section shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife.

(c) Notwithstanding subdivision (b):

(1) The sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975.

(2) The sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975.

(d) No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situated.

1103. (a) Where one or both of the spouses either has a conservator of the estate or lacks legal capacity to manage and control community property, the procedure for management and control (which includes disposition) of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

(b) Where one or both spouses either has a conservator of the estate or lacks legal capacity to give consent to a gift of community personal property or a disposition of community personal property without a valuable consideration as required by Section 1100 or to a sale, conveyance, or encumbrance of community personal property for which a consent is required by Section 1100, the procedure for such gift, disposition, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

(c) Where one or both spouses either has a conservator of the estate or lacks legal capacity to join in executing a lease, sale, conveyance, or encumbrance of community real property or any interest therein as required by Section 1102, the procedure for such lease, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

§ 1503 AMENDMENT 37

On page 56, line 38, strike out "part" and insert:
chapter

§ 2400 AMENDMENT 38

On page 99, line 39, strike out "wheresoever" and insert:
wherever

§ 3010ch AMENDMENT 39

On page 113, between lines 3 and 4, insert:

Chapter 2. General Provisions

§ 3155ch AMENDMENT 40

On page 129, line 28, strike out "Contested"

§ 3170art AMENDMENT 41

On page 131, strike out lines 31 and 32, and insert:

Article 2. Mediation of Contested Custody or Visitation

§ 3183 AMENDMENT 42

On page 134, line 14, strike out "parties to" and insert:
parents in

§ 4320 AMENDMENT 43

On page 190, line 39, after "support" insert:
under this part

§ 4411 AMENDMENT 44

On page 198, line 38, strike out "reached" and insert:
attained

§ 4550ch AMENDMENT 45

On page 202, line 4, strike out "1.5." and insert:
2.

§ 4600ch AMENDMENT 46

On page 206, line 22, strike out "2." and insert:

3.

§ 4613 AMENDMENT 47

On page 208, line 28, strike out "6" and insert:

8

§ 4613 AMENDMENT 48

On page 208, line 33, strike out "6" and insert:

8

§ 4613 AMENDMENT 49

On page 208, line 40, strike out "6" and insert:

8

§ 4700ch AMENDMENT 50

On page 212, line 18, strike out "3." and insert:

4.

§ 4720ch AMENDMENT 51

On page 213, line 22, strike out "3.5." and insert:

5.

§ 4728 AMENDMENT 52

On page 215, line 29, strike out "Chapter 5" and insert:

Chapter 7

§ 4800ch AMENDMENT 53

On page 216, line 8, strike out "4." and insert:

6.

§ 4853 AMENDMENT 54

On page 230, line 14, strike out "6" and insert:

8

§ 5100ch AMENDMENT 55

On page 231, line 18, strike out "5." and insert:

7.

§ 5200ch AMENDMENT 56

On page 232, line 35, strike out "6." and insert:

8.

§ 5505 AMENDMENT 57

On page 244, line 34, strike out "person" and insert:

persons

§ 5530 AMENDMENT 58

On page 248, line 29, strike out "Sections 240 to 244, inclusive" and insert:

Part 4 (commencing with Section 240) of Division 2.

§ 7891 AMENDMENT 59

On page 307, line 40, strike out "old" and insert:

of age

§ 8707 AMENDMENT 60

On page 334, line 13, strike out "old" and insert:

of age

§ 8911 AMENDMENT 61

On page 361, line 35, strike out "petition the superior court of" and insert:

file a petition in

§ 9100 AMENDMENT 62

On page 368, line 25, strike out "an" and insert:

the

Op Date AMENDMENT 63

On page 385, following line 29, insert:

SEC. 15. This act shall become operative on January 1, 1994.

FC401

05/13/92

AMENDMENTS TO ASSEMBLY BILL 2641
AS AMENDED IN ASSEMBLY MARCH 19, 1992

§ CC 687 AMENDMENT 1

On page 7, line 11, strike out "Section 760" and insert:
Part 2 (commencing with Section 760) of Division 4

§ CCP 683.130(d) AMENDMENT 2

On page 34, line 13, strike out "5" and insert:

7

§ CCP 684.010 AMENDMENT 3

On page 34, line 34, strike out "216" and insert:

215

§ CCP 699.510(b) AMENDMENT 4

On page 36, line 23, strike out "Chapter 5" and insert:
Chapter 7

§ 706.011 AMENDMENT 5

On page 44, line 33, after "Code" insert:
or Section 3088 of the Probate Code, which requires an employer to
withhold earnings for support.

§ CCP 706.011(b) AMENDMENT 6

On page 44, line 32, strike out "6" and insert:

8

§ GC 27752 AMENDMENT 7

On page 83, line 10, strike out "3111" and insert:

3112

§ GC 68514 AMENDMENT 8

On page 84, line 19, after "Code" insert a comma

§ H&S 1522.4 AMENDMENT 9

On page 88, strike out lines 4 to 26, inclusive

§ Lab 300 AMENDMENT 10

On page 93, line 32, strike out "6" and insert:

8

§ Penal 270h AMENDMENT 11

On page 97, line 35, strike out "6" and insert:

8

§ Penal 270h AMENDMENT 12

On page 97, line 40, strike out "order of" and after "assignment" insert:
order

§ Penal 270h AMENDMENT 13

On page 98, line 1, strike out "6" and insert:

8

§ Penal 279 AMENDMENT 14

On page 104, line 1, strike out "3000" and insert:

3010

§ Penal 12021 AMENDMENT 15

On page 115, line 26, strike out "5515.5" and insert:

5516

§ Prob 3071 AMENDMENT 16

On page 135, strike out lines 9 to 11, inclusive, and insert:
Section 1100 or 1102 of the Family Code or by any

§ Prob 3088 AMENDMENT 17

On page 137, line 38, strike out "6" and insert:

8

§ W&I 304 AMENDMENT 18

On page 142, line 37, strike out "5550" and insert:
2035

§ W&I 11475.1 AMENDMENT 19

On page 166, line 4, strike out "subdivision (a) of Section"

§ W&I 11475.1 AMENDMENT 20

On page 168, line 2, strike out "6" and insert:
8

§ W&I 11478 AMENDMENT 21

On page 172, line 9, strike out "4" and insert:
6

§ W&I 11478.1 AMENDMENT 22

On page 173, line 3, strike out "4" and insert:
6

§ W&I 11478.2(g) AMENDMENT 23

On page 178, line 1, strike out "4" and insert:
6

§ W&I 11478.2(1) AMENDMENT 24

On page 179, line 11, strike out "4" and insert:
6

§ W&I 11478.8 AMENDMENT 25

On page 180, line 24, strike out "20" and insert:
30

§ W&I 11489 AMENDMENT 26

On page 181, line 13, strike out "6" and insert:
8

Op. date AMENDMENT 27

On page 189, line 10, strike out "bill" and insert:
act

California Alliance Against Domestic Violence

Advocating on Behalf of Battered Women and Their Children

Law Revision Commission
RECEIVED

Please respond to:

MAR 20 1992

File: _____
Key: _____

1063 Cragmont Ave.
Berkeley, Ca. 94708

March 18, 1992

Stan Ulrich
California Law Revision Commission
4000 Middlefield Rd, Suite D-2
Palo Alto, Ca. 94303

RE: AB 2650 (Speier)

Dear Mr. Ulrich:

Thanks for your latest mailing to me regarding the changes in AB 2650 (Speier), the proposed Family Code. Overall, they look fine. I also appreciated your including the feedback letters you received, including mine, as appendices.

However, I did have a couple questions and concerns.

Memorandum 92-18, CCP § 527:

On page 22, CCP § 527(b) was deleted and reference made to Section 240 of the proposed Family Code. The deleted language should be reinstated, and the reference to Section 546 in the deleted section should be changed to Section 527.6.

The Comment states that 527(b) is continued in § 245 of the Family Code. But it's not. Section 245 of the Family Code does not apply to people receiving TRO's under CCP § 527.6, who may need a re-issuance if they are unable to serve the defendant on time.

This is very likely to happen, as the court date is only 15 - 20 days away. There are plenty of people who are harassed but don't fall under the current Family Law Act, Domestic Violence Prevention Act, or the Uniform Parentage Act, such as co-workers, neighbors, former friends, distant relatives, former business partners, etc. This re-issuance provision was added not long ago because some

courts felt they did not have authority to re-issue Civil Harassment orders. Please don't make the legislature put it back in again in a separate bill!

Memorandum 92-18, CCP § 527.6:

New subsection (f) on page 23 is a good addition, clarifying that the support person statute applies in a Civil Harassment situation as well, if there are allegations of domestic violence.

Memorandum 92-19, Appendix, page 10:

I agree with the amendments detailed in this memorandum. My comments concern the letters in the Appendix.

First, Bob Poulsen's memo, page 10, discusses proposed Section 90, which defines "family or household member" (currently CCP § 542). I cannot find this section in AB 2650. Why is it missing? Additionally, he raises the question whether this term includes boarders. I think it does -- "household member" presumably means a resident of the same house. As to a third cousin who lives in the house occasionally, again it would seem to apply, under either "household member". Since CCP § 542(c) limits family members to persons related by consanguinity or affinity within the second degree, third cousins would not be included.

Memorandum 92-19, Appendix, page 46:

Second, in my letter, on page 46 of the Appendix, under proposed § 5515, I answered a question raised in the Note. I noticed that the amendment I proposed was not adopted. I still think it should be. The notice and enforcement provisions of proposed § 2037 certainly belong in § 5515. They are already printed on the Judicial Council forms, and they are also very important in terms of informing defendants of the consequences of failing to appear, and in terms of getting law enforcement officers to enforce orders. Alternatively, § 5515 could just cross-reference § 2037.

I was glad to see that § 5515 had not been limited to "protective orders", as defined in § 5505, a proposal raised in the original Note to § 5515. Every aspect of a restraining order (except for money orders) is subject to being enforced by law enforcement officers. They are often called upon to resolve custody, visitation, property control, and residence exclusion matters which are part of restraining orders. Adopting a narrow definition, such as the one in §

5505, would be a substantial change in the law, indeed, confuse officers, and greatly limit the effectiveness of these orders.

Thanks for keeping me informed. I would appreciate continuing to receive amendments and comments.

Sincerely,

A handwritten signature in cursive script that reads "Nancy K. D. Lemon". The signature is written in black ink and is positioned above the typed name.

Nancy K. D. Lemon
Co-Chair, Family Law Committee
CAADV

DISTRICT ADDRESS
2800 BARKAN BLVD. SUITE 218
HOLLYWOOD, CA 90068
(310) 678-8200

SENATE COMMITTEES
CHAIRMAN, RULES
SENATE ELECTIONS
AND REAPPORTIONMENT
SENATE AGRICULTURE
AND WATER RESOURCES
SENATE JUDICIARY

STATE SENATOR
DAVID ROBERTI
PRESIDENT PRO TEMPORE

REPLY TO:
SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO, CA 94248
(916) 445-8380

California Legislature

TWENTY-THIRD DISTRICT
LOS ANGELES COUNTY

Law Revision Commission
RECEIVED

MAR 26 1992

March 23, 1992



File: _____
Key: _____

Honorable Phil Isenberg
Chair
Assembly Judiciary Committee
State Capitol
Sacramento, California 95814

Dear Assemblymember Isenberg:

AB 2650 (Speier) is set for hearing in your committee on Wednesday, March 25, 1992. This bill proposes the new Family Code and was prepared by the California Law Revision Commission.

The prime sponsors of my bill, SB 716, which was enacted into law last year, have communicated their concerns to the commission regarding several changes proposed in the bill. I share the concern expressed by the Coalition for Family Equity that the language in AB 2650 would create serious problems.

In the current version, AB 2650 disseminates portions of Civil Code Sections 5103, 5125, 5125.1, 5127 throughout the Code. Since these sections were the subject of my bill, it is crucial that they remain intact as amended by SB 716.

Otherwise the legislative purpose of clarifying the fiduciary duty between spouses until the time of dissolution will be once again ambiguous. Simply, these sections were meant to be read together to give full force and effect to legislative intent.

Honorable Phil Isenberg
March 23, 1992
Page Two

It is my understanding from the Coalition for Family Equity that the Law Revision Commission has voted unanimously to "restore the existing language and structure of the provisions with which the Coalition is concerned." However, these changes will not be made until after the measure leaves the Assembly Judiciary Committee.

I believe that the changes made to those Civil Code Sections are extremely important, particularly because they clarify the duties of the most important relationship that people will have during their life. In order to ensure that there is no confusion regarding this point, I wanted to send you this letter articulating my position on this matter.

Sincerely,



DAVID ROBERTI

DR:dbsa

cc: Assemblymember Jackie Speier
Assemblymember Terry Friedman
Assemblymember Marguerite Archie-Hudson
Senator Bill Lockyer
Dorothy Jonas, Co-Chair of Coalition for Family Equity
Mr. Stan Ulrich, Law Revision Commission
↓ Mr. Edwin Marzec, Law Revision Commission

**FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA**

APP 24 1992

File: _____
Key: _____

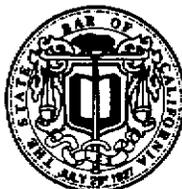
Chair
JOHN DAVID ROTHSCHILD, *Sanoma*

Vice-Chair
STEPHEN J. WAGNER, *Sacramento*

Secretary/Treasurer
GEORGE O. NIELSEN, *San Francisco*

Advisors
ADEYENH M. CANTOR, *Beverly Hills*
STERLING HONEA, *Los Angeles*
LAWRENCE M. GASSNER, *Ontario*

State Bar Staff Administrator
DONALD W. BREEB



555 FRANKLIN STREET
SAN FRANCISCO, CA 94102
(415) 561-8200
Fax: (415) 561-8228

Executive Committee
BESSIE M. CARR, *San Diego*
ROBERT A. CHRISMAN, *Carina*
JENNIFER P. GORDON, *San Francisco*
CATHERINE M. GRUNDMANN, *San Francisco*
JAMES A. HENNENHOEFER, *Vista*
MICHELLE KATZ, *Los Angeles*
SHARON PONG MAH, *San Rafael*
GEORGE O. NIELSEN, *San Francisco*
ROBERT J. O'HAIR, *Sacramento*
MABLEAN E. PATTON, *Los Angeles*
RONALD A. ROSENFIELD, *Beverly Hills*
JOHN DAVID ROTHSCHILD, *Sanoma*
JANIS K. STOCKS, *San Diego*
MELISSA H. TOBEN, *San Francisco*
STEPHEN J. WAGNER, *Sacramento*

April 20, 1992

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

Re: Family Law Executive Committee

Dear Mr. Sterling:

At the meetings of March 27 and April 11, 1992, the Executive Committee planned its responses to the Family Law Code Project and to the Study on Community Property in Joint Tenancy form.

It was noted that the Family Law Code is now in bill form and being administered through the Speier legislative office. Accordingly, it was decided that our communications about the Code in the future will be both to that office and to the Law Revision Commission.

The Family Law Code was then divided into sections for assignment to specified members of the Executive Committee, and responses were scheduled on the various sections of the Code over the next few months. At each later Executive Committee meeting, reports from the standing committees will be considered.

The first three sections of the Code were reported back to the Committee at the April 11, 1992, meeting, and these three reports will reach you in the next two weeks; (Bill pages 4-89). [The report for Bill pages 90-171 by end May; for pages 171-270 by end June, etc.].

The study on Community Property/Joint Tenancy has been assigned to the North and South Property Standing Committees of our Family Law Section during the last two months, and will be on their agenda for response this month. The Executive Committee will take these up in May, and you should have our evaluation in June.

I next relay the Executive Committee's response to your March 26 memo to us with respect to the family law code:

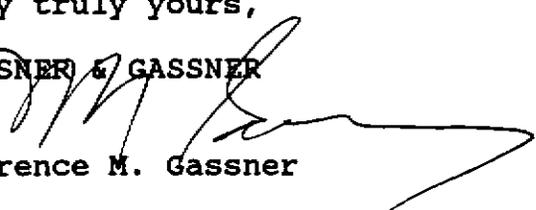
1. Former references to "this part": We believe that your disposition is correct.

April 20, 1992
Nathaniel Sterling
Page 2

2. Custody: We agree with your suggested disposition.
 3. References to Civil Code Section 4600: We recommend that we adopt your specific reference to the reenacted portion of CC 4600 as opposed to the general broad reference to division 8, sections 300 et seq.
 4. Elimination of "decree": The suggested terminology is acceptable and the elimination of "decree" is appropriate since there is no longer a decree of dissolution, but rather a judgment of dissolution or an order after hearing.
- We are concerned that the Uniform Child Custody Jurisdiction Act will still use the term decree-state. Also, we question if the lack of a definition of "decree" will cause a problem with respect to all of the adoption decrees, divorce decrees, etc., that are lodged in our courts, and which will still be registered here from other jurisdictions.
5. Section 3601, 3651, e.g., Termination vs Revocation: We believe the word "termination" is better than "revocation" and support your change.
 6. Section 4320, Spousal Support Factors: the factors set forth in Section 4320 (currently CC 4801) have been held to apply to permanent orders, not pendente lite orders. We believe this distinction should be made in the new code. Substantive legislation would be required to apply the list to temporary orders.
 7. Section 155, Definition of Support Order: We agree with you that the word "remission" should be retained in the URESA, but does not fit into the balance of the family code.
 8. Section 273, Attorney's fees for enforcement of support order: We believe that the reference bill was mis-chaptered and you have correctly restored the chaptered out language.

Very truly yours,

GASSNER & GASSNER


Lawrence M. Gassner

cc: John D. Rothchild
Steven Wagner
Melissa Toben
Donald Breer

What materials are you using?

Are you working with the bill (AB 2650) or with the December 1991 Staff Draft Family Code? I ask because, while the bill is almost identical to the December 1991 draft, if you are working only with the bill, you would not have the benefit of the comments.

If you do not have the Comments, do you have the conversion tables we have distributed? There are two tables, one from existing law to the Family Code and the other from the Family Code to existing law.

Minutes of October 31, 1991, Commission Meeting

Remember that we did consider SB comments at our October 1991 meeting. These are disposed of in Memo 91-59 and in the Minutes of the meeting.

Status of Bills

For your information, AB 2650 (Family Code) and AB 2641 (conforming revisions) were approved by the Assembly Judiciary Committee yesterday (March 25). As you know, we are committed to continue working with the State Bar (and other groups) to resolve any problems presented in the bills, either by restoring existing language or by coming to a consensus decision.

Both bills have been amended, but if you have AB 2650 as introduced, it is sufficient for consideration of the issues raised below. Most amendments to AB 2650 were purely technical or corrective to deal with drafting problems or Legislative Counsel errors and inconsistencies. The substantive matters are summarized in Memorandum 92-19 (pp. 3-4) (3/3/92) which you should have received recently.

We will be preparing another set of amendments over the next several months. We hope to amend AB 2650 only one more time to save reprinting costs, so the final set of amendments will be saved until the last part of the legislative process.

Additional corrections will be made in a clean-up bill in the 1993 legislative session. This schedule should afford ample time to make sure the new code is in good shape when it becomes operative.

Suggestions for FLEXCOM Consideration

Former references to "this part"

References to the "Family Law Act" or "this part" (meaning Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) have to be changed in the Family Code. In some cases, we have chosen to apply the section to the entire code; in others, a more limited application seems appropriate, such as in proceedings for dissolution, nullity, or legal separation.

Provisions where this problem arises include: §§ 80, 125, 145, 214, 270-271, 290-291, 2045, 2080, 2082, 3026, 3028, 3110, 5103, 5519.

Are these dispositions correct?

Custody

Related to the previous point, some custody provisions refer to the Family Law Act and some refer to whenever custody is at issue. We

have tried to keep existing structure by retaining the "at issue" language and substituting nullity, dissolution, and separation for references to "this part" or the Family Law Act. Compare bill §§ 3012 and 3060.

What is FLEXCOM view of this disposition?

References to Civil Code § 4600

Several sections of existing law contain cross-references to Civil Code § 4600 on child custody. Do these references mean to refer to custody procedures in general or just to Section 4600?

Civil Code § 4600 is divided up into shorter sections in the Family Code. We have taken the approach of referring to the specific sections where Section 4600 was disposed of in cross-references. See, bill §§ 1850, 2253, 3175, 7604, 7807, 7891. Should these references be broadened to refer to Division 8 (§§ 3000 *et seq.*)?

Elimination of "decree"

We sent a copy of the draft statute with "judgment" and "order" in boldface for FLEXCOM review. Having heard nothing, may we assume that the terminology is acceptable? And that elimination of "decree" is appropriate?

§ 3601, 3651, e.g., Termination v. Revocation

The bill substitutes "termination" for "revocation" as to support orders in several places. Is this a good change?

§ 4320. Spousal Support Factors

Should these factors be applied to all orders, including pendente lite orders?

In this connection, what do you think of separating the factors out into §§ 4320-4323, instead of following § 4330? In other words, consider the way Civil Code § 4800 has been reorganized.

§ 155. Definition of Support Order

Should "remission" be retained in the definition of support order? It comes from the Uniform Reciprocal Enforcement of Support Act. We would keep the word in the uniform act but it doesn't seem to be needed in the general definition.

§ 273. Attorney's fees for enforcement of support order

The language in Section 273(a)(2) was added by 1991 Cal. Stat. ch. 110, § 4, but was chaptered out by 1991 Cal. Stat. ch. 500, § 1. We have assumed this was a mistake and restored the chaptered out language. Is this correct?

MAY 04 1992

**FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA**

File: _____

Key: _____

Chair
JOHN DAVID BROTTSCHILD, *Sanoma*
Vice-Chair
STEPHEN J. WAGNER, *Sacramento*
Secretary/Treasurer
GEORGE O. NIELSEN, *San Francisco*
Advisors
ADEYEMM M. CANTOR, *Seavely Hills*
STERLING HONZA, *Los Angeles*
LAWRENCE M. GARDNER, *Ontario*
State Bar Staff Administrator
DONALD W. BREEK



555 FRANKLIN STREET
SAN FRANCISCO, CA 94102
(415) 561-8200
Fax: (415) 561-8228

Executive Committee
BESSIE M. CAEL, *San Diego*
ROBERT A. CHEBEMAN, *Corvina*
JENNIFER F. GORDON, *San Francisco*
CATHERINE M. GRUNDMANN, *San Francisco*
JAMES A. HEIKENBOPFER, *Visalia*
MICHELLE KATZ, *Los Angeles*
SHARON YONG MAH, *San Rafael*
GEORGE O. NIELSEN, *San Francisco*
ROBERT J. O'HAIR, *Sacramento*
MABLEAN E. PAXTON, *Los Angeles*
DONALD A. ROSENFIELD, *Seavely Hills*
JOHN DAVID BROTTSCHILD, *Sanoma*
JANIS E. STOCKER, *San Diego*
MELISSA R. TORRES, *San Francisco*
STEPHEN J. WAGNER, *Sacramento*

TO: LARRY DOYLE, DIRECTOR, OFFICE OF GOVERNMENTAL AFFAIRS

FROM: ROBERT A. CHRISMAN

DATE: APRIL 29, 1992

RE: AB 2650 JACKIE SPEIER AMENDED MARCH 23, 1992
REVIEW OF SECTIONS 1-594
TECHNICAL CHANGES

SECTION POSITION: SUPPORT RECOMMENDED CHANGES

DATE POSITION RECOMMENDED: APRIL 11, 1992

SECTION VOTE: AYES: 10 NOES: 0 N.V.: 0

ANALYSIS:

The following are the observations and comments concerning specific, proposed Code Sections as set forth hereinafter.

§216 After entry of a judgment of dissolution of marriage, nullity of marriage, or legal separation of the parties, or after a permanent order in any other proceeding in which there was at issue the visitation, custody or support of a minor child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient.

Comment: Suggest that Section affirmatively state that service upon the attorney is required as well as service upon the party. This would bring Section into compliance with the Code of Civil Procedure re notice. In the alternative, add "or required" following "service upon the attorney of record is not sufficient".

§354(d) Applicants for a marriage license shall not be required to state, for any purpose, their race or color.

Comment: Suggest that religion be included in Section as to matters not required to state. While this is a substantive change, it would seem consistent with existing law.

§422(c) The official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, or member of the clergy.

Comment: The above Section references the return of the marriage license by the person solemnizing the marriage. Section 400(a) references those who may solemnize a marriage including specifically a rabbi - It would seem appropriate to include that reference to a rabbi in Section 422(c).

ROBERT A. CHRISMAN

ROBERT A. CHRISMAN

cc: Larry Gassner
Honorable Jacqueline Speier
✓ Nathaniel Sterling