#F-650 8/5/83

Memorandum 83-67

Subject: Study F-650 - Liability of Stepparent for Child Support

As part of its recommendation relating to liability of marital property for debts, the Commission determined that if a person with a child support obligation remarries, the community property of the new marriage should be liable for the child support obligation, with the exception of the earnings of the stepparent. When Assemblyman McAlister introduced the Commission's legislation on liability of marital property as Assembly Bill 1460, however, he deleted the provisions on stepparent liability and substituted a provision that whatever the law was on this point is unchanged. He did this for political reasons, even though he basically agrees with the Commission's recommendation as to stepparent liability.

In order to effectuate the Commission's recommendation on stepparent liability, it will be necessary to introduce a separate bill dealing with it. We have attached a draft of a separate recommendation that effectuates the Commission's decisions and have distributed the recommendation for review and comment. At the September meeting we will go over the draft and any comments we have received.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

#F-650 7/18/83

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

LIABILITY OF STEPPARENT FOR CHILD SUPPORT

July 18, 1983

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN SEPTEMBER 8, 1983.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

TENTATIVE RECOMMENDATION

relating to

LIABILITY OF STEPPARENT FOR CHILD SUPPORT

The extent to which marital property of a second marriage is liable for a child support obligation of a first marriage is unclear. Civil Code Section 199 provides that after dissolution of marriage a child support obligation may be satisfied "only" from the total earnings (or assets acquired therefrom) of each spouse.[1] Whether this provision is intended to immunize other community property of the second marriage, including earnings of the stepparent, is unclear. Civil Code Section 4807 appears to subject community property, including the community property interest of the parent in the earnings of the stepparent, to a child support obligation.[2] In this regard, Civil Code Sections 5127.5 and 5127.6 also appear to create exceptions to the rule of Section 199 under certain factual situations. These provisions were intended to comport with AFDC standards.[3] However, the provisions are ineffective, unworkable, confusing, obsolete, and probably unconstitutional.[4]

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1. Civil Code Section 199 provides:

   The obligation of a father and mother to support their natural child under this chapter, including but not limited to Sections 196 and 206, shall extend only to, and may be satisfied only from, the total earnings, or the assets acquired therefrom, and separate property of each, if there has been a dissolution of their marriage as specified by Section 4350.

2. In re Marriage of Brown, 99 Cal. App.3d 702, 160 Cal. Rptr. 524 (1979). Civil Code Section 4807 provides:

   The community property, the quasi-community property, and the separate property of the parents may be subjected to the support, maintenance, and education of the children in such proportions as the court deems just.

3. Beilenson and Agran, The Welfare Reform Act of 1971, 3 Pac. L.J. 475, 485 (1972); Review of Selected 1979 California Legislation, 11 Pac. L.J. 531-32 (1980); Wood v. Woods, 133 Cal. App.3d 954, 184 Cal. Rptr. 471 (1982).

4. Bruch, Management Powers and Duties Under California's Community Property Laws: Recommendations for Reform, 34 Hastings L.J. 227, 253-60 (1982); Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143, 204-06 (1981); In re

The liability of the earnings of a stepparent for a child support obligation of the parent should be dealt with clearly and directly. A child to whom the parent owes an obligation of support should be in at least as good a position as a general creditor. This means that in the case of remarriage of the parent, the child should be permitted to enforce the support obligation not only against the separate property of the parent but also against all community property of the subsequent marriage except the earnings of the stepparent. To permit the child support obligation to be enforced against the earnings of the stepparent is not only unfair to the stepparent but will also impede remarriage of persons with child support obligations. The increased liability of the community created by the remarriage of the parent is sufficient protection for the child. However, the earnings of the stepparent should be taken into account in setting the amount of the child support obligation, in recognition of the fact that the parent's ability to pay may be affected by the earnings of the stepparent.[5]

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 5120 and 5120.150 of the Civil Code, relating to family law.

The people of the State of California do enact as follows:

Marriage of Shupe, 139 Cal. App.3d 1026, 189 Cal. Rptr. 288 (1983). Welfare and Institutions Code Section 11261, which was identical to and enacted together with Civil Code Section 5127.6, was repealed by 1981-1982 Cal. Stats. 1st Ext. Sess., ch. 3, § 20, and replaced with Welfare and Institutions Code Section 11008.14, which simply makes the earnings of the stepparent "considered available for purposes of eligibility determination and grant computation to the extent required by federal law."

5. In re Marriage of Havens, 125 Cal. App.3d 1012, 178 Cal. Rptr. 477 (1981).

Civil Code § 5120 (amended)

SECTION 1. Section 5120 of the Civil Code is amended to read:

5120. Neither the separate property of a spouse nor the earnings of the spouse after marriage is liable for the debts of the other spouse contracted before the marriage or for a child support obligation of the other spouse that does not arise out of the marriage.

Comment. Section 5120 is amended to make clear that the earnings of a stepparent are not liable for a child support obligation of the parent, notwithstanding implications to the contrary in cases and other statutes. Cf. Section 4807 (community property may be subjected to support of children); In re Marriage of Brown, 99 Cal. App.3d 702, 160 Cal. Rptr. 524 (1979) (community interest of parent in income of stepparent obligated for child support). The implications to the contrary in Sections 5127.5 and 5127.6 are limited to AFDC benefit determinations and the sections themselves have been impliedly repealed. See, e.g., In re Marriage of Shupe, 139 Cal. App.3d 1026, 189 Cal. Rptr. 288 (1983); Cal. Stats. 1981-82, 1st Ex. Sess., ch. 3 (repealing Welfare and Institutions Code § 11261, which was identical to Civil Code § 5127.6, and enacting Welfare and Institutions Code § 11008.14, substituting a new rule that income of a stepparent shall be considered available for purposes of eligibility determination and grant computation to the extent required by federal law).

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Civil Code § 5120.150 (amended)

SEC. 2. Section 5120.150, as added to the Civil Code by Assembly Bill 1460 of the 1983-84 Regular Session, is amended to read:

5120.150. (a) For the purpose of this chapter, a child or spousal support obligation of a married person that does not arise out of the marriage shall be treated as a debt incurred before marriage, regardless whether a court order for support is made or modified before or during marriage and regardless whether any installment payment on the obligation accrues before or during marriage.

~~(b) Whether the earnings of a married person during marriage are liable for a child support obligation of the other person's spouse that does not arise out of the marriage shall not be determined by this chapter but by the law in effect immediately before the operative date of this chapter.~~

~~(c)~~ (b) If community property is applied to the satisfaction of a child or spousal support obligation of a married person that does not

arise out of the marriage, at a time when nonexempt separate income of the person is available but is not applied to the satisfaction of the obligation, the community is entitled to reimbursement from the person in the amount of the separate income, not exceeding one-half the community property so applied.

~~(d)~~ (c) Nothing in this section limits the matters a court may take into consideration in determining or modifying the amount of a support order including, but not limited to, the earnings of the spouse of the person obligated for child or spousal support.

Comment. Subdivision (a) of Section 5120.150 makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community property of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Section 5120.110 (liability of community property).

Subdivision (b) codifies the rule of Weinberg v. Weinberg, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967). See also Bare v. Bare, 256 Cal. App.2d 684, 64 Cal. Rptr. 335 (1967); In re Marriage of Smaltz, 82 Cal. App.3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (c) makes clear that despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings may be taken into account by the court in setting the amount of the support obligation. This codifies existing law. See, e.g., In re Marriage of Havens, 125 Cal. App.3d 1012, 178 Cal. Rptr. 477 (1981).

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Double-Jointing Provision

SEC. 3. Section 1 of this act shall not take effect if Section 5120 of the Civil Code is repealed by Assembly Bill No. 1460 of the 1983-84 Regular Session, regardless whether this act is chaptered before or after Assembly Bill No. 1460.

Double-Jointing Provision

SEC. 4. Section 2 of this act shall take effect only if Section 5120.150 is added to the Civil Code by Assembly Bill No. 1460 of the 1983-84 Regular Session, and in such case Section 2 of this act shall take effect at the same time as Assembly Bill No. 1460, regardless whether this act is chaptered before or after Assembly Bill No. 1460.