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Domestic Relations

University of the Pacific, McGeorge School of Law

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Domestic Relations

Domestic Relations; child or spousal support

Civil Code §§232, 1300, 1301, 1304, 4700, 4801 (amended); Code of Civil Procedure §397.5 (new); Code of Civil Procedure §§904.1, 917.7 (amended).

AB 1816 (Hayes); STATS 1971, Ch 1210

Allows the court discretion in making orders for child and spousal support retroactive; enables the court to order transfer of modification or enforcement proceedings; makes the language of specified sections consistent with the terminology of the Family Law Act.

Sections 4700 and 4801 of the Civil Code, relating to child support and spousal support respectively, are amended to enable the court to make a modification or revocation of such support retroactive to the date of filing of the notice of motion or order to show cause, or to any date subsequent thereto.

Prior to this amendment, §§4700 and 4801 did not allow the court to make its order of modification or revocation retroactive to any date other than the date notice of motion or order to show cause was filed.

Section 397.5 is added to the Code of Civil Procedure to provide that after a final judgment in any enforcement or modification proceedings under the Family Law Act, when it appears that both petitioner and respondent have moved from the county rendering the decree, the court may order that the proceedings be transferred to the county of residence of either party when the ends of justice and the convenience of the parties would be promoted by the change.

Under prior law, the court which issued the decree maintained continuing jurisdiction over the parties.

Section 232 of the Civil Code, which provides classes of persons who may be declared free from parental custody and control, is amended to omit reference to persons whose parents have been divorced on grounds of adultery. Under the Family Law Act adultery has been eliminated as grounds for dissolution.

Sections 1300, 1301, 1304 of the Civil Code, relating to the declara-

tion of a married person's separate homestead, are amended to substitute the words "dissolution of a marriage" for "divorce," and "legal separation" for "separate maintenance."

Since enactment of the Family Law Act in 1969, the terms "divorce" and "separate maintenance" are no longer used.

Section 904.1 of the Code of Civil Procedure is amended to provide that an appeal may be taken from a superior court interlocutory judgment of "dissolution of marriage," rather than from an interlocutory "decree of divorce."

Code of Civil Procedure §917.7, relating to a stay of proceedings by the perfecting of an appeal, is amended to substitute "§5102" for "§157." Section 5102 is within the Family Law Act, and substantially reenacted former Section 157.

COMMENT

Chapter 1210 recognizes the problem judges are faced with in modifying or revoking child and spousal support orders, and gives the court the discretionary authority to make an order retroactive to the date of filing or any date subsequent thereto, so that the court may tailor such orders to best fit the circumstances of the case.

This chapter also recognizes that the court which issues a decree terminating a marital relationship may be inconvenient to the parties on account of their subsequent change of residence, and Chapter 1210 therefore provides for a change of venue in such circumstances.

The remaining amendments adopted by Chapter 1210 are nonsubstantive and designed to make the language of the amended sections consistent with the terminology of the Family Law Act.

Domestic Relations; modification or revocation of spousal support

Civil Code §§4702, 4801 (amended).

AB 389 (Hayes); STATS 1971, Ch 1675

Chapter 1675 amends subdivision (b) of §4702 of the Civil Code to read: "In any proceeding where a court makes or has made an order requiring payment of child support to a *parent* having custody of any minor children, the court may direct that payments thereof be made to [a] county clerk, probation officer or other officer of the court." Previously the provision applied when there was an order of payment of child support to a *former spouse*.

Chapter 1675 also amends §4801 by deleting the provision which allowed modification of spousal support when either party was living with a member of the opposite sex and holding him or her out as a husband or wife. Also, subdivision (a) of §4801 now provides that an order of modification or revocation "may be made retroactive to the date of filing of the notice of motion or order to show cause to modify or revoke, or to any date subsequent thereto."

Domestic Relations; dissolution of marriage, amelioration of contempt of court

Civil Code §4381 (new).

AB 2462 (Hayes); STATS 1971, Ch 867

Following the commencement of dissolution of marriage proceedings, the court may issue orders relating to child custody, support, family obligations, and restraining conduct. Any such order may be enforced, if necessary, by resort to contempt of court proceedings (Civil Code §4380).

Section 4381 is added to the Civil Code to provide that any conditional or unconditional reconciliation of the parties shall be an ameliorating factor to be considered by the court in considering any contempt of an existing court order in a dissolution proceeding.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, *Attorney's Guide to the Family Law Act* §3.2 (1970).

Domestic Relations; adoption

Government Code §26860 (new); Health and Safety Code §§10433.4, 10439.5, 10448, 10451, 10615 (new).

SB 1592 (Lagomarsino); STATS 1971 Ch 1166

(Effective January 1, 1972)

Section 10433.4 is added to the Health and Safety Code to provide that at any time after the issuance of a new birth certificate, another amended certificate may be issued, at the request of the adopting parents, which omits the specific name and address of the hospital or other facility where the birth occurred or which omits the city and county of birth, or both.

Section 10615 of the Health and Safety Code is added to provide that a fee of \$5 shall be paid to the State Registrar by the applicant for

the establishment of an amended record of birth under the provisions of Article 4 (amendment after adoption), Article 5 (amendment after legitimation), or Article 6 (amendment after adjudication or acknowledgement of paternity).

Sections 10439.5, 10448, and 10451 are added to provide that the State Registrar shall furnish a certified copy of the newly amended record of birth, prepared under authority of Articles 4, 5 or 6, to the registrant without additional cost.

Section 26860 is added to the Government Code to require a fee of \$5 to be paid to the county clerk at the time of filing the petition in an adoption proceeding, except for agency adoptions in which the adoption fee is waived and a statement from the agency to this effect is filed with the petition. Such fees shall be paid monthly by the county clerk to the State Registrar of Vital Statistics for the services required by statute of that office.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §88 (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, *California Family Lawyer* §§19.96-19.99, 9.26 (1961).

Domestic Relations; birth records

Health and Safety Code §10433 (amended).
SB 238 (Zenovich); STATS 1971, Ch 137

Section 10433 provides for the contents and form of the birth certificate of an adopted child. Chapter 137 amends this section to delete reference to the date the record was amended to reflect the adoption.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §88 (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, *California Family Lawyer* §19.96 (1961).

Domestic Relations; separate property

Civil Code §§5118, 5119 (amended).
AB 1549 (Hayes); STATS 1971, Ch 1699

Chapter 1699 classifies as separate property the earnings and accumulations of each spouse and the minor children in their custody when the spouses are living separate and apart.

Under prior law when the spouses were living separate and apart, be-

fore a final decree of dissolution, the husband's earnings were community property but the earnings of the wife were her separate property.

See Generally:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §5 (7th ed. 1960), (Supp. 1969).