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Domestic Relations

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Domestic Relations

Domestic Relations; dissolution filing fees for servicemen

Government Code §26857.5 (new).
SB 1456 (Biddle); STATS 1974, Ch 39

Chapter 39 adds section 26857.5 to the Government Code to provide that no filing fee shall be charged for any appearance, stipulation, or waiver of rights by a respondent who is a member of the armed forces and who does not contest an action for dissolution of the marriage under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C., app., §501 *et seq.*]. Under the provisions of the Act, a default judgment cannot be entered against a respondent serviceman. Therefore, a serviceman who does not wish to contest a dissolution suit must file a waiver of rights, for which he is required to pay a filing fee. By the elimination of such fees the serviceman will now be able to avoid costs which could be avoided by a civilian who allowed a default judgment to be entered against him while retaining the same degree of protection of the rights of servicemen under prior law.

Domestic Relations; civil rights of prisoners

Penal Code §2625 (new).
AB 3668 (Sieroty); STATS 1974, Ch 1462

Prior to the enactment of chapter 1462, the civil rights of prisoners in California state prisons were virtually suspended except as specifically enumerated in section 2600 of the Penal Code. However, recent Supreme Court decisions have held that certain fundamental rights may not be abridged with respect to any individual unless there is a compelling governmental interest involved. While section 2600 of the Penal Code still restricts a great number of the civil rights of prisoners, chapter 1462 adds section 2625 to the Penal Code to provide that on receipt, from a prisoner or his attorney, of an affidavit indicating the prisoner's desire to be present at a hearing to terminate the prisoner's parental rights under section 232 of the Civil Code, the court must issue an order for the temporary removal of such prisoner and his pro-

duction before the court. Section 2625 further provides that in all other actions at which a prisoner's marital rights or parental rights are subject to adjudication, the court may order the prisoner removed from a state prison and brought before the court.

See Generally:

- 1) Comment, *Domestic Relations Problems of California Prisoners*, 6 U.C.D.L. REV. 313 (1973).

**Domestic Relations; elimination of questionnaires
in dissolution proceedings**

Civil Code §4356 (repealed); §4508 (amended).

SB 1875 (Holmdahl); STAS 1974, Ch 437

Support: State Bar of California; Judicial Council

Formerly, Civil Code Section 4356 provided that parties to a proceeding seeking dissolution of a marriage were required to file a confidential questionnaire with the court. This requirement obtained only in counties which had established conciliation courts. The questionnaire posed inquiries of a slightly personal nature, designed to assist counseling. Chapter 437 repeals that section and eliminates mention of the questionnaires in related section 4508. The act does not affect the collection of statistics by the State Department of Health, Vital Statistics Section, inasmuch as the parties will still be required to fill out a form giving factual information including information on prior marriages.

COMMENT

The former questionnaires had been objected to on two grounds. First, the highly personal nature of the inquiries often proved offensive or embarrassing to parties required to answer. Attorneys handling dissolutions reported that their clients often felt the questionnaires were an invasion of privacy. For example, questions asked included: Did your parents quarrel? What is the marital history of your parents? With whom have you discussed your marital difficulties? Secondly, it was felt none of the parties for whom the questionnaires were intended to be of use (*i.e.*, judges and marriage counselors) were in fact utilizing them. Marriage counselors, in fact, indicated they required the parties to fill out entirely new forms. This act, therefore, does not impair the information available to counselors but rather eliminates an unneeded and unused form.

Domestic Relations; child support

Civil Code §§4701, 4702 (amended).

AB 1946 (McAlister); STATS 1974, Ch 514

Support: Attorney General; National Organization for Women; State Social Welfare Board

Section 4701 currently allows the court to order a parent who is obligated to pay child support to assign a portion of his future wages or salary to an officer of the court or county designated by the court to receive such payments. Prior to chapter 514, such an order to assign could only be binding on an existing employer of the parent. This chapter now provides that such an order is binding on not only an existing employer but also any future employer who is served with a copy of the order. "Employer" is defined to include a public entity. This chapter also expressly requires the employer to cooperate with, and provide relevant employment information to, the district attorney so that the support obligation may be enforced.

Under newly added subsection (b) of section 4701, if the parent who has been ordered to pay child support is in arrears in payment for two months within the last 24 months and the person who is to receive the payments petitions the court, the court shall order the defaulting parent to assign a portion of his wages or salary to either a county officer designated by the court *or directly to the person entitled to receive the support payments*. Arrearages shall be computed on the basis of the support payments due and owing on the date the defaulting parent is notified of the petition for wage assignment. Subsequent payment of the arrearages by the defaulting parent does not relieve the court of its duty under this section to order the assignment of a portion of the wages or salary. The assignment order shall be binding on any existing or *future* employer who is served with a copy of the order. The defaulting parent may have a wage assignment ordered pursuant to subsection (b) of section 4701 terminated upon petition to the court if (1) there have been 18 continuous and uninterrupted months of full payment under the court order or (2) payments cannot be made because the person who is to receive the payments fails to notify the proper officials of a change of address.

Newly added subsection (e) of section 4701 provides that if the whereabouts of the defaulting parent and the identity of his employer are unknown, the district attorney shall contact the central registry maintained by the Department of Justice in order to find such information, and then notify the court of the last known address of the par-

ent or the name and address of that parent's last employer. The court shall then order the parent obligated to make support payments to show cause why an order for wage assignment pursuant to section 4701(b) should not issue. Section 4701 also expressly provides that an employer shall not use any assignment authorized by the court as grounds for dismissal of an employee.

See Generally:

- 1) 6 WITKIN, *SUMMARY OF CALIFORNIA LAW, Parent and Child* §§136-140 (8th ed. 1974).
- 2) Cruise, *The District Attorney and Family Support 1971 Style*, 46 CAL. S.B.J. 476 (1971).
- 3) REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 195 (Civil Procedure; prejudgment attachment).

Domestic Relations; support of minor children

Penal Code §§270, 270d, 270f, 270g (amended).

AB 1293 (Keene); STATS 1974, Ch 893

Chapter 893 amends section 270 of the Penal Code to make the criminal sanctions for willful failure to pay child support applicable equally to the mother and father of a minor child. Previously the provisions of section 270 were applicable solely to the father regardless of any judicial decree or agreement of support, custody, or alimony. Section 270d, which provides for fines levied pursuant to sections 270 or 270a to be paid to the spouse, guardian, or custodian of the child or children or to the county if the child or children are receiving public assistance, section 270f, which provides for investigation by the district attorney of claims of failure to support, and section 270g, which provides for periodic review of such claims by the district attorney, have also been amended by chapter 893 to reflect the liability of either spouse now provided for in section 270.

See Generally:

- 1) 6 WITKIN, *SUMMARY OF CALIFORNIA LAW, Parent and Child* §140 (8th ed. 1974).

Domestic Relations; child support orders

Civil Code §4704 (new).

SB 1240 (Berryhill); STATS 1974, Ch 81

Chapter 81 has been enacted to clarify an ambiguity in the law relating to child support orders. This chapter expressly states that a child support order issued prior to March 4, 1972 (the effective date of legislation reducing the age of majority to 18 years) may be

amended or modified by the court after that date without automatically affecting the duration of the original support order. Prior to the enactment of this chapter, some legal writers had concluded that if a child support order which was issued while the age of majority was 21 years was modified or amended after the age of majority had been legally reduced, then the amended child support order would automatically terminate when the child reached age 18 rather than age 21 [See CONTINUING EDUCATION OF THE BAR, ATTORNEY'S GUIDE TO FAMILY LAW ACT PRACTICE §4.32 (2d ed. 1972)]. Chapter 81 makes clear that such a reduction of the duration of a child support order is not automatic. However, the court still has the discretion to modify a child support order if there has been a material change in circumstances [Philbin v. Philbin, 19 Cal. App. 3d 115, 96 Cal. Rptr. 408 (1971)]. Thus the courts may possibly continue to reduce the duration of those child support orders issued while the age of majority was 21 years, based on the changed circumstances rationale, despite the provisions of this chapter.

Domestic Relations; revocation of spousal support

Civil Code §4801.5 (new).

SB 2392 (Whetmore); STATS 1974, Ch 1338

Section 4801.5 has been added to the Civil Code to *require* the court to revoke any decree, order, or judgment for spousal support upon a petition by the supporting spouse and a court finding that the spouse receiving support has been living with a member of the opposite sex and holding himself out as the spouse of that person for a total of 30 days, consecutively or nonconsecutively, although he is not married to that person. Upon such a finding the court shall also order the restitution of any support payments received by the spouse after the onset of such a relationship.

COMMENT

Prior to the enactment of chapter 1338, section 4801 of the Civil Code permitted the modification or revocation of an order for spousal support as the court deemed necessary. The court had the power to modify or revoke support orders upon a change in either party's economic circumstances, regardless of the reason. However, the sole fact that a spouse receiving support payments was living with a member of the opposite sex was not sufficient justification for the revocation of a support order [Double v. Double, 248 Cal. App. 2d 650, 56 Cal.

Rptr. 687 (1967)]. The actual impact of chapter 1338 is in the limited situation in which the spouse receiving support is living with a member of the opposite sex *and* holding himself or herself out as married to that person, and that person is not supporting such spouse or otherwise changing his economic situation. Furthermore, there is no indication in chapter 1338 as to what constitutes holding oneself out as the spouse of another. It is unclear if this includes just living with a person of the opposite sex, or would require some additional conduct as well.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Husband and Wife* §123B (Supp. 1969).

Domestic Relations; support payment enforcement

Civil Code §4805 (amended).

SB 2103 (Dymally); STATS 1974, Ch 1329

Support: State Bar of California

Chapter 1329 revises the priority of assets that may be reached to enforce decrees, orders, and judgments authorized by the Family Law Act [CAL. CIV. CODE §4000 *et seq.*]. Prior to the enactment of chapter 1329, in the enforcement of any decree, order, or judgment the court was required to resort first to community property, then to quasi-community property, and finally to the separate property of the spouse ordered to pay support. As amended, section 4805 of the Civil Code provides that the priority of assets that may be reached to satisfy support orders is (1) the earnings, income, or accumulations of either spouse, while living separate and apart from the other spouse, which would have been community property if the spouse had not been living separate and apart from the other spouse; (2) the community property; (3) the quasi-community property; and (4) the separate property of the spouse ordered to make support payments.

Chapter 1329 is apparently designed to end the problem of a spouse who has been ordered by the court to make support payments but who then uses the community property to satisfy the support obligation. The effect is that half of the obligation is satisfied with property already owned by the party to whom support is owed. In some cases this practice reportedly resulted in dissipation of the community property while the spouse ordered to pay was allowed to keep all his earnings after the separation as separate property [STATE BAR OF CALIFORNIA, 1973 CONFERENCE RESOLUTION 6-19].

Domestic Relations; adoption of minors

Civil Code §§224, 234, 237.5 (amended).

AB 1211 (Boatwright); STATS 1974, Ch 246

Support: Children's Lobby; Children's Home Society

Under the law prior to chapter 246, an *illegitimate* child could be placed for adoption with only the mother's consent. This chapter creates an exception to this rule by providing that a child born before the marriage of his parents, or within 300 days after the marriage of his parents is terminated by judicial decree, cannot be placed for adoption unless the requirements of consent which are applicable to *legitimate* children are met. Thus, the consent of both parents, if living, is necessary before such a child can be placed for adoption, unless (1) the father has been awarded custody of the child by judicial decree or by agreement, and the mother subsequently fails to communicate with the child (if able to do so) for a period of one year, or (2) the mother has been awarded custody of the child by judicial decree or agreement, and the father willfully fails to pay for the care, support, and education of the child (if able to do so) for one year. In these instances only the consent of the parent having custody is required, provided that the parent without custody is served with a copy of the citation in the same manner that a summons for a civil action is served.

Upon the filing of the petition to declare the minor free from parental custody and control, section 234 provides that a citation shall issue to require the person having custody or control of the minor to appear at the proceedings with the child. Under prior law there were no express exceptions to this requirement that the child be present. Chapter 246 now allows the judge, if necessity is shown, to excuse a child under 12 years of age from attending the proceedings. Section 237.5 provides that the parents and the minor have the right to be represented by counsel at these proceedings. The court may appoint counsel for the minor, regardless of his economic status, as well as for the parents if they are indigent. This section is amended by chapter 246 to provide that the court may appoint private counsel *or* a public defender to represent either the minor or the parents. If counsel is appointed the court may grant a continuance for 30 days as opposed to only seven days under prior law.

See Generally:

- 1) 6 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §§190-203 (8th ed. 1974).
- 2) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 364 (1974) (termination of parental control).

Domestic Relations; adoptions—new birth certificates

Health and Safety Code §10432 (amended).

SB 393 (Roberti); STATS 1974, Ch 79

Support: California Association of Adoption Agencies; Children's Home Society

Section 10432 of the Health and Safety Code requires the State Registrar of Vital Statistics to issue a new birth certificate upon receipt of a report from a court that a child born in California has been adopted in another state or territory of the United States. Chapter 79 amends section 10432 to include adoptions in foreign countries. This extension of the law covers two areas, passport applications and naturalization proceedings, in which reference to the birth certificate would be necessary for foreign adopting parents. The new certificate, reflecting the adopted name and the names of the adopting parents, then becomes the only one open to public inspection (§10434). Information as to the child's natural parents is accessible only through court order (§10439). All of these provisions voice a strong public policy favoring the anonymity of the child's biological parents, both for the protection of the child and his adopted parents.

See Generally:

- 1) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 351 (1974).

Domestic Relations; child placement

Civil Code Title 4 (commencing with §264) (new).

SB 1863 (Song); STATS 1974, Ch 956

Chapter 956 has been enacted to incorporate into the California Civil Code the Interstate Compact on the Placement of Children, which is in effect in 21 states to date. Chapter 956 prohibits public and private agencies from sending a child into a foreign state unless the agency complies with the provisions of this legislation. The Compact delineates the conditions and procedures for placing a child in a foreign state. The sending agency must notify the appropriate authorities in the receiving state of the intention to place or send a child into that state, the reasons for the action, and must receive from these authorities proper authorization. The Compact requires that the sending agency, which includes any state or state official, court, person, corporation, charitable agency, or other entity which sends a child to another state for placement purposes, shall retain jurisdiction over the child until the child is adopted, reaches majority, becomes self-supporting or is

discharged from the jurisdiction of the sending agency. The sending agency additionally retains financial responsibility for the support and maintenance of the child during the period of placement. Chapter 956 authorizes the creation of a Compact Administrator who shall have the power to make rules and regulations to carry out the purpose of the legislation. It further stipulates that a placement in violation of the terms of the Compact constitutes a violation of the laws of both the sending and receiving states and is also grounds for revoking the license, permit, or other legal authorization of the sending agency. The terms of the Compact expressly do not apply to the placement of a child in a foreign state by the parent or a close relative when the child is left with any such relative or a nonagency guardian.

COMMENT

Some adoption agency associations opposing this legislation claim that placements made by licensed adoption agencies (regulated by §1520 *et seq.* of the Health and Safety Code) and placements in foster child homes (regulated by §16500 *et seq.* of the Welfare and Institutions Code), which together comprise over 90 percent of child placements, have resulted in very few problems. However, it is claimed that placements made independently by the parent, and which are thus not governed by the Compact, have been subject to much abuse. Presumably, such abuse results from lack of investigation into the receiving family to insure adequate protection of the child's welfare. Thus, there may be need for additional legislation to control these independent placements.

Domestic Relations; public social services

Welfare and Institutions Code Chapter 4 (commencing with §12500) (repealed); §§12303.5, 12304.5, 12361 (new); §§12151, 12200, 12300, 12302, 12303, 12304, 12351, 12400, 13920, 13922, 18910 (amended).

AB 853 (Burton); STATS 1974, Ch 75
(Effective March 14, 1974)

Coordinates state and federal supplemental aid programs; fixes maximum and minimum limits for supportive services; eliminates requirement that relatives support blind and disabled aid recipients; provides criminal penalties for unauthorized use of food stamps.

Chapter 75 has been enacted to apply retroactively to meet requirements [Pub. L. No. 92-603, §§1601-1634 (Oct. 30, 1972), 86 STAT.

1329] dealing with increases in supplemental aid payments for the aged, blind, and disabled, thereby coordinating state supplemental aid payments with federal social security benefits to meet the federal supplemental aid requirements and thereby retain federal administration of the state supplemental aid program.

Under section 12151, as amended, all recipients of aid during December 1973 who have met all of the requirements for supplementary aid (to the aged, blind, and disabled), emergency aid (to the aged, blind, and disabled), or aid for the needy and disabled under chapters 3 (commencing with §12000), 4 (commencing with §12500) and 6 (commencing with §13500) of the Welfare and Institutions Code, shall continue to be eligible for supplemental aid after January 1, 1974, unless classified as ineligible because the applicant has died, has failed to be classified as aged, blind, or disabled, is an inmate of a public institution, has failed to apply for aid within the allotted time period, or is a drug addict or alcoholic and is not undergoing treatment at an approved facility or institution [Pub. L. No. 93-66, §212(a) (July 9, 1973); 42 U.S.C. §1382 *et seq.*].

Section 12200 has been amended to increase the amounts of supplemental aid that will be added to a recipient's federal social security benefit, and to set maximum and minimum ceilings varying according to the disability involved, marital status, age, additional income, and in kind support and maintenance received from other sources.

The service of "attendant care" has been deleted from those supportive services which are provided to recipients of public assistance who remain in their own homes or an abode of their own choosing (§12300 as amended). Section 12303.5 has been added to the Welfare and Institutions Code to limit a recipient of in-home supportive care to \$350 per month, unless that individual falls within section 12304, as amended, which permits supportive aid not to exceed \$450 per month to those individuals who are severely impaired and in need of in-home supportive services as determined by the county welfare department. Section 12304 has also been amended to require the county to notify in writing any individuals who are eligible for assistance under chapter 3 or chapter 4 that they are potentially eligible to receive aid to purchase in-home supportive services if their income is insufficient to provide for such care.

The requirement that relatives contribute to the support of, or defray the cost of, aid to a blind or disabled recipient (formerly required by §12351) is expressly eliminated by the addition of section 12361,

which also prohibits any threats of legal action against such a relative by an officer or employee of the department. Sections 13920 and 13922 have been amended to revise the minimum and maximum allowances received by persons living in nonmedical, out-of-home care facilities. Such allowances shall be determined by the marital status of the applicant and the cost-of-living increases as provided for in section 12201.

Section 18910 has been amended to provide misdemeanor and felony penalties (depending on the dollar value of the violations involved) for the use, possession or transfer of food stamps unauthorized by either chapter 10 (commencing with §18900) of the Welfare and Institutions Code or the Food Stamp Act of 1964 [Pub. L. No. 88-525 (Aug. 31, 1964), 78 STAT. 703].

Domestic Relations; community property

Civil Code §§5117, 5130 (repealed); §§5116, 5125, 5127 (amended).

SB 1601 (Song); STATS 1974, Ch 1206

Chapter 1206 has been enacted in an effort to amend and clarify the 1973 community property legislation [CAL. STATS. 1973, c. 987] by making certain key provisions retroactive. The areas of the law which have been affected are: (1) management and control of community property by either spouse (§5125 of the Civil Code), (2) right to void certain transfers (§5127), and (3) liability of the community property for contracts of either spouse made during marriage (§5116).

Section 5125, which provides the right to management and control of community assets by either spouse, has been amended to extend the right to equal management and control to property acquired prior to the effective date of chapter 1206 (January 1, 1975) as well as to property acquired after that date. Additionally, section 5125(e) requires that each spouse shall act in good faith with respect to the other spouse in the management and control of the community property. Section 5127 has also been amended to allow either spouse to void within one year from the date of recordation a conveyance of community real property, whenever acquired, made without the consent of the nonconveying spouse. However, the section also provides that any lease, contract, mortgage or deed of the husband made 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, and the husband was the record title holder at that time.

Section 5116 has been amended to provide that the property of the community is liable for the contracts of either spouse, whether made prior to, on, or after January 1, 1975. Prior to the enactment of chapter 1206, the community property would have been liable only for the contracts of either spouse made on or after January 1, 1975.

COMMENT

Retroactivity

Although section 1 of chapter 1206 declares the legislative intent of retroactivity, and the language of the actual code sections amended does appear to make sections 5115, 5125 and 5127 retroactive, the retroactive effect of these provisions is suspect in light of section 7, which was added by an amendment to Senate Bill 1601 in the closing days of the 1973-74 Regular Session. Section 7 states, "This act shall not apply to or affect any act or transaction which occurred prior to January 1, 1975." If section 7 is deemed to be controlling, it could be read to negative the entire retroactive thrust of chapter 1206. One result of such a nonretroactive interpretation would be to protect the creditors who transacted with the husband prior to 1975 when most of the community assets were under the control of the husband and therefore liable only for his debts and not the debts of his wife. If this legislation is not retroactive, then only the creditors of the husband may satisfy from community funds debts of the community which occurred prior to 1975. However an interpretation of nonretroactivity would also remove from the equal control of the wife any community property acquired prior to 1975.

Alternatively, "act or transaction" could be interpreted to exclude "acquisitions" by the community, thereby giving the wife equal management and control of community property which was acquired prior to January 1, 1975, and which is still retained by the community. If any community property was conveyed away by the husband in a transaction prior to January 1, 1975, without the consent of the wife, the wife may not attack the conveyance on the basis of equal right to management and control; as such a "transaction" comes within the purview of section 7, which denies any retroactive rights in property transferred prior to January 1, 1975.

Section 5117, which provided that the community property under the management and control of the wife was liable for necessities furnished to the husband and wife while living together, and section 5130, which allowed third parties to recover the reasonable value of any necessities provided to the wife because of the husband's neglect in providing those necessities from community assets, have been repealed. Apparently they are no longer required to protect creditors since the debts of either spouse accruing on or after January 1, 1975, are collectable out of all community assets, while transactions involving necessities made prior to January 1, 1975, would apparently still be controlled by former sections 5117 and 5130.

Constitutional Validity

If the provisions of chapter 1206 are interpreted to be retroactive, then the constitutionality of such an application must be examined. While the husband's right to sole management and control of the majority of the community assets acquired prior to January 1, 1975, may be classifiable as a vested right, recent California decisions have permitted the retroactive application of community property legislation when the public interest served outweighs the vested property rights that may be impaired [*See, e.g., Addison v. Addison*, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 29 (1967)]. The public interest served by extending the right to equal management and control of community property to either spouse arguably would not be served adequately unless equal management and control is extended to all of the community property, whenever acquired. Thus the public interest served by the implementation of the equal management and control of *all* community assets [*See Comment, Retroactive Application of California's Community Property Statutes*, 18 STAN. L. REV. 514, 522-23 (1966)] would apparently outweigh the impairment of the husband's rights; and, as retroactivity is necessary to facilitate such an interest, sections 5125 and 5127 will probably satisfy the constitutional requirements of due process.

However, the constitutional validity of a retroactive application of section 5116, which would allow the creditors of the wife to reach property which was exempt from liability at the time the debt was incurred, does not seem to be essential to implement equal management and control legislation and therefore may not sufficiently outweigh the impairment of any rights of the husband in regard to management and control of such property. Therefore, an interpretation of section 7 of

chapter 1206 which excludes transactions made prior to January 1, 1975, from community property liability, would seem to avoid any possible constitutional invalidation of section 5116.

See Generally:

- 1) Comment, *California's New Community Property Law—Its Effect On Interspousal Mismanagement Litigation*, 5 PAC. L.J. 732 (1974).
- 2) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 352 (1974) (Civil Code §§5116, 5125, 5127).