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# Domestic Relations

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# Domestic Relations

## Domestic Relations; child support—separate trials

Civil Code §4707 (new).

AB 2284 (Berman); STATS 1982, Ch 550

Opposition: State Bar of California

Existing law provides that when there is more than one contested issue in a trial, and one of the issues is the custody of a minor child,<sup>1</sup> the court must order a separate trial on the custody issue.<sup>2</sup> Chapter 550 provides that in any case when the *support* of a minor child<sup>3</sup> is at issue, the court *may*, upon a showing of good cause, order a separate trial on the support issue.<sup>4</sup> As in the case of a custody trial, the support trial must be given preference in the setting of a trial date over other civil cases,<sup>5</sup> except those cases that are given special precedence.<sup>6</sup> In addition, Chapter 550 expedites the hearing of matters by requiring that when separate trials are ordered on the issues of custody and support, the two issues must be tried together.<sup>7</sup>

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1. See CAL. CIV. CODE §4600 (procedures governing child custody cases).

2. *Id.* §4600.6(b).

3. See *id.* §4700 (procedures governing determination of support of a minor child).

4. *Id.* §4707.

5. 4 B. WITKIN, CALIFORNIA PROCEDURE, *Trials* §46 (2nd ed. 1971) (explanation of giving preference in the setting of a trial date over other civil cases).

6. CAL. CIV. CODE §4707. Existing law provides that when custody is the sole issue the case will still be given preference. It is unclear, however, when support is the sole issue whether it will also be given preference over other civil matters. Compare *id.* §4600.6 with *id.* §4707.

7. *Id.* §4707.

## Domestic Relations; stepparent visitation

Civil Code §4351.5 (new); Government Code §26840.3 (amended).

AB 2635 (Farr); STATS. 1982, Ch 1071

Support: Department of Finance

In *Perry v. Superior Court of Kern County*<sup>1</sup> the Court of Appeals held that a trial court was prohibited from awarding visitation rights to a

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1. 108 Cal. App. 3d 480, 166 Cal. Rptr. 583 (1980).

stepparent in dissolution proceedings under the Family Law Act.<sup>2</sup> The Legislature, in enacting Chapter 1071, has apparently responded to the invitation in *Perry* to "address this thorny problem of visitation by stepparents."<sup>3</sup> Chapter 1071 grants the court jurisdiction in dissolution proceedings to render judgments and orders concerning visitation of minor stepchildren of the marriage.<sup>4</sup> In addition, Chapter 1071 establishes mediation procedures to effect a settlement on the issue of visitation.<sup>5</sup>

Under existing law, a superior court has jurisdiction to inquire into and render appropriate judgments regarding the status of the marriage, the support of either party, the settlement of property rights, and the custody and support of minor children of the marriage.<sup>6</sup> The phrase "children of the marriage," however, was construed in *Perry* to preclude a court from granting visitation rights to a divorced stepparent, since the stepparent was neither the natural nor the adoptive parent of the child.<sup>7</sup>

Chapter 1071 amends the law regarding a court's jurisdiction under the Family Law Act in dissolution proceedings by granting the court authority to inquire into and to render judgments and orders concerning the visitation of minor step-children of the marriage.<sup>8</sup> Prior to granting the visitation right to the stepparent, however, the court must make a finding that the visitation order is in the best interests of the minor child.<sup>9</sup>

Furthermore, Chapter 1071 establishes mediation procedures to determine the rights of parties regarding the matter of stepparent visitation.<sup>10</sup> Chapter 1071 requires that notice of the mediation hearing be given to all interested persons<sup>11</sup> and provides that the mediation meeting be held in private and be confidential.<sup>12</sup> Additionally, the mediator may (1) exclude counsel from the proceedings if this is deemed appro-

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2. *Id.* at 481-82, 166 Cal. Rptr. at 583-84. See generally CAL. CIV. CODE §§4000-5138 (the Family Law Act).

3. 108 Cal. App. 3d at 485, 166 Cal. Rptr. at 586.

4. Compare CAL. CIV. CODE §4351.5(a) with CAL. STATS. 1977, c. 860, §1, at 2599 (amending CAL. CIV. CODE §4351).

5. CAL. CIV. CODE §4351.5.

6. *Id.* §4351.

7. 108 Cal. App. 3d at 481-82, 166 Cal. Rptr. at 583-84.

8. Compare CAL. CIV. CODE §4351.5(a) with CAL. STATS. 1977, c. 860, §1, at 2599.

9. CAL. CIV. CODE §4351.5(a).

10. *Id.* §4351.5.

11. *Id.* §4351.5(h). The notice of a mediation or other hearing is to be given to the stepparent seeking visitation rights, each parent of the child, and to the counsel of record of each parent. Notice is to be given by certified mail, return receipt requested, postage prepaid, to the last known address of each of the parents and their counsel. *Id.*

12. *Id.* §4351.5(c).

priate or necessary,<sup>13</sup> (2) interview the child in order to assess the needs of the child with regards to visitation,<sup>14</sup> and (3) recommend that mutual restraining orders be issued to protect the well-being of the child while the controversy is being determined,<sup>15</sup> and (4) recommend that an investigation be conducted to assist the parties in reaching an agreement.<sup>16</sup>

If the mediation proceeding results in agreement between the parties over visitation, the agreement will be reported to the court and counsel for the parties.<sup>17</sup> If the parties cannot agree on visitation rights the court will set a hearing to resolve the matter.<sup>18</sup>

Although a natural parent is not required to participate in the mediation process, failure to do so will result in a waiver of the parent's right to object to a settlement reached by the other parties.<sup>19</sup> No right of visitation granted a stepparent may conflict, however, with a visitation or custodial right of a natural or adoptive parent who is not a party to the dissolution proceeding.<sup>20</sup>

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13. *Id.* §4351.5(d).

14. *Id.*

15. *Id.* §4351.5(e).

16. *Id.*

17. *Id.*

18. *Id.* §4351.5(g).

19. *Id.* §4351.5(f).

20. *Id.* §4351.5(i).

## **Domestic Relations; domestic violence and visitation rights**

Civil Code §§4601.5, 4608 (new); §7020 (amended); Code of Civil Procedure §547.5 (new); §548 (amended).

AB 3569 (Moore); STATS. 1982, Ch 359

Support: State Bar of California

AB 3650 (Sher); STATS. 1982, Ch 439

Support: Mid-Peninsula Support Network

The Domestic Violence Prevention Act<sup>1</sup> was enacted to prevent recurring acts of violence<sup>2</sup> committed by a spouse or household member<sup>3</sup> against the other spouse or any other family or household member.<sup>4</sup>

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1. *See* CAL. CIV. PROC. CODE §§540-553.

2. *Id.* §542(b); CAL. WELF. & INST. CODE §18291 (definition of domestic violence).

3. CAL. CIV. PROC. CODE §542(c); CAL. WELF. & INST. CODE §18291 (definition of family or household member); 12 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 383, 386 (1981).

4. *See* CAL. CIV. PROC. CODE §540; *see also* CAL. WELF. & INST. CODE §18290 (declaration

Chapter 359 further implements this goal by enacting provisions that allow the court to determine if a third party must be present when a noncustodial parent<sup>5</sup> exercises visitation rights after an *ex parte* order<sup>6</sup> has been issued enjoining<sup>7</sup> the noncustodial parent from specified behavior.<sup>8</sup> In addition, Chapter 359 specifies certain factors that must be considered in making this determination<sup>9</sup> and Chapters 359 and 439 increase the maximum effective period of a temporary restraining order issued against a violent or abusive parent.<sup>10</sup>

Existing law states that reasonable visitation rights will be awarded to a parent unless the granting of these rights would be detrimental to the child.<sup>11</sup> Chapter 359 provides that during the dissolution of marriage,<sup>12</sup> if the noncustodial parent has been enjoined by a restraining order to prevent contact with the other parent because the noncustodial parent has committed a violent act,<sup>13</sup> the court, whether making an award of visitation<sup>14</sup> or an award of temporary custody,<sup>15</sup> must consider whether the best interests of the child require that visitation be in the presence of a third person.<sup>16</sup> Since there is no standard to determine what constitutes a child's best interest,<sup>17</sup> this determination is

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of need to ameliorate and reduce the trauma of domestic violence). *See generally* 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 465 (1980).

5. *See Perry v. Superior Court*, 108 Cal. App. 3d 480, 481, 166 Cal. Rptr. 583, 584 (1980) (visitation can be awarded to natural or adoptive parents); *In re Reyna*, 55 Cal. App. 3d 288, 297, 126 Cal. Rptr. 138, 144 (1976) (the father of an illegitimate child is considered a parent in determining custody or visitation matters).

6. *See* CAL. CIV. CODE §4359; CAL. CIV. PROC. CODE §§546, 547 (authorizing the court to issue *ex parte* orders).

7. CAL. CIV. PROC. CODE §525 (definition of injunction).

8. CAL. CIV. CODE §4601.5; CAL. CIV. PROC. CODE §547.5; *see also* CAL. CIV. CODE §4359(a)(2), (3) (the enjoined behavior includes contacting, molesting, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or other named family and household members).

9. CAL. CIV. CODE §§4601.5, 4608; CAL. CIV. PROC. CODE §547.5 (the determination includes consideration of the nature of the acts from which the parent was enjoined, and includes consideration of the health, safety and welfare of the child).

10. *Compare* CAL. CIV. PROC. CODE §548 with CAL. STATS. 1979, c. 795, §10, at 282 (enacting CAL. CIV. PROC. CODE §548); CAL. CIV. CODE §7020 with CAL. STATS. 1980, c. 1158, §3, at 3876 (amending CAL. CIV. CODE §7020).

11. CAL. CIV. CODE §4601; *see id.* §4600 (the public policy is to assure minor children of contact with both parents); *see also* *Feist v. Feist*, 236 Cal. App. 2d 433, 435, 46 Cal. Rptr. 93, 95 (1965); *Bartold v. Bartold*, 155 Cal. App. 2d 251, 254, 318 P.2d 69, 71 (1957).

12. *See generally* CAL. CIV. CODE §§4500-4531; §§4400-4458. Chapter 359 also requires this consideration during a judicial determination of a void or voidable marriage. *See* CAL. CIV. CODE §4601.5; CAL. CIV. PROC. CODE §547.5.

13. *See* CAL. CIV. CODE §4359.

14. *See id.* §4601.

15. *See id.* §4600. *See generally* *Feist v. Feist*, 236 Cal. App. 2d 433, 46 Cal. Rptr. 93 (1965) (in the absence of a provision expressly denying the right of visitation in a custody order, a parent deprived of custody is entitled to reasonable visitation as a matter of natural right).

16. *See* CAL. CIV. CODE §4601.5; CAL. CIV. PROC. CODE §547.5.

17. *See* *Bialac v. Bialac*, 240 Cal. App. 2d 940, 946, 50 Cal. Rptr. 12, 15 (1966).

within the broad discretion of the court.<sup>18</sup> The court can only make this determination, however, after a full inquiry<sup>19</sup> that includes considering the morals, dispositions, personal behavior and characteristics of the parent seeking visitation.<sup>20</sup> Chapter 359 requires that the court also consider the health, safety, and welfare of the child in determining what is in the child's best interest.<sup>21</sup>

In deciding whether a third person will be required to be present during visitation, Chapter 359 also requires the court to consider the nature of the acts<sup>22</sup> the parent was enjoined from doing and the time that has elapsed since the order was initiated.<sup>23</sup> Furthermore, Chapter 359 allows either parent to submit to the court the name of third persons suitable to be present.<sup>24</sup>

Existing law provides that it is within the discretion of the court, within guidelines, to determine how long a temporary restraining order will remain in effect.<sup>25</sup> Under prior law, during dissolution and annulment proceedings, as well as proceedings under the Uniform Parentage Act, the court could not allow a temporary restraining order to remain in effect past 90 days.<sup>26</sup> Chapters 359 and 439 now allow a temporary restraining order originally granted under either proceeding to remain in effect for up to one year.<sup>27</sup> Additionally, both Chapters 359 and 439 eliminate the restriction of prior law that prevented the parties, by mutual consent, from extending a temporary restraining order past one year.<sup>28</sup>

Under prior law, only the court *by its own volition* could *terminate* the temporary restraining order.<sup>29</sup> Chapter 359 now permits the termination or extension of the order by an order of the court pursuant to

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18. See *In re Marriage of Murga*, 103 Cal. App. 3d 498, 504, 163 Cal. Rptr. 79, 81 (1980); *Nadler v. Superior Court*, 255 Cal. App. 2d 523, 525, 63 Cal. Rptr. 352, 354 (1967).

19. See *Feist v. Feist*, 236 Cal. App. 2d 433, 436, 46 Cal. Rptr. 93, 95 (1965).

20. See *Mathewson v. Mathewson*, 207 Cal. App. 2d 532, 537-38, 24 Cal. Rptr. 466, 469-70 (1962); *Feist v. Feist*, 236 Cal. App. 2d 433, 435, 46 Cal. Rptr. 93, 95 (1965).

21. CAL. CIV. CODE §4608.

22. See CAL. CIV. CODE §4359(a)(2) (list of the acts that may be enjoined).

23. See CAL. CIV. CODE §4601.5; CAL. CIV. PROC. CODE §547.5.

24. See CAL. CIV. CODE §4601.5; CAL. CIV. PROC. CODE §547.5.

25. CAL. CIV. PROC. CODE §548.

26. See CAL. STATS. 1979, c. 795, §10, at 282 (enacting CAL. CIV. PROC. CODE §548); CAL. STATS. 1980, c. 1158, §3, at 689 (amending CAL. CIV. CODE §7020).

27. CAL. CIV. CODE §7020; CAL. CIV. PROC. CODE §548; see Assemblyman Byron Sher, Press Release, May 7, 1982 (copy on file at the *Pacific Law Journal*) (this expanded protection will provide a cooling-off period and give victims time to relocate and establish themselves without harassment from former cohabitants); STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 7-18 (reports from organizations providing services to battered women show that incidents and threats of further acts of domestic violence often occur after the 90 day order has expired).

28. Compare CAL. CIV. PROC. CODE §548 with CAL. STATS. 1979, c. 795, §10, at 282; CAL. CIV. CODE §7020 with CAL. STATS. 1980, c. 1158, §3, at 689.

29. See CAL. STATS. 1979, c. 795, §10, at 282.

either a written stipulation filed with the court or on motion of either party.<sup>30</sup> The requirement that the written stipulation be filed ensures that the court is notified of any mutual agreements by the parties.<sup>31</sup>

In summary, Chapter 359 allows the court to determine if a third person must be present during visitations between a noncustodial parent and child when that parent has been enjoined by an ex parte order for violent or abusive behavior in the past.<sup>32</sup> Both Chapters 359 and 439 increase the maximum period in which these ex parte orders can remain in effect<sup>33</sup> and amend procedures for the extension or termination of these orders.<sup>34</sup>

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30. See CAL. CIV. PROC. CODE §548. Under the Uniform Parentage Act, the temporary restraining order may still be extended by mutual consent of the parties without the requirement of a filed written stipulation or motion. See CAL. CIV. PROC. CODE §7020.

31. See CAL. CIV. PROC. CODE §548; STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 7-18 (the requirement also ensures that the appropriate law enforcement agencies are notified).

32. CAL. CIV. PROC. CODE §4601.5; CAL. CIV. PROC. CODE §547.5.

33. CAL. CIV. PROC. CODE §7020; CAL. CIV. PROC. CODE §548.

34. CAL. CIV. PROC. CODE §7020; CAL. CIV. PROC. CODE §548.

## **Domestic Relations; restitution for domestic violence**

Code of Civil Procedure §547 (amended).

AB 3607 (Moorhead); STATS. 1982, Ch 578

Support: Los Angeles Women Lawyers; National Organization of Women; State Bar of California

Chapter 578, in accord with recent commentary that advocates increased legal intervention to prevent domestic violence,<sup>1</sup> increases the penalties imposed on violators of the Domestic Violence Prevention Act<sup>2</sup> for their actions.<sup>3</sup> Existing law provides that after notice and a hearing, a court may require that one member of a family or household pay another member of the household for the loss of earnings and out-of-pocket expenses incurred as a result of domestic violence.<sup>4</sup> Reimbursable expenses include, but are not limited to, expenditures for tem-

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1. Bolton, *The Domestic Violence Continuum; A Pressing Need for Legal Intervention*, 66 WOMEN LAW. J. 11, 15 (1980); see CAL. CIV. PROC. CODE §547(c).

2. CAL. CIV. PROC. CODE §§540-553.

3. See STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 7-19. Compare CAL. CIV. PROC. CODE §547(c)(1) with CAL. STATS. 1980, c. 1158, §8, at 3881 (amending CAL. CIV. PROC. CODE §547).

4. CAL. CIV. PROC. CODE §547(c)(1); see also Mills and McNamar, *California's Response to Domestic Violence*, 21 SANTA CLARA L. REV. 1, 12 (1981).

porary housing and medical care.<sup>5</sup> Although medical care *may* be interpreted to include psychological care,<sup>6</sup> Chapter 578 removes the need for this interpretation by specifically including psychological care as a reimbursable expense.<sup>7</sup>

After the court follows the existing requirement of notice and a hearing,<sup>8</sup> Chapter 578 also allows the court to order the defendant to pay any individual or agency for the reasonable value of providing services to the family or household member that is required as a result of abuse or injury inflicted by the defendant.<sup>9</sup> Allowable services include, but are not limited to, housing, living expenses, advocacy, child care, and transportation.<sup>10</sup> Additionally, in response to concern about whether the term advocacy would include only attorneys' fees, Chapter 578 further defines advocacy to include counseling and referral services as allowable expenses.<sup>11</sup>

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5. CAL. CIV. PROC. CODE §547(c)(1).

6. *See* STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 7-20.

7. *Compare* CAL. CIV. PROC. CODE §547(c)(1) *with* CAL. STATS. 1980, c. 1158, §8, at 3881.

8. *See* CAL. CIV. PROC. CODE §547.

9. *See id.* §547(c)(2).

10. *Id.*

11. *Compare id.* *with* STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 7-19 *and* CAL. STATS. 1980, c. 1158, §8, at 3881.

