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Domestic Relations

University of the Pacific; McGeorge School of Law

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Domestic Relations

Domestic Relations; support mediation

Civil Code § 4801.9 (new); §§ 4607, 4801 (amended); Welfare and Institutions Code § 11475.5 (amended).
SB 907 (Lockyer); 1987 STAT. Ch. 1086

Existing law provides a mediation procedure in a proceeding under the Family Law Act when the custody or visitation of a minor child is at issue.¹ Chapter 1086 expands existing law by allowing mediation of a dispute relating to any existing order for custody or visitation.² Under existing law, an order for spousal support terminates at a period specified in the order and may not be extended unless the court retains jurisdiction in the original order.³ Chapter 1086 expands existing law allowing the court to retain jurisdiction indefinitely when the marriage is of long duration.⁴

Chapter 1086 provides an additional, simplified method for the modification of spousal support awards.⁵ The moving party⁶ may not file a spousal modification for one year following the previous award.⁷ The procedure allows for only one modification of spousal

1. CAL. CIV. CODE § 4607(a). The mediation of the contested issues are set prior to, or concurrent with, the matter for hearing. *Id.*

2. *Id.* The petition may be filed upon the adoption of a resolution by the board of supervisors authorizing the procedure. *Id.*

3. *Id.* § 4801(d).

4. *Id.* (except where the parties make a written agreement to the contrary). For the purpose of retaining jurisdiction, a marriage of a long duration is one of 10 years or more. *Id.*

5. *Id.* § 4801.9(a).

6. *See id.* § 4801.9(c). Under this procedure no attorney may take part in the proceedings unless the attorney is appearing as a party. *Id.* A party electing to be represented by counsel must motion the court under penalty of perjury of the intentions whereupon the court must proceed on the motion as in a proceeding for modification of spousal support and the party's intent to proceed with the benefit of counsel must be accompanied by the party's declaration stating facts evidencing that intent. *Id.* § 4801.9(b).

7. *Id.* § 4801.9(b) (the one year limitation does not apply if the request is based on a significant decrease in the income of the moving party). The motion must include a proposed order for modification and a declaration stating, under penalty of perjury, that the facts upon which the motion is based are true and correct. *Id.* The order must then be served upon the

support within any twelve month period⁸ and grants an increase of spousal support, without requiring a showing of changed circumstance, provided the amount doesn't exceed an amount equal to the increase in the California consumer price index for each year subsequent to the date on which the current award was granted.⁹ When the request for modification is based on a significant decrease in the income of the moving party, the moving party may be required to submit economic evidence of the decrease and the award must be based on that evidence.¹⁰ If the responding party defaults when the modification is based on a decrease in the income of the moving party, the court must make the award based on the economic evidence.¹¹

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other party and the responding party has 30 days from date of service to file an objection and request a hearing, and is then responsible for giving notice to the moving party of the date of the hearing. *Id.* The moving party must file a duplicate copy of notice with the District Attorney within five working days of filing, and notice must be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served or by personal service and proof of service must be filed with the court. *Id.* § 4801.9(e), (f).

8. *See id.* § 4801.9(d) (except where the request is based on a significant decrease in the income of the moving party).

9. *Id.* § 4801.9(d). The court must consider the economic evidence presented by the parties by way of income statements and expense statements if the court deems them relevant. *Id.* If the responding party defaults, the court may award an increase without a showing of economic evidence by the moving party. *Id.* If the court has guidelines in modifying spousal support they will be used; but if there is none, the court must use the factors employed in determining the existing award. *Id.* In a contested proceeding, the parties must make available their state income tax returns for the proceeding year, and no relief may be granted to anyone who fails to submit the documents. *Id.*

10. *Id.*

11. *Id.*