

**RESOLUTION 09-03-2017**

**DIGEST**

Standing: Delete Obsolete References to Legitimacy in Actions for Injury to a Child  
Amends Code of Civil Procedure section 376 to eliminate reference to illegitimate children.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 376 to eliminate reference to illegitimate children. This resolution should be approved in principle because it removes outdated and unnecessary distinctions of legitimacy from the statute governing standing of parents and guardians to maintain an action on behalf of an injured child.

This resolution should be approved because it treats all children, as well as the parents and guardians of all children, equally. It removes outdated distinctions of illegitimacy and makes appropriate conforming changes to Section 376.

California social norms have evolved to recognize the growing trend of non-traditional marital relationships and family units, inclusive of domestic partnerships. Likewise, California social norms no longer stigmatize children born to parents who are not legally married under California law. However, vestiges of past stigmatization of children born to unmarried parents (usually referring exclusively to the mothers) remain in California statutes. This resolution seeks to eliminate those antiquated vestiges from one important statute, Code of Civil Procedure section 376, which governs standing of parents and guardians to maintain an action on behalf of an injured child.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 376 to read as follows:

- 1 § 376
- 2 (a) The parents of an ~~illegitimate~~ legitimate unmarried minor child, acting jointly, may maintain an
- 3 action for injury to the child caused by the wrongful act or neglect of another. If either parent
- 4 fails on demand to join as plaintiff in the action or is dead or cannot be found, then the other
- 5 parent may maintain the action. The parent, if living, who does not join as plaintiff shall be
- 6 joined as a defendant and, before trial or hearing of any question of fact, shall be served with
- 7 summons either in the manner provided by law for the service of a summons in a civil action or
- 8 by sending a copy of the summons and complaint by registered mail with proper postage prepaid
- 9 addressed to that parent's last known address with request for a return receipt. If service is made
- 10 by registered mail, the production of a return receipt purporting to be signed by the addressee

11 creates a rebuttable presumption that the summons and complaint have been duly served. The  
12 presumption established by this section is a presumption affecting the burden of producing  
13 evidence. The respective rights of the parents to any award shall be determined by the court.

14 (b) A parent may maintain an action for such an injury to his or her ~~illegitimate~~  
15 unmarried minor child if a guardian has not been appointed. Where a parent who does not have  
16 care, custody, or control of the child brings the action, the parent who has care, custody, or  
17 control of the child shall be served with the summons either in the manner provided by law for  
18 the serving of a summons in a civil action or by sending a copy of the summons and complaint  
19 by registered mail, with proper postage prepaid, addressed to the last known address of that  
20 parent, with request for a return receipt. If service is made by registered mail, the production of a  
21 return receipt purporting to be signed by the addressee creates a rebuttable presumption that the  
22 summons and complaint have been duly served. The presumption established by this section is a  
23 presumption affecting the burden of producing evidence. The respective rights of the parents to  
24 any award shall be determined by the court.

25 (c) The father of an ~~illegitimate~~ child who maintains an action under this section shall  
26 have acknowledged in writing prior to the child's injury, in the presence of a competent witness,  
27 that he is the father of the child, or, prior to the child's injury, have been judicially determined to  
28 be the father of the child.

29 (d) A parent of an ~~illegitimate~~ child who does not maintain an action under this section  
30 may be joined as a party thereto.

31 (e) A guardian may maintain an action for such an injury to his or her ward.

32 (f) An action under this section may be maintained against the person causing the injury.  
33 If any other person is responsible for the wrongful act or neglect, the action may also be  
34 maintained against the other person. The death of the child or ward does not abate the parents' or  
35 guardian's cause of action for the child's injury as to damages accruing before the child's death.

36 (g) In an action under this section, damages may be awarded that, under all of the  
37 circumstances of the case, may be just, except that:

38 (1) In an action maintained after the death of the child, the damages recoverable are as  
39 provided in Section 377.34.

40 (2) Where the person causing the injury is deceased, the damages recoverable in an action  
41 against the decedent's personal representative are as provided in Section 377.42.

42 (h) If an action arising out of the same wrongful act or neglect may be maintained  
43 pursuant to Section 377.60 for wrongful death of a child described in this section, the action  
44 authorized by this section may be consolidated therewith for trial as provided in Section 1048.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

## **STATEMENT OF REASONS**

The Problem: Currently, Code of Civil Procedure section 376, which designates persons with standing to file litigation for injuries to a child, refers to the legitimacy of the child. This characterization is archaic, and is now irrelevant, having no meaning in the context of the statute, given the provisions of the Family Code with respect to the determination of parentage.

This Resolution: Would eliminate the references in section 376 to “illegitimate” children.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR RELATED LEGISLATION**

None Known.

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