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OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 83-704
	:	
of	:	<u>MARCH 1, 1984</u>
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JOHN K. VAN DE KAMP	:	
Attorney General	:	
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ANTHONY S. DA VIGO	:	
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THE HONORABLE LLOYD G. CONNELLY, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following question:

Is a fee for filing the first paper on behalf of a defendant or respondent in a civil action required for the filing of a stipulation to modify a marital settlement agreement incorporated in a default interlocutory decree of dissolution of marriage?

CONCLUSION

A fee for filing the first paper on behalf of a defendant or respondent in a civil action is required for the filing of a stipulation to modify a marital settlement agreement incorporated in a default interlocutory decree of dissolution of marriage.

ANALYSIS

Government Code section 26826 provides as follows:

"The total fee for filing the first paper in the action on behalf of any defendant, intervenor, respondent, or adverse party, whether separately or jointly, except for the purpose of making disclaimer shall be the sum fixed by resolution adopted pursuant to Section 68090, which shall not exceed the following maximum amounts:

"(1) In any county where a fee is collected for the court reporter fund, the total fees shall not exceed sixty-three dollars (\$63).

"(2) In any county where a fee is not collected for the court reporter fund, the total fee shall not exceed thirty-five dollars (\$35).

"As used in this section the work 'paper' does not include a stipulation for the appointment of a judge pro tempore or of a court investigator or the report made by the investigator or the declaration of a spouse filed in an order to show cause proceeding or a marital settlement agreement which is signed by a defaulted respondent and intended for incorporation in a proposed interlocutory decree of dissolution of marriage." (Emphases added.)

In 61 Ops.Cal.Atty.Gen. 80 (1978) we concluded that where the husband and wife intended that a property settlement agreement be incorporated into a court judgment, the clerk, when the agreement is received for that purpose, is required to collect the fee for the filing of the first paper under the section above cited. Thereafter, that section was amended to add the final clause of the last paragraph which is italicized. (Stats. 1981, ch. 109, § 1.) We are not asked whether such a fee is required for the filing of a stipulation to modify a marital settlement agreement incorporated in a default interlocutory decree of dissolution of marriage.

It must be presumed that the interpretation of the Attorney General had come to the attention of the Legislature. (*California Correctional Officers' Assn. v. Board of Administration* (1978) 76 Cal.App.3d 786, 794), and it would appear that the 1981 amendment was a specific legislative response thereto. thus, the Legislature was aware of the special distinctions and limitations contained in the Attorney General's opinion, and particularly of its limited concern with marital settlement agreements offered for incorporation in *proposed* interlocutory decrees. (See 61 Ops.Cal.Atty.Gen., *supra*, 81, n. 1, citing *Kelley v. Kelley* (1977) 73 Cal.App.3d 672, and expressly distinguishing the execution of a formal stipulation to be filed for entry of order and order incorporating

agreement under Cal. Rules of Court, rule 1223.) That the 1981 legislative amendment was specifically limited to that situation clearly appears by its express terms. The express statutory reference to "a marital settlement agreement which is . . . intended for incorporation in a proposed interlocutory decree . . ." does not include a post-decree stipulation to modify a pre-incorporated agreement.

It is well settled that a court may not add to or detract from a statute or insert or delete words to accomplish a purpose that does not appear on its face or from its legislative history. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331,340; 66 Ops.Cal.Atty.Gen. 217, 222 (1983).) Further, the enumeration of items within a statute implies the exclusion of other items within the enumerated class. (*Williams v. Los Angeles Met. Transit Auth.* (1968) 68 Cal.2d 599, 603-604; 62 Ops.Cal.Atty.Gen. 126, 129 (1979).) Finally, a clause of exemption from a general provision is ordinarily construed strictly. (*People ex rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 543; 66 Ops.Cal.Atty.Gen. 24, 26 (1983).) Hence, a stipulation to modify a marital settlement agreement incorporated in a default interlocutory decree of dissolution of marriage does not fall within any exception contained in section 26826 of the Government Code.

With respect to the issue as to whether the stipulation is filed on behalf of the defendant, we adopt the rationale set forth in 61 Ops.Cal.Atty.Gen., *supra*, 83, regarding the marital settlement agreement:

"It is notable that under section 4800, subdivision (a) [of the Civil Code], the Legislature provided that the written agreement of the parties shall govern the division of the community property and the quasi-community property. Because the property-settlement agreement will affect the court proceeding in the matter, the presentation of the executed property-settlement agreement with the intent of both parties that it be incorporated into the decree should be considered a filing on behalf of the defendant.

"We are advised that clerks require a 'first paper' fee from both petitioner and defendant where the parties execute and file a stipulation for judgment under rule 1223, California Rules of Court. Thus, if plaintiff sues and defendant stipulates to entry of judgment in an ordinary civil case, the clerk would require that a 'first paper' fee be paid by defendants. The defendants, while not appearing to assert a defense, are nonetheless availing themselves of the process of the court to avoid a nonconsensual decision. The same theory would be applicable to a spouse who desires the settlement to be incorporated into a court decree, presumably to use the court process for enforcement if necessary."

The question presented is based upon the assumption that the marital settlement agreement was the only document, other than the stipulation to modify the agreement, to be filed by the defendant in the default proceeding. Government Code section 26826 provides that an item designated in the last paragraph thereof, including a marital settlement agreement, is not a "paper." Hence, the stipulation is the "first paper" to be filed for or on behalf of the defendant. It is concluded that a fee is required for the filing of a stipulation to modify a marital settlement agreement incorporated in a default interlocutory decree of dissolution of marriage.
