

## J. Y. Interpretation No.171 (October 23, 1981) \*

**ISSUE:** Article 1090 of the Civil Code stipulates: “When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may admonish the parent.” Is the specified wording of ‘the nearest senior relative(s)’ meant to refer to the nearest senior relative of ‘the abusive parent’ or ‘the abused child’?

**RELEVANT LAWS:**

Article 1090 of the Civil Code (民法第一千零九十條) .

**KEYWORDS:**

abuse of parental rights (親權濫用), family council (親屬會議) .\*\*

**HOLDING:** Article 1090 of the Civil Code stipulates: “When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may admonish the parent. An application may be made to the court for suspending all or some of the parental rights shall the alleged admonition be in vain.” That specified wording of ‘the

**解釋文：**民法第一千零九十條：「父母濫用其對於子女之權利時，其最近尊親屬或親屬會議，得糾正之。糾正無效時，得請求法院宣告停止其權利之全部或一部」之規定，所稱其最近尊親屬之「其」字，係指父母本身而言，本院院字第一三九八號解釋，應予維持。

\* Translated by Professor Dr. Amy H.L. SHEE.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

nearest senior relative(s)' is meant to refer to the nearest senior relative(s) of 'the abusive parent'. Thus the Interpretation Yuan-tze No. 1398 of this Yuan shall be reaffirmed.

**REASONING:** At the 118th Meeting of the Grand Justices Council of the Judicial Yuan, it was resolved that "when a central or local government agency, in the application of the Constitution, laws or administrative orders, encounters doubts on any Interpretation of the Judicial Yuan and consequently submits a petition for a further Interpretation, this Meeting may make a re-Interpretation under Article 4 or Article 7 of the Grand Justices Council Adjudication Act." The present petition concerns questions raised by the Supreme Court about Interpretation Yuan-tze No. 1398 of the Judicial Yuan, thus it shall be re-interpreted in accordance with the above resolution.

Article 1090 of the Civil Code stipulates: "When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may

**解釋理由書：**查司法院大法官會議第一百十八次會議議決：「中央或地方機關就職權上適用憲法、法律或命令，對於本院之解釋發生疑義，聲請解釋時，本會議得依司法院大法官會議法第四條或第七條之規定，再行解。」本件係最高法院對於本院院字第一三九八號解釋適用發生疑義，聲請解釋，依照上項決議應予解釋，合先說明。

按民法第一千零九十條規定：「父母濫用其對於子女之權利時，其最近尊親屬或親屬會議，得糾正之。糾正無效時，得請求法院宣告停止其權利之

admonish the parent. An application may be made to the court for suspending all or some of the parental rights shall the alleged admonition be in vain.” It is obvious, from synthetic observation of the legal wording, that ‘the nearest senior relative(s)’ specifically refers to the nearest senior relative(s) of the abusive parent. On the basis of Chinese family ethics, the legal admonition of abusive parental rights is considered to be under the appropriate authority of the parent’s senior relative(s) apart from a legally organized family council, and the above provision in question shall thus be read accordingly. If ‘the nearest senior relative(s)’ referred to the abused child’s nearest senior relatives, the admonishers could have been the abusive parents themselves, and the situation would have been unacceptable. Even in cases where one of the parents is not the abuser and such detached status might qualify such parent as an independent admonisher, doubts would also be raised as to the effectiveness of the admonition itself, for a father assumes equal status with a mother and neither has more parental rights than the other. In such circum-

全部或一部。」該條文中所稱「其最近尊親屬」之「其」字，與上下文中所用有關「其」字綜合觀察，乃係指父母本身而言，至為明顯。蓋關於父母濫用其對子女之權利，須要糾正時，除依法得由親屬會議為之之外，所稱其最近尊親屬之糾正，基於我國倫常觀念，自以輩分較高於被糾正人之尊親屬行之，方屬相當。如認「其最近尊親屬」之「其」字，係指被濫用權利之子女言，則子女之最近尊親屬為父母，成為糾正人，而濫用權利之人，亦為父母，成為被糾正人，於理不合。倘以父或母之一方對子女有濫權行為，另一方居於超然地位，固有差異；但父與母地位平等，既無尊卑之分，曷能為有效之糾正；至此種情形，尚應注意其他法律（例如兒童福利法）之適用，以達保護子女權益之目的。故本院院字第一三九八號解釋應予維持。

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stances, though, the applicability of other laws (the Children Welfare Act, for instance) has to be considered for the purposes of safeguarding the rights and interests of the child. Therewith, the Interpretation Yuan-tze No. 1398 of this Yuan shall be reaffirmed.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。