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INVITATION TO COMMENT

SPR11-41

Title	Action Requested
Family Law: Revise Domestic Partnership Forms to Include Dissolution, Legal Separation, or Nullity of Same-Sex Marriage	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise the forms <i>Petition—Domestic Partnership</i> (form FL-103) and <i>Response—Domestic Partnership</i> (form FL-123)	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Bonnie Hough, 415-865-7668 bonnie.hough@jud.ca.gov
Hon. Kimberly Nystrom-Geist and Hon. Dean Stout, Cochairs	Rita Mah, 415-865-7670 rita.mah@jud.ca.gov

Summary

The proposed revised forms would implement the mandate of Assembly Bill 2700, which requires the Judicial Council to prescribe a form for couples who are concurrently married and registered as domestic partners to dissolve both unions in a single court proceeding.

Discussion

Assembly Bill 2700 (Stats. 2010, ch. 397), effective January 1, 2011, amended Family Code section 2010(a) to specify that the superior court's jurisdiction concerning the status of a marriage includes those out-of-state same-sex marriages contracted on or after November 5, 2008. This bill also amended Family Code section 299 by adding subsection (e) to provide that parties to a registered domestic partnership who are also married to one another may petition the court to dissolve both their domestic partnership and their marriage in a single proceeding, using a form to be prescribed by the Judicial Council.

Currently, couples who are registered domestic partners dissolve their domestic partnership status by filing *Petition—Domestic Partnership (Family Law)* (form FL-103) and respond using *Response—Domestic Partnership (Family Law)* (form FL-123), or, if they are eligible, by filing a *Notice of Termination of Domestic Partnership* with the Secretary of State. If they are also married, they must now file a second court action to dissolve the marriage and pay additional

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

filing fees to file *Petition—Marriage (Family Law)* (form FL-100) and respond using *Response—Marriage (Family Law)* (form FL-123).

This proposal would amend *Petition—Domestic Partnership* (form FL-103) and *Response—Domestic Partnership* (form FL-123) to allow parties to request dissolution, legal separation, or nullity of both their domestic partnership and their marriage in a single court proceeding by checking two boxes on a form instead of filing two separate actions, paying two filing fees, and unnecessarily burdening the parties and wasting judicial resources.

For those parties eligible for summary dissolution under Family Code section 2400, a separate proposal being circulated for comment proposes that, among other changes, summary dissolution forms be modified to allow those couples who qualify for summary dissolution of both their marriage and their domestic partnership to use the *Joint Petition for Summary Dissolution of Marriage* (form FL-800) for both unions. They would then not have to file a separate Notice of Termination of Domestic Partnership with the Secretary of State.

The two proposed revised forms are attached at pages 3–6. A copy of Assembly Bill 2700 is attached at pages 7–9.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO. : _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT7 03/17/11 xyz Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DOMESTIC PARTNERSHIP OF PETITIONER: RESPONDENT:	
PETITION FOR <input type="checkbox"/> Dissolution of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Legal Separation of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Nullity of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> AMENDED	CASE NUMBER:

1. STATISTICAL FACTS

- a. (1) Date of registration of domestic partnership or equivalent:
- (2) Date of separation:
- (3) Time from date of registration of domestic partnership to date of separation (specify): _____ Years _____ Months
- b. (1) Date of marriage: _____
- (2) Time from date of marriage to date of separation (specify): _____ Years _____ Months

2. RESIDENCE (Partnerships established out of state and marriages only)

- a. Our domestic partnership was established in another state (specify state): _____
- b. Our marriage was established in another state on or after November 5, 2008 (specify state): _____
- c. Petitioner Respondent has been a resident of this state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Domestic Partnership*.

3. DECLARATION REGARDING MINOR CHILDREN (include children of this relationship born or adopted prior to or during this domestic partnership or marriage):

- a. There are no minor children.
 - b. The minor children are:
- | <u>Child's name</u> | <u>Birthdate</u> | <u>Age</u> | <u>Sex</u> |
|---------------------|------------------|------------|------------|
| | | | |

Continued on Attachment 3b.

c. If there are minor children of the petitioner and respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

4. SEPARATE PROPERTY

Petitioner requests that the assets and debts listed in *Property Declaration* (form FL-160) in Attachment 4 below be confirmed as separate property.

Item _____ Confirm to _____

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or partner support.

DOMESTIC PARTNERSHIP OF <i>(Last name, first name of each party):</i>	CASE NUMBER:
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5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. There are no such assets or debts subject to disposition by the court in this proceeding.
- b. All such assets and debts are listed in *Property Declaration* (form FL-160) in Attachment 5b.
 below *(specify)*:

6. **Petitioner requests**

- a. dissolution of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- b. legal separation of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- c. nullity of void domestic partnership marriage based on
 - (1) incest. (Fam. Code, § 2200.)
 - (2) bigamy. (Fam. Code, § 2201.)
- d. nullity of voidable domestic partnership marriage based on
 - (1) petitioner's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).)
 - (2) prior existing marriage or domestic partnership. (Fam. Code, § 2210(b).)
 - (3) unsound mind. (Fam. Code, § 2210(c).)
 - (4) fraud. (Fam. Code, § 2210(d).)
 - (5) force. (Fam. Code, § 2210(e).)
 - (6) physical incapacity. (Fam. Code, § 2210(f).)

7. **Petitioner requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

- | | Petitioner | Respondent | Joint | Other |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| a. Legal custody of children to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Physical custody of children to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Child visitation granted to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| As requested in form: <input type="checkbox"/> FL-311 <input type="checkbox"/> FL-312 <input type="checkbox"/> FL-341(C) <input type="checkbox"/> FL-341(D) <input type="checkbox"/> FL-341(E) <input type="checkbox"/> Attachment 7c. | | | | |
| d. <input type="checkbox"/> Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage. | | | | |
| e. Attorney fees and costs payable by | <input type="checkbox"/> | <input type="checkbox"/> | | |
| f. Partner or spousal support payable to | <input type="checkbox"/> | <input type="checkbox"/> | | |
| g. <input type="checkbox"/> Terminate court's jurisdiction (ability) to award partner or spousal support to respondent. | | | | |
| h. <input type="checkbox"/> Property rights be determined. | | | | |
| i. <input type="checkbox"/> Petitioner's former name be restored to <i>(specify)</i> : | | | | |
| j. <input type="checkbox"/> Other <i>(specify)</i> : | | | | |

Continued on Attachment 7j.

8. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

9. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

 (TYPE OR PRINT NAME)

Date: _____

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF PETITIONER)

▶ _____
 (SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your partner or spouse or a court order (see Fam. Code, §§ 231–235).

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 4 04/07/11 mc Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DOMESTIC PARTNERSHIP OF PETITIONER: RESPONDENT:	
RESPONSE <input type="checkbox"/> and REQUEST FOR <input type="checkbox"/> Dissolution of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Legal Separation of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Nullity of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> AMENDED	CASE NUMBER:

1. STATISTICAL FACTS

- a. (1) Date of registration of domestic partnership or equivalent:
- (2) Date of separation:
- (3) Time from date of registration of domestic partnership to date of separation (specify): _____ Years _____ Months
- b. (1) Date of marriage: _____
- (2) Time from date of marriage to date of separation (specify): _____ Years _____ Months

2. RESIDENCE (Partnerships established out of state and marriages only)

- a. Our domestic partnership was established in another state (specify state): _____
- b. Our marriage was established in another state on or after November 5, 2008 (specify state): _____
- c. Petitioner Respondent has been a resident of this state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Domestic Partnership*.

3. DECLARATION REGARDING MINOR CHILDREN (include children of this relationship born or adopted prior to or during this domestic partnership or marriage):

- a. There are no minor children.
 - b. The minor children are:
- | Child's name | Birthdate | Age | Sex |
|--------------|-----------|-----|-----|
| | | | |

Continued on Attachment 3b.

- c. If there are minor children of the petitioner and the respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

4. SEPARATE PROPERTY

Respondent requests that the assets and debts listed in *Property Declaration* (form FL-160) in Attachment 4 below be confirmed as separate property.

Item	Confirm to
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NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or partner support.

DOMESTIC PARTNERSHIP OF <i>(Last name, first name of each party):</i>	CASE NUMBER:
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5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. There are no such assets or debts subject to disposition by the court in this proceeding.
- b. All such assets and debts are listed in *Property Declaration* (form FL-160) in Attachment 5b.
 below (*specify*):

6. **Respondent contends** that there is not a valid domestic partnership, marriage, or equivalent.

7. **Respondent denies** the grounds set forth in item 6 of the petition.

8. **Respondent requests**

- a. dissolution of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- b. legal separation of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- c. nullity of void domestic partnership marriage based on
 - (1) incest. (Fam. Code, § 2200.)
 - (2) bigamy. (Fam. Code, § 2201.)
- d. nullity of voidable domestic partnership marriage based on
 - (1) respondent's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).)
 - (2) prior existing marriage or domestic partnership. (Fam. Code, § 2210(b).)
 - (3) unsound mind. (Fam. Code, § 2210(c).)
 - (4) fraud. (Fam. Code, § 2210(d).)
 - (5) force. (Fam. Code, § 2210(e).)
 - (6) physical incapacity. (Fam. Code, § 2210(f).)

9. **Respondent requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Physical custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child visitation granted to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As requested in form: <input type="checkbox"/> FL-311 <input type="checkbox"/> FL-312 <input type="checkbox"/> FL-341(C) <input type="checkbox"/> FL-341(D) <input type="checkbox"/> FL-341(E) <input type="checkbox"/> Attachment 9c.				
d. <input type="checkbox"/> Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage.				
e. Attorney fees and costs payable by	<input type="checkbox"/>	<input type="checkbox"/>		
f. <input type="checkbox"/> Partner or spousal support payable to	<input type="checkbox"/>	<input type="checkbox"/>		
g. <input type="checkbox"/> Terminate court's jurisdiction (ability) to award partner or spousal support to the petitioner.				
h. <input type="checkbox"/> Property rights be determined.				
i. <input type="checkbox"/> Respondent's former name be restored to (<i>specify</i>):				
j. <input type="checkbox"/> Other (<i>specify</i>):				

Continued on Attachment 9j.

10. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children on request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF RESPONDENT)

Date: _____

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF ATTORNEY FOR RESPONDENT)

The original response must be filed in the court with proof of service of a copy on petitioner.

Assembly Bill No. 2700

CHAPTER 397

An act to amend Sections 299 and 2010 of the Family Code, relating to domestic partner registration.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2700, Ma. Domestic partner registration: termination.

(1) Existing law provides that the superior courts have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. Existing law provides that the dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership follow the same procedures, and the partners possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as specified.

This bill would authorize parties to a registered domestic partnership who are also married to one another to petition the court to dissolve both their domestic partnership status and their marriage status in a single proceeding, in a form prescribed by the Judicial Council. The bill would also require the Judicial Council to prescribe the specified form.

(2) Existing law provides that, in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning, among other things, the status of the marriage.

Existing law provides that two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted have the same rights and responsibilities as are granted to or imposed upon spouses with the sole exception of the designation of "marriage".

This bill would specify that the court's jurisdiction concerning the status of a marriage includes those out-of-state same-sex marriages contracted on or after November 5, 2008.

The people of the State of California do enact as follows:

SECTION 1. Section 299 of the Family Code is amended to read:

299. (a) A registered domestic partnership may be terminated without filing a proceeding for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

(1) The Notice of Termination of Domestic Partnership is signed by both registered domestic partners.

(2) There are no children of the relationship of the parties born before or after registration of the domestic partnership or adopted by the parties after registration of the domestic partnership, and neither of the registered domestic partners, to their knowledge, is pregnant.

(3) The registered domestic partnership is not more than five years in duration.

(4) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of filing of the Notice of Termination of Domestic Partnership.

(5) There are no unpaid obligations in excess of the amount described in paragraph (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, incurred by either or both of the parties after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile.

(6) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any rights to support by the other domestic partner.

(9) The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership.

(10) Both parties desire that the domestic partnership be terminated.

(b) The registered domestic partnership shall be terminated effective six months after the date of filing of the Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that neither party has, before that date, filed with the Secretary of State a notice of revocation of the termination of domestic partnership, in the form and content as shall be prescribed by the Secretary of State, and sent to the other party a copy of the notice of revocation by first-class mail, postage prepaid, at the other party's last known address. The effect of termination

of a domestic partnership pursuant to this section shall be the same as, and shall be treated for all purposes as, the entry of a judgment of dissolution of a domestic partnership.

(c) The termination of a domestic partnership pursuant to subdivision (b) does not prejudice nor bar the rights of either of the parties to institute an action in the superior court to set aside the termination for fraud, duress, mistake, or any other ground recognized at law or in equity. A court may set aside the termination of domestic partnership and declare the termination of the domestic partnership null and void upon proof that the parties did not meet the requirements of subdivision (a) at the time of the filing of the Notice of Termination of Domestic Partnership with the Secretary of State.

(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. The dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as provided in subdivision (a), and except that, in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.

(e) Parties to a registered domestic partnership who are also married to one another may petition the court to dissolve both their domestic partnership and their marriage in a single proceeding, in a form that shall be prescribed by the Judicial Council.

SEC. 2. Section 2010 of the Family Code is amended to read:

2010. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning the following:

- (a) The status of the marriage, including any marriage under subdivision (c) of Section 308.
- (b) The custody of minor children of the marriage.
- (c) The support of children for whom support may be ordered, including children born after the filing of the initial petition or the final decree of dissolution.
- (d) The support of either party.
- (e) The settlement of the property rights of the parties.
- (f) The award of attorney's fees and costs.

Item SPR11-41 Response Form

Title: Family Law: Revise Domestic Partnership Forms to Include Dissolution, Legal Separation, or Nullity of Same-Sex Marriage (revise forms FL-103 and FL-123)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.