

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-52

Title	Action Requested
Domestic Violence – Family Law: Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt California Rules of Court, rule 5.380; approve form DV-180;	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Tamara Abrams, tamara.abrams@jud.ca.gov
Hon. Kimberly Nystrom-Geist and Hon. Dean Stout, Cochairs	415-865-7712

Summary

Effective January 1, 2011, Assembly Bill 939 (Stats. 2010, ch. 352) amended Family Code section 6323(b) to authorize the court to accept a stipulation of parentage in a Domestic Violence Prevention Act (DVPA) case and, if parentage is uncontested, enter a judgment establishing parentage, subject to the set-aside provisions in Family Code section 7646.

This proposal would provide a form and procedure for parents to stipulate to parentage in a DVPA case. The proposed rule would state that if the court accepts the stipulated judgment after a noticed hearing in a DVPA case, the court may not charge a filing fee or require a party to open a separate parentage or other type of case for the stipulated judgment.

Discussion

Rule 5.380

The rule would specify that parties may use form DV-180 for their stipulation regarding parentage. The rule would specify that if the court issues a restraining order after a noticed hearing and the court accepts the stipulation, the court may not require a party to open a separate case file for the judgment. Further, the rule would state that when a judgment is filed in a DVPA case in which a restraining order is currently in effect, the court is prohibited from collecting a filing fee.

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 These proposals are circulated for comment purposes only.

Judgment Filed After Noticed Hearing

The statute is silent as to whether the court may accept a stipulation regarding parentage prior to a noticed hearing. The committee considered the proposed rule's applicability prior to a noticed hearing and concluded that there was no compelling argument to allow the court to accept a stipulated agreement regarding parentage prior to a noticed hearing.

No Separate Case File

The committee considered whether the parties should be required to open a separate family law case in which to file the judgment. The main argument supporting a requirement to file a separate case is the potential difficulty for the court in locating the judgment if the underlying restraining order expires. However, the statutory scheme favors the reduction of multiple case files. The committee concluded that the rule should not create an additional barrier for parties in a DVPA case by requiring a separate case.

No Filing Fee

Family Code section 6222 states that there is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by the DVPA when the request for the other order is necessary to obtain or give effect to a protective order.

It appears that an agreed judgment of parentage is necessary to establish certainty regarding paternity under Family Code section 6323 for purposes of issuing child custody and visitation orders, which are necessary to give effect to a protective order. The rule would state that if there is a restraining order currently in effect, the court may not collect a filing fee for the agreed judgment of parentage in order to provide clarity on this issue.

Form DV-180 (Agreed Judgment of Parentage)

This optional form would provide parties with a form to enter their stipulated agreement regarding parentage in the Domestic Violence Prevention Act case. Item 3 of the form restates the factors listed in Family Code section 6323 that establish a parent-and-child relationship for purposes of that section.

Item 5(a) would allow parties to file stipulated agreements for child custody and parenting time. Comments are requested on whether this approach would be problematic in cases where the parties file form DV-180, after the restraining order is issued, with stipulated modifications to child custody and parenting time. In those cases, the child custody and parenting time modifications would not be attached to form DV-130 (*Restraining Order After Hearing*) and so would not be entered into the California Law Enforcement Telecommunications System. Additionally, it is possible for parties to be confused about whether they should attach child custody and parenting time orders on form DV-130 or form DV-180 in cases where the two forms are filed concurrently. Comment is specifically requested on this issue.

Checkboxes marked by the parents will alert the court to facts indicating that parentage is contested or is at issue in another court case. The advisements listed at items 6, 7, and 8 are currently stated in the standard Family Law form FL-235 (*Advisement and Waiver of Rights Re: Establishment of Parental Relationship*), but the wording has been revised in plain language style.

Specific Comments Requested

Form DV-180 (*Agreed Judgment of Parentage*)

Item 5(a) would allow parties to file stipulated agreements for child custody and parenting time. Comments are requested on whether this approach would be problematic in cases where the parties file form DV-180, after the restraining order is issued, with stipulated modifications to child custody and parenting time. In those cases, the child custody and parenting time modifications would not be attached to form DV-130 (*Restraining Order After Hearing*) and so would not be entered into the California Law Enforcement Telecommunications System.

Additionally, it is possible for parties to be confused about whether they should attach child custody and parenting time orders on form DV-130 or form DV-180 in cases where the two forms are filed concurrently. Comment is specifically requested on this issue.

Attachments

1. Cal. Rules of Court, rule 5.380 at page 4.
2. Form DV-180 at pages 5–7.
3. Attachment A: Fam. Code §§6222, 6323 (excerpts) at pages 8–9.

California Rule of Court, rule 5.380 would be adopted January 1, 2012, to read as:

1 **Rule 5.380. Stipulated Judgment of Parentage in Domestic Violence Prevention Act**
2 **cases**

3
4 **(a) Stipulated judgment filed on Judicial Council form**

5
6 This rule applies to a judgment of parentage made under Family Code
7 section 6323(b)(2). Such a judgment may be issued on form DV-180, *Agreed*
8 *Judgment of Parentage.*

9
10 **(b) No requirement to open separate case; no filing fee**

11
12 If the court issues a restraining order in the case after a noticed hearing under
13 Family Code section 6340 and the court accepts the judgment of parentage,
14 the court may not require a party to open a separate parentage or other type
15 of case file. When a judgment of parentage is filed in a Domestic Violence
16 Prevention Act case in which there is a restraining order currently in effect,
17 no filing fee may be charged.

18
19
20
21
22 Notes:

23 Proposed rule 5.380 is based on Assembly Bill 939, which revised Family Code
24 section 6323 effective January 1, 2011, to add subsection (b)(2) as follows:

25
26 6323(b)(2). The court may accept a stipulation of paternity by the parties and, if
27 paternity is uncontested, enter a judgment establishing paternity, subject to the set-
28 aside provisions in Section 7646.

Clerk stamps date here when form is filed.

**Draft
Not Approved By the
Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:**1 Protected Person:**Name: _____
Relationship to the children in this case (check one): Mother Father**2 Restrained Person:**Name: _____
Relationship to the children in this case (check one): Mother Father**3 We declare:**

We are the parents of the children listed below because (check each box that is true):

- a. The mother in (1) or (2) gave birth to the children.
- b. We were married and living together at the time the children were born.
- c. Genetic tests show that we are the parents of the children.
- d. To the best of our knowledge:
- (1) No court has ordered or found that someone other than us is a parent of the children.
- (2) There is no pending adoption or guardianship case for the children.
- (3) There is no child support order for the children.
- (4) No other person has signed a voluntary declaration of paternity for the children.
- (5) There is no court case in which another man claims to be or is alleged to be the father of the children.

4 The children in this case are (specify):

	Child's Name	Date of Birth
a.	_____	_____
b.	_____	_____
c.	_____	_____
d.	_____	_____

5 Orders requested

We ask the court to make the orders checked below and attached to this form (check all that apply):

- a. Custody and Parenting Time: DV-140 DV-145 DV-150 Other: _____
- b. Child Support: FL-342 FL-342 (A) FL-350
- c. Attorney Fees and Costs: FL-346
- d. Name Change for Child:

From (name): _____ To (name): _____

 If you need more space to write, check the box. Attach a sheet of paper and write "DV-180—Agreed Judgment of Parentage" at the top.

- e. Reasonable expenses of pregnancy and birth (specify in attachment).
- f. Other (specify): _____

Case Number: _____

Your name: _____

6 If you are involved in a parentage case, you have these rights:

- **Right to a lawyer.** You can hire a lawyer to represent you. If you cannot afford to hire a lawyer, the court’s Family Law Facilitator can help you. Or call your local bar association.
- **Right to a trial.** You can ask a judge, in a separate case, to decide if you are the parent of the children in this case. You can bring evidence and witnesses to that trial. And you can question the witnesses against you.
- **Right to genetic tests.** You can ask a judge, in a separate case, to order genetic tests to see if you are the parent of the children in this case. Depending on your case, the court may order you to pay for those tests.

7 If you give up these rights, the court may decide you are the legal parent.

The court may order you to:

- **Pay child support.** Child support may be taken out of your paycheck without notifying you first. Child support can be a lot of money, and it usually lasts until the child turns 18. If you do not support the children as ordered, you can face criminal charges.
- **Pay other expenses and costs.** The court may also order that you pay other expenses for the children in this case. You will have all the legal duties of a parent.

8 Read and sign below only if you understand and give up your rights.

- We understand that we are saying that we are the legal parents of the children in this case.
- We give up our rights listed above, except for our right to a lawyer if either of us has a lawyer. If either of us do not have a lawyer for this agreement, we are waiving our rights to a lawyer for this agreement, but we know we have the right to hire a lawyer for the domestic violence restraining order case but not for this agreement. If either of us has a lawyer for this agreement, that lawyer has read and explained this information to the person being represented and that person understands it.
- We have read and understand this form.
- If someone translated this form, we understood the translation.

9 We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. We have read and understand the rights listed in this form. Both people named in ① and ② give up these rights and freely agree that the court can make orders naming us as legal parents of the children listed on this form.

_____	_____	▶
Date	Type or print Protected Person’s name	Protected Person signs here
_____	_____	▶
Date	Type or print Restrained Person’s name	Restrained Person signs here
_____	_____	▶
Date	Type or print Protected Person’s lawyer’s name	Protected Person’s lawyer signs here
_____	_____	▶
Date	Type or print Restrained Person’s lawyer’s name	Restrained Person’s lawyer signs here



Case Number: _____

Your name: _____

10 The court finds

Name: _____

Mother Father

Name: _____

Mother Father

are the parents of the children listed in (4).

11 The court orders

- a. The orders requested in (5) are ordered by the court.
- b. The birth certificates must be amended to conform to this court order by
 - (1) adding the father's name.
 - (2) changing the last name of the children.
- c. Other (*specify*): _____
- d. Continued on Attachment (11) d.
Number of pages attached: _____

Date: _____  _____
Judicial Officer

13 Interpreter's Declaration

I have read or translated or interpreted on the record this *Agreed Judgment of Parentage*, to the best of my ability, to the (*check one*):

Protected Person Restrained Person, who said that:

- He or she was unable to read or understand the English documents
- His or her primary language is (*specify*): _____ *and*
- He or she now understands this document.

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 interpreter's name *Interpreter signs here*

Date: _____  _____
Type or print interpreter's name *Interpreter signs here*

Attachment A
Statutes Pertaining To Form DV-180 and Rule of Court, Rule 5.380

6222. There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody and visitation of a minor child on the conditions the court determines to a party who has established a parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any custody or visitation orders have already been issued in any other proceeding.

(2) (A) In making a determination of the best interests of the child and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all **family** members, if the party who has obtained the restraining order has established a parent and child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical custody to the party to whom the restraining order was issued and may make an order of no visitation to the other party pending the establishment of a parent and child relationship between the child and the other party.

(B) A party may establish a parent and child relationship for purposes of subparagraph (A) only by offering proof of any of the following:

(i) The party gave birth to the child.

(ii) The child is conclusively presumed to be a child of the marriage between the parties, pursuant to Section 7540, or the party has been determined by a court to be a parent of the child, pursuant to Section 7541.

(iii) Legal adoption or pending legal adoption of the child by the party.

(iv) The party has signed a valid voluntary declaration of paternity, which has been in effect more than 60 days prior to the issuance of the restraining order, and that declaration has not been rescinded or set aside.

(v) A determination made by the juvenile court that there is a parent and child relationship between the party offering the proof and the child.

(vi) A determination of paternity made in a proceeding to determine custody or visitation in a case brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions **Code**.

(vii) The party has been determined to be the parent of the child through a proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(viii) Both parties stipulate, in writing or on the record, for purposes of this proceeding, that they are the parents of the child.

(b) (1) Except as provided in paragraph (2), the court shall not

make a finding of paternity in this proceeding, and any order issued pursuant to this section shall be without prejudice in any other action brought to establish a parent and child relationship.

(2) The court may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity, subject to the set-aside provisions in Section 7646.

(c) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(d) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether visitation or custody shall be suspended or denied.

Item SPR11-52 Response Form

Title: Domestic Violence – Family Law: Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases (adopt Cal. Rules of Court, rule 5.380; approve form DV-180)

- 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.