

Preparing Your Family Law Trial Brief

If you have been set for trial, you may have been ordered to file a Trial Brief prior to the date of your Court Trial. This is a complex issue to present to the Court. This handout is only intended as guidance and does not replace legal advice.

1. There is NO form on which to write your trial brief. You must create it yourself from scratch. Attached to this packet, you will find a sample, as well as the proper format for your Brief. This format is prescribed by California Rule of Court 5.394 (which can be read at www.courts.ca.gov/rules.htm), and should be in the following format:
 - Statistical Facts
 - Date of Marriage
 - Date of Separation
 - Length of Marriage
 - Minor Children (including birthdates and ages)
 - A Brief Summary of the Case
 - Settled Issues
 - Issues to be Litigated at Trial
 - Proposal of Resolution of Issues
 - Summary of any Expert Reports or Testimony to be Offered
 - Witness List
 - Legal Arguments to be Relied On
 - Other Matters
 - Attachments and Exhibits List
2. The Trial Brief is a chance for you to show the Judge your position on the outstanding issues, as well as the legal arguments for why the Court should order in your favor.
 - You may need to do research at the Law Library or elsewhere in order to prepare and discuss your legal arguments.
3. Attach any exhibits you feel may be useful in the trial. Exhibits may include proof of cash in bank accounts, an expert's report, an appraisal of your home, or any other proof which supports your position. You may also have custody evaluations and other documents that were accumulated throughout the divorce. You may choose to attach these as well.
4. The Trial Brief MUST be served on the other party by mail and filed with the Court at least 5 days prior to Trial (CRC 5.394(b)).
5. Before you file your Trial Brief, prepare the Proof of Service attached. Have someone over 18 who is not a party to the case sign the Proof of Service and mail a copy of your brief to the opposing party or his/her attorney.
6. Take the original and a copy of the proof of service along with the original and a copy of your brief to the Clerk's window in the Watsonville courthouse for filing. The copies you get back from the Clerk are for your records.

PLEASE NOTE that preparing a Trial Brief can be very complicated. It may be important to consult with or hire a private attorney AND to do your own legal research at the law library.

IMPORTANT: This is not to be construed as legal advice, but it is designed merely to offer some assistance to the public. You should be aware that all procedures are subject to change. It is always recommended that you consult with an attorney for legal advice.

1 Forrest Gump
123 Anywhere St.
2 New City, CA 95000
3 In pro per
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5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ
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9 In re Marriage of) Case #: FL012345
10)
10 Petitioner: Forrest Gump) TRIAL BRIEF
11)
11 Respondent: Jenny Gump) Trial date: Feb. 14, 2012
12) Time: 8:30 am
12) Dept: C

13 TO: The Court in the above-entitled matter, and to Jenny Gump,
14 Respondent:
15

16 **I. STATISTICAL FACTS**

- 17 a. Date of Marriage: 6/1/2000
18 b. Date of Separation: 11/17/2011
19 c. Length of Marriage: 11 Years 5 Months
20 d. Children: Name Age DOB
21 i. Forrest Gump, Jr. 6 4/5/2006
22 ii. Sweetie Gump 3 7/8/2009

23 **II. BRIEF SUMMARY OF THE CASE**

24 This case was filed originally by the Petitioner on
25 12/23/2011. Disclosures have been exchanged. Discovery
26 has been finished. The parties have been to mediation and
27 have a parenting plan, as well as Child Support based on
28 that parenting plan.

1 **III. SETTLED ISSUES**

- 2 a. On May 1, 2012, the parties entered into a Stipulation
3 for Child Custody and Visitation.
- 4 b. On May 25, 2012, the parties received child support
5 orders from the Court as follows: Petitioner to pay
6 Respondent \$448.00 per month for child support.
- 7 c. It is Petitioner's information and belief that these
8 issues have been settled, and do not need to be re-
9 litigated.

10 **IV. ISSUES TO BE LITIGATED AT TRIAL**

11 a. Permanent Spousal Support

- 12 i. Respondent should pay Petitioner permanent
13 spousal support.

14 b. Health Insurance for Petitioner

- 15 i. Respondent should be ordered to provide health
16 insurance for Petitioner, or in the alternative,
17 the expense of the same should be included in the
18 amount of Spousal Support to be paid Petitioner
19 by Respondent.

20 c. Property Division

21 i. Sale of Family Residence

- 22 1. Petitioner wishes to buy the Respondent out
23 of her community interest in the house.

24 ii. Division of Pension Plan

- 25 1. Petitioner's position is that both parties
26 should keep their own pension plan, and the
27 off-set payment should be applied to
28

1 Respondent's purchase of the community
2 interest in the Family Residence.

3 **V. PROPOSAL OF RESOLUTION OF ISSUES**

4 a. Permanent Spousal Support

5 i. As is evidenced by the Petitioner's April 1, 2012
6 Income and Expense Declaration (attached hereto
7 as Exhibit 1), his living expenses total
8 approximately \$6,300.00 per month, exclusive of
9 health insurance, since Petitioner remains on
10 Respondent's health insurance.

11 ii. Petitioner is a sailor by profession. On July 4,
12 2009, Petitioner was seriously injured in an on-
13 the-job accident. As a result, Petitioner is
14 permanently disabled and unable to perform any
15 type of physical labor. His main source of
16 income is in non-taxable federal social security
17 disability benefits.

18 iii. By contrast, Respondent earns approximately
19 \$220,000.00 per year in her capacity as a
20 successful children's book author (see
21 Respondent's Income and Expense Declaration,
22 filed April 5, 2012, attached hereto as Exhibit
23 2).

24 iv. Since becoming permanently disabled, Petitioner
25 has been a "stay-at-home" dad. Moreover, by
26 stipulation of the parties, Petitioner has
27 primary physical custody of the minor children
28 (see paragraph III(a) above).

1 v. Notwithstanding the fact Petitioner is
2 permanently disabled and unable to perform any
3 type of physical labor, as well as the fact he is
4 the parent with primary custody of the minor
5 children, it is anticipated Respondent will
6 attempt to persuade this Court that Petitioner is
7 a malingerer who effuses to go back to work
8 despite having the ability and opportunity to do
9 so and therefore should receive zero permanent
10 spousal support. Naturally, Petitioner
11 vehemently disagrees with Respondent's assessment
12 and he will present expert testimony at trial
13 regarding the extent of his disability and
14 resulting limitations.

15 b. Health Insurance

16 i. Once the parties' marriage is dissolved,
17 Petitioner will no longer be eligible for
18 coverage as a dependent under Respondent's group
19 health insurance plan through her employer. He
20 will be eligible to receive comparable coverage
21 under COBRA, however at a much higher cost.
22 Petitioner has received preliminary premium
23 quotes of at least \$1,000.00 per month for this
24 health care coverage.

25 ii. Petitioner asks the Court to order Respondent to
26 pay the sum of \$1,000.00 to Petitioner for health
27 insurance coverage.

28 c. Petitioner to be awarded the Family Residence

1 i. Petitioner and the minor children have been
2 living exclusively in the family Residence,
3 located at 123 Anywhere St., New City, CA 95000,
4 since the date of separation. Petitioner is
5 requesting the family residence be awarded to him
6 as a portion of his share of community property
7 subject to the existing encumbrances thereon, as
8 delineated in Exhibit 5 attached hereto.

9 **VI. SUMMARY OF ANY EXPERT REPORTS OR TESTIMONY TO BE OFFERED**

10 a. Dr. Santa Claus, M.D. will testify as to Petitioner's
11 disability, his inability to work gainfully, and the
12 children's need for him to be a stay at home father.

13 b. Ms. Easter Bunny, of Happy Day Appraising, will
14 testify as to the current value of the family
15 residence being \$400,000.00.

16 **VII. WITNESS LIST**

17 a. Dr. Santa Claus, M.D. (expert)
18 1 North Pole Drive
19 North Pole, California 95001
20 b. Ms. Easter Bunny, President (expert)
21 Happy Day Appraisal
22 14576 Soquel Blvd.
23 Santa Cruz, CA 95000
24 c. Petitioner, Forrest Gump

25 **VIII. LEGAL ARGUMENTS TO BE RELIED ON**

26 a. Spousal Support
27 i. The statutory factors that must be considered
28 when making an award for permanent spousal

1 support include, among others, the supported
2 spouse's health and ability to engage in gainful
3 employment without interfering with the interests
4 of the dependent children in his or her custody,
5 the length of the parties' marriage and the
6 supporting spouse's ability to pay support.
7 (Family Code Section 4320(c), (f), (g), (h);
8 See also *Marriage of Teegarden* (1986) 181
9 CalApp3d 401, 409-410 - reversible error to deny
10 support where spouse's debilitating disease
11 precluded employment and other spouse's income
12 far exceeded ailing spouse's income; and *Marriage*
13 *of Mosely* (2008) 165 CalApp4th 1375, 1390- Court
14 cannot disregard impact on dependent children
15 when setting custodial parent's spousal support
16 award.)

17 **IX. OTHER MATTERS**

18 None

19 **X. ATTACHMENTS AND EXHIBITS**

- 20 a. Petitioner's Income and Expense Declaration
21 b. Respondent's Income and Expense Declaration
22 c. Dr. Santa Claus' curriculum vitae
23 d. Ms. Easter Bunny's curriculum vitae
24 e. Petitioner's proposal of division of community
25 property

26 Respectfully Submitted,

27 Date: _____

28 Forrest Gump, Petitioner

Trial Brief Format

The Self Help Center strongly suggests you use the following format simply as a guide.

1 Name _____
2 Address _____
3 City, State, Zip _____

4 In pro per
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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ
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10
11 In re Marriage of _____) Case #:
12)
13 Petitioner: _____) TRIAL BRIEF
14)
15 Respondent: _____) Trial date:
16) Time:
17) Dept:
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17 TO: The Court in the above-entitled matter,
18 and to _____, the Petitioner/ Respondent

19 I. STATISTICAL FACTS

- 20 a. Date of Marriage: _____
21 b. Date of Separation: _____
22 c. Length of Marriage: _____ Years _____ Months
23 d. Children: Name Age DOB
24 i. _____
25 ii. _____
26 iii. _____
27 iv. _____

28 continued on Attachment I(d)

1 V. PROPOSAL OF RESOLUTION OF ISSUES

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11 VI. SUMMARY OF ANY EXPERT REPORTS OR TESTIMONY TO BE OFFERED

12 _____
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19 VII. WITNESS LIST

20 a. (expert) _____

21 Address: _____

22 _____
23 b. (expert) _____

24 Address: _____

25 _____
26 c. _____

27 d. _____

28 e. _____

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VIII. LEGAL ARGUMENTS TO BE RELIED ON

IX. OTHER MATTERS

X. ATTACHMENTS AND EXHIBITS

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

Respectfully Submitted,

Date:

Name (Petitioner/ Respondent)

