



Judicial Council of California . Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Family Law: Attorney's Fees and Costs	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, FL-319, and FL-346; revise form FL-340	January 1, 2012
	Date of Report
	October 18, 2011
Recommended by	Contact
Family and Juvenile Law Advisory Committee	Melissa Ardaiz, 916-643-8002 melissa.ardaiz@jud.ca.gov
Hon. Kimberly J. Nystrom-Geist, Cochair	
Hon. Dean Stout, Cochair	
Elkins Family Law Implementation Task Force	
Hon. Laurie D. Zelon, Chair	

Executive Summary

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommend that the Judicial Council adopt a new rule of court, approve four new Judicial Council forms, and revise one form previously adopted for use in family law proceedings. The new and revised forms are necessary to comply with legislative mandates in Assembly Bill 939 (Stats. 2010, ch. 352)¹ and to clarify legal requirements with respect to requesting and awarding attorney's fees based on financial need in family law proceedings. The new rule is also mandated by AB 939 and sets out the steps for requesting and awarding needs-based fees.

¹ Available: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_939_bill_20100927_chaptered.pdf

Recommendation

The Family and Juvenile Law Advisory Committee and Elkins Family Law Implementation Task Force recommend that the Judicial Council, effective January 1, 2012:

1. Adopt rule 5.93² (Attorney's fees and costs), which identifies the steps for a litigant or court to take in requesting, responding to a request for, and awarding attorney's fees and costs based on financial need;
2. Approve optional form FL-157³, *Spousal or Partner Support Declaration Attachment*, for litigants to use, as an attachment to the *Request for Attorney's Fees and Costs Attachment* (form FL-319), *Declaration for Default or Uncontested Judgment* (form FL-170), *Application for Order* (form FL-310) and *Order to Show Cause* (form FL-300) or *Notice of Motion* (form FL-301) to request that the court award, modify a request, or deny a request for spousal or domestic partner support and to provide supporting facts that address the issues identified in Family Code section 4320, which are also required in a request for attorney's fees and costs;
3. Approve optional form FL-158, *Supporting Declaration for Attorney's Fees and Costs Attachment*, for litigants to use, as an attachment to *Request for Attorney's Fees and Costs Attachment* (form FL-319) or *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320), to provide the court with additional background information either in support of or in opposition to a request for needs-based attorney's fees and costs, such as any history of child support, spousal or partner support, or family support orders;
4. Approve optional form FL-319, *Request for Attorney's Fees and Costs Attachment*, for litigants to use, as an attachment to the *Application for Order* (form FL-310) and *Order to Show Cause* (form FL-300) or *Notice of Motion* (form FL-301) , to request that the court award needs-based attorney's fees and costs;
5. Approve optional form FL -346 *Attorney's Fees and Costs Order Attachment*, for the court to use, as an attachment to *Findings and Order After Hearing* (form FL-340), *Judgment*

² Proposed new rule 5.93 was circulated for public comment as rule 5.427.

³ Form FL-157, *Spousal or Partner Support Declaration Attachment*, was originally included as part of another proposal—*Default and Uncontested Judgment Checklist and Related Forms* (item 45). However, those rules and forms are now being proposed to the Judicial Council at a future meeting, with an effective date of July 1, 2012. Form FL-157 should become effective at the same time as form FL-158, *Supporting Declaration for Attorney's Fees and Costs Attachment*, since form FL-158 includes a reference to form FL-157 as these factors are also required in an order for attorney's fees and costs based on need and income of the parties. Thus, form FL-157 and related comments have been added to this proposal, with a proposed effective date of January 1, 2012.

(form FL-180), or *Judgment (Uniform Parentage—Custody and Support)* (form FL-250), to identify court findings and orders with respect to needs-based attorney’s fees and costs; and

6. Revise mandatory form FL-340, *Findings and Order After Hearing*, to improve organization and numbering, add clarifying language in item 1, add a reference to “parenting time” in item 2, add “Other” check boxes in items 2–6, add a check box for the court to attach new form FL-346 (see item 5 of this recommendation) in item 6, and add a check box for the court to order a continuance in item 9.⁴

The text of rule 5.93 is attached at pages 13–14; copies of the new and revised forms are attached at pages 15–25.

Previous Council Action

The Judicial Council adopted *Findings and Order After Hearing (Family Law—Domestic Violence Prevention—Uniform Parentage)* (rule 1296.31) as a mandatory form, effective January 1, 1992. Rule 1296.31 was renumbered as form FL-340, effective January 1, 2003.

Rationale for Recommendation

The new rule and forms on attorney’s fees result from legislative mandate. Effective January 1, 2011, Assembly Bill 939 (Committee on Judiciary; Stats. 2010, ch. 352) amended Family Code sections 2030, 2032, 3121, and 3557, which concern awarding attorney’s fees and costs based on income and need in family law proceedings. The bill requires that the Judicial Council, by January 1, 2012, adopt a rule of court to implement sections 2030 and 3121 and develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees and costs under these sections. (See, e.g., Family Code section 2030(e), which is included in Attachment A to this report.)

New form FL-157, *Spousal or Partner Support Declaration Attachment*, results from the Elkins Family Law Task Force Recommendations. A key finding in the *Final Report and Recommendations*⁵ was that the processing of default and uncontested judgments in dissolution and legal separation cases submitted by declaration under Family Code section 2336 differs from county to county. Courts have developed a wide array of local forms to reflect these changes, not all of which are consistent with each other. The differing procedures and constant changes significantly increase the workload on court staff and create confusion for court staff, attorneys, and litigants—especially self-represented litigants, who often have difficulty obtaining

⁴ Form FL-320, *Responsive Declaration to Order to Show Cause or Notice of Motion*, was also circulated to change the form’s title to *Responsive Declaration to Request for Order* to make it consistent with the change in title to form FL-300, which was recommended in another report. The proposal to revise form FL-300 will be considered at a different Judicial Council meeting. Therefore, form FL-320 has been removed from this proposal and will be included with the form FL-300 proposal when it is considered by the Judicial Council.

⁵ Elkins Family Law Task Force, *Final Report and Recommendations* (2010), p. 38.

information and complying with local requirements. It also greatly impacts the timeliness of case processing.

New form FL-157 is one of many forms intended to facilitate statewide simplification of the process for obtaining default and uncontested judgments by setting out the factors that the court must consider when making orders for judgment or modification of judgment on the issue of spousal support or partnership support under Family Code section 4320. These factors are also required in determinations of attorney's fees based on need and income of the parties. Family code 2032(b) for example, notes that "[i]n determining what is just and reasonable under the relative circumstances, the court shall take into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320." Therefore, form FL-319 refers to setting out the factors in form FL-157 to ensure that this information is provided to the court.

Legal compliance

Rule 5.93 and the three new attorney's fees forms (forms FL-319, FL-158, and FL-346) are necessary to comply with legislative mandates and to clarify current legal requirements with respect to requesting and awarding needs-based attorney's fees and costs in family law proceedings.

Family Code sections 2030⁶, 2032⁷, 3121⁸, and 3557⁹ identify factors and issues for the court to consider in determining whether an award of attorney's fees and costs is appropriate. Sections 2030 and 3121 provide that a court in a dissolution or marriage proceeding or a proceeding under section 3120 may order one party to pay the other party an amount that is reasonably necessary for attorney's fees and costs in order to ensure that each party has access to legal representation. The court must base its determination on the respective incomes and needs of the parties and any factors affecting parties' respective abilities to pay.

Assembly Bill 939 further requires that when a request for attorney's fees and costs is made, the court must make findings about whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. The bill requires the court to make an order awarding attorney's fees and costs if the findings demonstrate disparity in access and ability to pay. These changes are reflected in sections 2030(a)(2), 3121(b), and 3557(a).

The recommended new forms incorporate these legal requirements. They also encompass Family Code sections 270¹⁰ and 7605¹¹, which address attorney's fees and costs in family law

⁶ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=02001-03000&file=2030-2034>

⁷ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=02001-03000&file=2030-2034>

⁸ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=03001-04000&file=3120-3121>

⁹ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=03001-04000&file=3550-3558>

¹⁰ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=00001-01000&file=270-274>

¹¹ Available: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=07001-08000&file=7600-7606>

proceedings but were not specifically included as part of AB 939. Section 270 requires the court to determine that a party has or is reasonably likely to have the ability to pay attorney's fees or costs before ordering an award of attorney's fees and costs under the Family Code. Section 7605 allows the court to order attorney's fees in proceedings to establish physical or legal custody of a child or a visitation order under the Uniform Parentage Act based on the income and needs of the parties and their respective abilities to pay. The requirements in these sections overlap with the requirements in sections 2030, 2032, 3121, and 3557.

Finally, the *Request* (form FL-319) incorporates current case law by noting that the party requesting attorney's fees and costs must provide the court with sufficient information about the extent and nature of the attorney's services and associated costs, which helps to demonstrate the value of the services and whether the requested fees are reasonably necessary. The major factors for the court to consider in fixing reasonable attorney's fees include the attorney's hourly billing rate; the nature and difficulty of the litigation; the skill required and employed in handling the litigation; the amount of fees and costs incurred or estimated; the attorney's experience in the particular type of work demanded; and why the fees and costs are just, necessary, and reasonable. (See *In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296; *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 869–871.)

Rule 5.93 is also legislatively mandated and sets out basic steps for requesting and awarding needs-based fees.

Elkins Task Force recommendations

Rule 5.93 and the new and revised forms comply with and effectuate two of the Elkins Family Law Task Force Recommendations:

- Providing efficient and effective procedures to help ensure justice, fairness, due process, and safety by expanding legal representation and providing a continuum of legal services (Task Force Recommendation III.A); and
- Ensuring meaningful access to justice for all litigants by streamlining family law forms and procedures (Task Force Recommendation I.D).

Expanding legal representation and providing a continuum of legal services. The task force recommended that the Judicial Council adopt statewide rules and forms regarding the information that needs to be submitted to the court to obtain an award of attorney's fees to promote consistency for attorneys and self-represented litigants and to encourage courts to make early needs-based fee awards rather than deferring the issue to trial.¹²

The recommended new forms allow the litigant to provide the court with information relevant to an award of attorney's fees and are geared toward requests for fees both early in the proceedings

¹² Elkins Family Law Task Force, *Final Report and Recommendations* (2010), pp. 59–62.

(to hire an attorney before the matter goes forward) and after representation has begun (to request fees for costs incurred or estimated future costs).

Streamlining family law forms and procedures. The task force recommended that Judicial Council forms “be easy to use, allow parties to provide critical information requested by the court, and be readily accessible.”¹³ The recommended new forms promote accessibility, uniformity, and flexibility, all of which play an important role in meeting court and court-user needs. They use plain language and utilize either a check box or open-ended question format to assist self-represented litigants in supplying the court with the information necessary to determine whether or not attorney’s fees are appropriate.

Comments, Alternatives Considered, and Policy Implications

Comments

The invitation to comment was circulated from April 21, 2011, through June 20, 2011, to the standard mailing list for family and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals.¹⁴ Thirty-six comments were received. Thirty-two commentators agreed with the proposal, with 21 suggesting modifications. Two commentators disagreed with the proposal. Two commentators did not indicate a position.

For the most part, this proposal received strong public support. Several commentators commented that the new attorney’s fees rule and forms would provide substantial benefit to self-represented litigants, attorneys, judicial officers, and court staff, and enhance public access to the courts.

There were many suggestions for improvement, including a large number of comments concerning language and organization, which are fully discussed in the comment chart. The following issues received the most significant comments:

- Whether the forms should be mandatory or optional;
- The scope of the proposed new rule and forms—whether they should encompass sanctions under Family Code section 271 or be limited to attorney’s fees based on financial need;
- Filing and service of process requirements;
- Attorney declarations; and
- Manner of payment for any attorney’s fees and costs awarded.

Mandatory or optional forms. As submitted for public comment, the committee and task force proposed the *Request* (form FL-319), *Order* (form FL-346), and *Spousal or Partner Support Declaration* (form FL-157) as mandatory forms and the *Supporting Declaration* (form FL-158)

¹³ *Id.* at p. 33.

¹⁴ A chart providing the full text of the comments and the committee responses is attached at pages 26–93.

as an optional form. Nine commentators expressed varying opinions about whether the new forms should be mandatory or optional, as follows:

- Two court commentators suggested making all of the new forms mandatory.
- One judicial officer disagreed with the proposal and suggested making all of the forms optional if approved.
- One attorney disagreed with the proposal and noted that a form is not necessary given the recent case law on requests for attorney's fees and costs in family law proceedings (the commentator did not refer to specific case law).
- One court commentator suggested making the *Order* (form FL-346) optional and allowing court findings and orders to be made in the minute order.
- Four commentators recommended making the *Spousal and Partnership Support Declaration* (form FL-157) optional as it is not required in all cases.

In order to effectuate both uniformity and flexibility, the committee and task force decided to recommend that the Judicial Council approve all four forms as optional, rather than mandatory, forms. The forms clarify the legal requirements for requesting needs-based attorney's fees in family law proceedings; identify the factors the court must consider in ordering spousal or partner support; and promote consistency and accessibility for self-represented litigants, attorneys, court staff, and bench officers. However, it is also important to preserve the ability of courts to develop and maintain efficient local practices and to minimize impact on court operations.

Therefore, with respect to attorney's fees, the committee and task force recommend that the Judicial Council approve the *Request* and *Supporting Declaration* as optional forms, but require that a party requesting attorney's fees either submit those forms or submit comparable declarations that address the factors covered in those forms. The information in these forms assists litigants in obtaining access to legal assistance and helps to ensure that courts receive the information needed to determine whether or not attorney's fees are appropriate.

Approving the *Order* as an optional form allows local courts the option of using the Judicial Council form, using the substance of the form (part or all) as a model to make a local form, or recording the findings and orders in the court minutes. It also allows attorneys the opportunity to draft more detailed proposed orders.

With respect to the *Spousal or Partner Support Declaration*, the committee and task force recommend that the Judicial Council approve the form as an optional form to provide flexibility and adjust the language on the form so that it is more neutral to both moving and responding parties. In addition, in response to commentators' suggestions, the committee and task force clarified that the form is not meant for use in requests for temporary spousal or partner support.

Scope. Three commentators submitted comments on the scope and applicability of the new rule and forms. Using the versions of the forms submitted for public comment, a party in a family law proceeding could use the forms to request attorney's fees and costs based on financial need (as

described in Family Code sections 2030, 2032, 3121, and 3557) or as a form of sanction (as described in section 271).

- Two commentators did not support application of the rule or forms to sanctions under Family Code section 271. The Los Angeles County Bar Association, Family Law Section Executive Committee (FLEXCOM) commented that sanctions are not necessarily needs-based or related to the respective income of the parties, which makes the requirement to fill out the forms both irrelevant and onerous. An attorney asserted that rule 5.93 imposes unnecessary requirements to obtain sanction-based attorney's fees, through processes such as the filing of an income and expense declaration, and is inconsistent with existing case law¹⁵. He suggested limiting rule 5.93's application to needs-based awards.
- Another commentator suggested expanding the forms for use in requesting attorney's fees under other statutes, such as for discovery sanctions or violations of local rules or California Rules of Court.

The committee and task force initially believed that it would be helpful to family law litigants, attorneys, court staff, and bench officers to include both needs-based and sanctions-based attorney's fees on the same form. While there are differences in the statutory requirements, the proposed forms were drafted so that the litigant, attorney, or court could indicate the type of attorney's fees relevant to the circumstances of the case. However, after considering public comment on this issue, the committee and task force now recommend limiting the scope of rule 5.93 and the new forms to attorney's fees and costs based on financial need for the following reasons:

- There are different statutory and case law requirements, depending on whether the fees are being requested based on need or as a form of sanction under Family Code section 271, and this makes the forms more legally complicated;
- The legislative mandate to develop a rule and form concerns needs-based attorney's fees and does not include a directive to incorporate sanctions-based attorney's fees;
- Including sanctions under Family Code section 271 might open the door for the forms to be used for other types of sanctions that the forms are not designed for; and
- There is concern that self-represented litigants would use the forms to request sanctions any time a party or attorney was being uncooperative, which could create workload and cost issues for the courts.

Therefore, any mention of sanctions under Family Code section 271 has been eliminated from the recommended new rule and forms.

Filing and service of process requirements. Six commentators submitted comments about filing requirements and service of process. Commentators requested clarification on:

¹⁵ See *Burkle v. Burkle* (2006) 144 Cal.App.4th 387; see also *Marriage of Corona* (2009) 172 Cal.App.4th 1205.

- Filing requirements—stating which forms were required as part of the request and response, whether those forms had to be attached as a package, and whether a declaration could be filed in lieu of an *Income and Expense Declaration* (form FL-150) if there was a current FL-150 already on file;
- Service of process—identifying the type of service required and who needs to be served; and
- Timeliness—identifying the timeline related to filing requirements and service of process.

Information about filing requirements and service of process will be included in *Request for Order* (form FL-300), *Information Sheet for Request for Order* (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which are currently proposed to be adopted in July 2012.

Attorney declarations. Four commentators expressed concern about requiring a party to submit an attorney’s declaration of fees if the request for fees exceeds \$2,000. This language was included in item 5c on the *Request* (form FL-319).

- Two commentators—the California Judges Association (CJA) and Judge B. Scott Thomsen, of the Superior Court of Nevada County—suggested raising the amount. CJA suggested raising the amount to over \$5,000, while Judge Thomsen noted that it should be raised to \$3,000 to \$3,500 to justify the associated cost and the court’s need for such a declaration.
- Two commentators—the Superior Court of San Bernardino County and the Harriett Buhai Center for Family Law—questioned why an attorney’s declaration was required at all and expressed concern that it would create barriers for self-represented litigants, especially those seeking to retain an attorney early in the case, and preclude them from seeking attorney’s fees and costs.

The committee and task force initially believed it would be helpful to require an attorney’s declaration describing the extent and nature of services if the request for attorney’s fees was in excess of \$2,000. An attorney’s declaration describing the extent and nature of services assists the court in determining both the value of those services and whether the requested fees are reasonably necessary. California case law identifies important factors for the court to consider. (See *In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296; *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 869–871.)

The \$2,000 amount was based on local rules. The intent was to create an exception for those litigants seeking a retainer fee by requiring an attorney’s declaration only if the requested fees exceeded this amount.

However, after considering public comment on this issue, the committee and task force recommend eliminating the specific requirement that a litigant file and serve an attorney’s declaration if the request for fees is in excess of \$2,000. The committee and task force weighed the following concerns:

- The appropriateness of mandating an attorney declaration;

- The appropriateness of designating a statewide monetary threshold;
- The potential financial and workload impact for attorneys, judicial officers, court staff, and litigants—particularly self-represented litigants; and
- The value of providing the court with information about the extent and nature of the attorney’s services.

Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding a provision instructing the party requesting attorney’s fees to “provide the court with sufficient information about the following factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; fees and costs incurred or anticipated; and why the fees and costs are just, necessary, and reasonable.

Manner of payment. Six commentators expressed concern that the payment schedule in the *Order* (form FL-346) was vague and confusing. Commentators suggested clarifying payment options and interest accrual. As submitted for public comment, the *Order* included item 5d(2)(c), which stated that “If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent.”

To clarify the payment schedule and address commentator concerns, the committee and task force:

- Eliminated item 5d2(c).
- Added a check box in item 4b(3), underneath the amount of fees awarded, which states “Interest is not included and is not waived.”
- Added a check box in item 4e(3), which states “If any payment is not timely made and more than _____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.”
- Added a check box in item 4e(4), which states “No interest will accrue as long as payments are timely made.”
- Clarified in the notice box on page 2 that any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent “per year” (as is set out in other family law forms).

Alternative actions considered and policy implications

This proposal results from legislative mandate. AB 939 requires the Judicial Council to adopt a rule of court to implement Family Code sections 2030 and 3121 and to develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees under those sections. The proposed new rule and new and revised forms reflect legal requirements and promote statewide consistency with respect to requesting and awarding needs-based attorney’s fees and costs in family law proceedings. In formulating their final recommendations, the committee and task force considered the three options described below.

Option 1. The committee and task force considered not developing the forms, but since AB 939 requires the Judicial Council to adopt a rule of court to implement Family Code sections 2030 and 3121 and to develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees under those sections, they do not think that option is appropriate. The Judicial Council must adopt a rule of court and develop a form, effective January 1, 2012, to comply with legislative mandate. Otherwise, the statewide rules and forms will not be compliant with statute.

Option 2. The committee and task force considered proposing that all of the new forms be mandatory but decided that proposing the four new forms as optional, rather than mandatory, more effectively balances court and court-user interests of flexibility with statewide interests of uniformity. It also promotes accessibility and minimizes the impact on local court operations.

Option 3. The committee and task force also considered proposing that the new rule and forms apply to both needs-based attorney’s fees, as described in Family Code sections 2030, 2032, 3121, 3557, and 7605, and sanctions-based attorney’s fees, as described in Family Code section 271. However, given the difference in statutory and case law requirements and the potential for misuse of the forms, as described above under “Scope,” the committee and task force decided to remove any mention of sanctions from the forms and now recommend that the new rule and forms be limited to attorney’s fees and costs based on financial need.

Implementation Requirements, Costs, and Operational Impacts

Implementation of the new and revised forms will involve standard reproduction costs for those courts that make copies of the forms for litigants. By providing a standard means for attorneys and self-represented litigants seeking to hire attorneys to provide necessary information to the court about needs-based fees, these forms should simplify the workload for courts and assist the court in making appropriate findings and orders. In addition, providing a form that includes legally required findings and orders may save the judicial officer time by eliminating the need to draft a separate order.

Relevant Strategic Plan Goals and Operational Plan Objectives

Three strategic goals are implicated in this proposal: Goal I, Access, Fairness, and Diversity; Goal III, Modernization of Management and Administration; and Goal IV, Quality of Justice and Service to the Public, as follows:

- *Access, Fairness, and Diversity:* The new forms promote ease of use, particularly for self-represented litigants; clarify the legal requirements for requesting needs-based attorney’s fees in family law proceedings; and assist litigants in obtaining access to legal assistance. (Goal I.1, I.5, and I.10.)
- *Modernization of Management and Administration:* The new rule and new and revised forms promote fair and timely distribution of justice by supporting access to legal representation

and early needs-based awards of attorney's fees. All three forms are recommended as optional to encourage statewide coordination and uniformity while preserving and facilitating the ability of courts to develop and maintain efficient local practices. (Goal III.A.1, III.A.7, III.B.1, and III.B.2.)

- *Quality of Justice and Service to the Public:* The new and revised forms are based on legislative mandate and Elkins Family Law Task Force's recommendations, both of which are aimed at responding to court user needs and ensuring a high quality of justice in family law proceedings. The promulgation of understandable forms and rules of court works toward gaining and maintaining the public's trust and confidence in the California court system. (Goal IV.3, and IV.5.)

Attachments

1. Rule 5.93, at pages 13–14
2. Forms FL-157, FL-158, FL-319, FL-340, and FL-346, at pages 15–25
3. Chart of Comments, at pages 26–93

Rule 5.93 of the California Rules of Court is adopted, effective January 1, 2012, to read:

Division 1. Family Rules
Chapter 1. General Provisions

Rule 5.93. Attorney's fees and costs

(a) Application

This rule applies to attorney's fees and costs based on financial need, as described in Family Code sections 2030, 2032, 3121, 3557, and 7605.

(b) Request

(1) Except as provided in Family Code section 2031(b), to request attorney's fees and costs, a party must complete, file and serve the following documents:

(A) Application for Order (form FL-310) attached to an Order to Show Cause (form FL-300) or a Notice of Motion (form FL-301);

(B) Request for Attorney's Fees and Costs Attachment (form FL-319) or a comparable declaration that addresses the factors covered in form FL-319;

(C) A current Income and Expense Declaration (form FL-150);

(D) A personal declaration in support of the request for attorney's fees and costs, either using Supporting Declaration for Attorney's Fees and Costs Attachment (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158; and

(E) Any other papers relevant to the relief requested.

(2) The party requesting attorney's fees and costs must provide the court with sufficient information about the attorney's hourly billing rate; the nature of the litigation; the attorney's experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable.

(c) Response to request

To respond to the request for attorney's fees and costs, a party must complete, file, and serve the following documents:

- 1 (1) Responsive Declaration to Order to Show Cause or Notice of Motion (form
2 FL-320);
- 3
- 4 (2) A current *Income and Expense Declaration* (form FL-150);
- 5
- 6 (3) A personal declaration responding to the request for attorney’s fees and costs,
7 either using *Supporting Declaration for Attorney’s Fees and Costs*
8 *Attachment* (form FL-158) or a comparable declaration that addresses the
9 factors covered in form FL-158; and
- 10
- 11 (4) Any other papers relevant to the relief requested.
- 12

13 **(d) Income and expense declaration**

14

15 Both parties must complete, file, and serve a current *Income and Expense*
16 *Declaration* (form FL-150). A *Financial Statement (Simplified)* (form FL-155) is
17 not appropriate for use in proceedings to determine or modify attorney’s fees and
18 costs.

19

- 20 (1) “Current” is defined as being completed within the past three months,
21 provided that no facts have changed. The form must be sufficiently
22 completed to allow determination of the issues.
- 23
- 24 (2) When attorney’s fees are requested by either party, the section on the *Income*
25 *and Expense Declaration* (form FL-150) related to the amount in savings,
26 credit union, certificates of deposit, and money market accounts must be fully
27 completed, as well as the section related to the amount of attorney’s fees
28 incurred, currently owed, and the source of money used to pay such fees.
- 29

30 **(e) Court findings and order**

31

32 The court may make findings and orders regarding attorney’s fees and costs by
33 using *Attorney’s Fees and Costs Order Attachment* (form FL-346). This form is an
34 attachment to *Findings and Order After Hearing* (form FL-340), *Judgment* (form
35 FL-180), and *Judgment (Uniform Parentage—Custody and Support)* (form FL-
36 250).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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SPOUSAL OR PARTNER SUPPORT DECLARATION ATTACHMENT

- Declaration for Default or Uncontested Judgment (form FL-170)**
 Supporting Declaration for Attorney's Fees and Costs Attachment (form FL-158)
 Other (specify):

1. **Spousal or domestic partner support.** I request that the court (*check all that apply*):

- a. Enter a judgment for spousal or domestic partner support for Petitioner Respondent.
- b. Modify the judgment for spousal or domestic partner support for Petitioner Respondent.
- c. Deny the request to modify the judgment for spousal or domestic partner support.
- d. Terminate jurisdiction to award spousal or domestic partner support to Petitioner Respondent.

2. **Attorney fees and costs.** I request that the court (*check one*):

- a. Order my attorney fees and costs to be paid by my spouse or domestic partner a joined party (*specify*):
- b. Deny the request for attorney fees and costs.

3. The facts in support of my request are:

a. **Family Code section 4320(a)(1)**

(1) The supported party has the following training, job skills, and work history:

(2) The current job market for the job skills of the supported party described in item 3a(1) is:

(3) The supported party would need the following time and expense to acquire the education or training to develop the job skills described in item 3a(1):

(4) To develop other, more marketable job skills or employment, the supported party would need the following retraining or education:

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	
OTHER PARTY:	

3. Facts in support of request.

b. **Family Code section 4320(a)(2)**

Provide any facts that indicate the supported party's earning ability is, or is not, lower than it might be if he or she had not had periods of unemployment because of the time needed to attend to domestic duties (*explain*):

c. **Family Code section 4320(b)**

Provide any facts that indicate that the supported party contributed to the education, training, career position, or license of the supporting party.

d. **Family Code section 4320(c)**

(1) The supporting party does does not have the ability to pay spousal or domestic partner support.

(2) The supporting party's current gross income from employment or self-employment is (*specify*):

(3) The supporting party's current income from investments, retirement, other sources is (*specify*):

(4) The supporting party's current assets and their values and balances are (*specify*):

(5) The supporting party's standard of living is (*describe, for example, type and frequency of vacations, value of home and other real estate, value of investments, type of vehicles owned, credit card use or nonuse*):

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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3. Facts in support of request.

e. **Family Code section 4320(d)**

The supported party does does not need support to maintain the standard of living we enjoyed during the marriage or domestic partnership.

f. **Family Code Section 4320(e)**

(1) The supported party's assets and obligations, including separate property, are *(list values and balances)*:

(2) The supporting party's assets and obligations, including separate property, are *(list values and balances)*:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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3. Facts in support of request.

g. **Family Code section 4320(f)**

Length of marriage or domestic partnership (*specify*):

h. **Family Code section 4320(g)**

Provide any facts indicating whether or not the supported party is able to work without unduly interfering with the interests of the children in his or her care (*describe*):

i. **Family Code section 4320(h)**

- (1) Petitioner's age is (*specify*): _____ Respondent's age is (*specify*): _____
- (2) Petitioner's current health condition is (*describe*): _____
- (3) Respondent's current health condition is (*describe*): _____

j. **Additional factors (Family Code sections 4320(i)–(n))**

The court will also consider the following factors before making a judgment for spousal or domestic partner support:

- (1) Any documented evidence of domestic violence between the parties as defined in Family Code section 6211.
- (2) The immediate and specific tax consequences for each party;
- (3) The balance of the hardships on each party;
- (4) The criminal conviction of an abusive spouse in reducing or eliminating support in accordance with Family Code section 4325;
- (5) The goal that the supported party will be self-supporting within a reasonable period of time; and
- (6) Any other factors the court determines are just and equitable.

Describe below any additional information that will assist the court in considering the above factors:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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SUPPORTING DECLARATION FOR ATTORNEY'S FEES AND COSTS ATTACHMENT

To: **Request for Attorney's Fees and Costs Attachment (form FL-319)**
 Responsive Declaration (form FL-320)

1. I am
 - a. the petitioner/plaintiff.
 - b. the respondent/defendant.
 - c. the other party.

2. I request that the court grant grant in part deny the request for attorney's fees and costs.

3. I am providing the following information in support of in opposition to the request for attorney's fees and costs.
 - a. The petitioner/plaintiff respondent/defendant other party has the ability to pay
 - (1) my attorney's fees and costs.
 - (2) his or her own attorney's fees and costs.
 - (3) both my and his or her own attorney's fees and costs.
 - (4) other (*specify*):

 - b. The attorney's fees and costs can be paid from the following sources:

 - c. The court should consider the following facts in deciding whether to grant, grant in part, or deny the request for attorney's fees and costs (*describe*):

See Attachment 3c.

 - d. If appropriate, describe the reasons why a non-spouse party or domestic partner is involved in the case and whether he or she should or should not pay attorney's fees and costs:

See Attachment 3d.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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4. Has an order already been made for payment of child support in this case?

a. No.

b. Yes. If so, describe the order:

(1) The petitioner/plaintiff respondent/defendant other party must pay: \$
 per month for child support.

(a) This order has been in effect since (date):

(b) The payments have been made have not been made have been made in part
 since the date of the order.

(2) Additional information (specify):

5. Has an order already been made for payment of spousal, partner, or family support in this case?

a. No.

b. Yes. If so, describe the order:

(1) The petitioner/plaintiff respondent/defendant other party must pay: \$
 per month for spousal support partner support family support.

(a) This order has been in effect since (date):

(b) The payments have been made have not been made have been made in part
 since the date of the order.

(2) Additional information (specify):

6. If you are or were married to, or in a domestic partnership with, the person you are seeking fees from, the court must consider the factors in Family Code section 4320 in determining whether it is just and reasonable under the relative circumstances to award attorney's fees and costs. Complete and attach *Spousal or Partner Support Declaration Attachment* (form FL-157) or a comparable declaration to provide the court with information about the factors described in section 4320.

7. You must complete, file, and serve a current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changed since the time of completion.

8. Number of pages attached to this *Supporting Declaration*: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date:

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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REQUEST FOR ATTORNEY'S FEES AND COSTS ATTACHMENT

1. I am completing this form because:
 - a. I need to have enough money for attorney's fees and costs to present my case adequately;
 I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney.
 - b. I have less money or limited access to funds to retain or maintain an attorney compared to the party that I am requesting pay for my attorney's fees and costs; and
 - c. the party that I want the court to order to pay for my attorney's fees and costs has or is reasonably likely to have the ability to pay for attorney's fees and costs for me and himself or herself.

2. I am asking the court to order that *(check all that apply)*:
 petitioner/plaintiff respondent/defendant
 other party *(specify)*: _____ pay for my attorney's fees and costs in this legal proceeding as follows:
 - a. Fees: \$ _____
 - b. Costs: \$ _____

3. The requested amount includes *(check all that apply)*:
 - a. a fee in the amount of: \$ _____ to hire an attorney in a timely manner before the proceedings in the matter go forward.
 - b. attorney's fees and costs incurred from the beginning of representation until now in the amount of: \$ _____
 - c. estimated attorney's fees and costs in the amount of: \$ _____
 - d. attorney's fees and costs for limited scope representation in the amount of: \$ _____

4. Have attorney's fees and costs been ordered in this case before?
 - a. No.
 - b. Yes. If so, describe the order:
 - (1) The petitioner/plaintiff respondent/defendant other party must pay: \$ _____ for attorney's fees and costs.
 - (a) This order was made on *(date)*: _____
 - (b) From the payment sources of *(if known)*: _____
 - (c) The payments have been made have not been made have been made in part since the date of the order.
 - (2) Additional information *(specify)*: _____

5. Along with this *Request* form, you must complete, file and serve:
 - a. A current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changed since the time of completion; and

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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5. b. A personal declaration in support of your request for attorney's fees and costs that explains why you need an award of attorney's fees and costs (either *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158).
6. The party requesting attorney's fees and costs must provide the court with sufficient information about the following factors:
 - a. The attorney's hourly billing rate;
 - b. The nature of the litigation, its difficulty, and the skill required and employed in handling the litigation;
 - c. Fees and costs incurred until now; anticipated attorney's fees and costs; and why the fees and costs are just, necessary, and reasonable;
 - d. The attorney's experience in the particular type of work demanded; and
 - e. If it is a limited scope fee arrangement, the scope of representation.

Notice to Responding Party

7. To respond to this request, you must complete, file, and serve:
 - a. A *Responsive Declaration* (form FL-320);
 - b. A current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changes since the time of completion; and
 - c. A personal declaration explaining why the court should grant or deny the request for attorney's fees and costs (either *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158).
8. Number of pages attached to this *Request* form: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date:

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	
FINDINGS AND ORDER AFTER HEARING	CASE NUMBER:

1. This proceeding was heard
 on (*date*): _____ at (*time*): _____ in Dept.: _____ Room: _____
 by Judge (*name*): _____ Temporary Judge
 On the order to show cause, notice of motion or request for order filed (*date*): _____ by (*name*): _____

a. Petitioner/plaintiff present Attorney present (*name*): _____
 b. Respondent/defendant present Attorney present (*name*): _____
 c. Other party present Attorney present (*name*): _____

THE COURT ORDERS

- 2. Custody and visitation/parenting time: As attached on form FL-341 Other Not applicable
- 3. Child support: As attached on form FL-342 Other Not applicable
- 4. Spousal or family support: As attached on form FL-343 Other Not applicable
- 5. Property orders: As attached on form FL-344 Other Not applicable
- 6. Attorney's fees: As attached on form FL-346 Other Not applicable
- 7. Other orders: As attached Not applicable
- 8. All other issues are reserved until further order of court.
- 9. This matter is continued for further hearing on (*date*): _____ at (*time*): _____ in Dept.: _____
 on the following issues:

Date: _____ _____
JUDICIAL OFFICER

Approved as conforming to court order.

 SIGNATURE OF ATTORNEY FOR PETITIONER / PLAINTIFF RESPONDENT/DEFENDANT OTHER PARTY

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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ATTORNEY'S FEES AND COSTS ORDER ATTACHMENT

Attached to:

- Findings and Orders After Hearing (form FL-340)*
 Judgment (Uniform Parentage—Custody and Support) (form FL-250)
 Judgment (form FL-180)
 Other (specify):

THE COURT FINDS

1. An award of attorney's fees and costs is appropriate because there is a demonstrated disparity between the parties in access to funds to retain or maintain counsel and in the ability to pay for legal representation.
- a. The party requested to pay attorney's fees and costs has or is reasonably likely to have the ability to pay for legal representation for both parties.
- b. The requested attorney's fees and costs are reasonable and necessary.
2. An award of attorney's fees and costs is not appropriate because (*check all that apply*):
- a. there is not a demonstrated disparity between the parties in access to funds to retain or maintain counsel or in the ability to pay for legal representation.
- b. the party requested to pay attorney's fees and costs does not have or is not reasonably likely to have the ability to pay for legal representation for both parties.
- c. the requested attorney's fees and costs are not reasonable or necessary.
3. Other (*specify*):

THE COURT ORDERS

4. a. The petitioner/plaintiff respondent/defendant other party to pay attorney's fees and costs in this legal proceeding
- b. in the amount of:
- (1) Fees: \$
- (2) Costs: \$
- (3) Interest is not included and is not waived.
- c. Payable to petitioner/plaintiff respondent/defendant other party
- d. From the payment sources of (*if specified*):

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
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4. e. With a payment schedule of *(specify)*:
- (1) Due in full, on or before *(date)*:
 - (2) Due in installments, with monthly payments of *(specify)*: \$ _____, on the *(specify)*: _____ day of each month, beginning *(date)*: _____ until paid in full.
 - (3) If any payment is not timely made and more than _____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.
 - (4) No interest will accrue as long as payments are timely made.
 - (5) Other *(specify)*:

5. This amount includes *(check all that apply)*:
- a. a fee in the amount of *(specify)* \$ _____ to hire an attorney in a timely manner before the proceedings in the matter go forward.
 - b. attorney's fees and costs incurred to date in the amount of *(specify)*: \$ _____
 - c. estimated attorney's fees and costs in the amount of *(specify)*: \$ _____
 - d. attorney's fees and costs for limited scope representation in the amount of *(specify)*: \$ _____
 - e. any amounts previously ordered that have not yet been paid *(specify)*: \$ _____
 - f. Other *(specify)*:

6. Other orders *(specify)*:

NOTICE: Any party required to pay attorney's fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
1.	Hon. Irma Poole Asberry Supervising Judge Superior Court of Riverside County	A	Changes will serve to make the process uniform, help parties provide needed information prior to hearings, and will serve to reduce court time.	No response required.
2.	Association of Certified Family Law Specialists (ACFLS) Diane Wasznicky, President Lynn Pfeifer, Executive Director	AM	See comments on specific provisions below.	
3.	Bay Area Legal Aid Staci Martin Staff Attorney	AM	See comments on specific provisions below.	
4.	California Judges Association (CJA) Jordan Posamentier, Esq. Legislative Counsel	AM	See comments on specific provisions below.	
5.	Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	N	<ol style="list-style-type: none"> These forms are unnecessary and burdensome and are likely to result in increased attorney’s fees for middle class litigants and result in fewer litigants who can afford attorneys. 	<ol style="list-style-type: none"> Assembly Bill 939 requires that the Judicial Council, by January 1, 2012, develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees and costs under Family Code sections 2030 and 3121. <p>These forms are intended to address statutory and case law requirements with respect to attorney’s fees and costs in family law proceedings, and they comply with current legal authority. To preserve flexibility, the committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (form FL-158), and <i>Order</i> (form FL-346) as optional, rather than mandatory, forms.</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
			<p>2. The mandatory requirements appear to be inconsistent with the option in Family Code section 2031 to make an oral request for attorney’s fees at the time of a hearing.</p>	<p>2. These forms do not eliminate the option of making an oral request for attorney’s fees at the time of a hearing, as authorized under Family Code section 2031(b). The committee and task force recommend adding language in subdivision (b) to clarify that an attorney’s fees order may be made without notice by an oral motion in open court, as described in section 2031(b), and that it is an exception to the listed requirements.</p> <p>2031(a)(1) provides that “Except as provided in subdivision (b) ... an application for a temporary order making, augmenting, or modifying an award of attorney’s fees, including a reasonable retainer to hire an attorney, or costs or both shall be made by motion on notice or by an order to show cause.”</p> <p>Section 2031(b) states that “An order described in subdivision (a) may be made without notice by an oral motion in open court” at the time of the hearing of the cause on the merits or at any time before entry of judgment against a party whose default has been entered under section 585 or 586 or the Code of Civil Procedure.</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
			<p>3. A majority of attorney fee requests can be decided on the evidence that is presented by the parties on support issues.</p> <p>4. These forms, if adopted, should all be optional forms, to prevent the denial of necessary fees to otherwise deserving litigants who may fail to fully comply with these burdensome requirements. Additionally, because of the increasing volume of forms being required for even routine family law hearings it becomes less likely that the litigants or the courts will take the time to review all of them.</p>	<p>3. Assembly Bill 939 requires that the Judicial Council, by January 1, 2012, develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees and costs under Family Code sections 2030 and 3121. The committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (FL-158), and <i>Order</i> (FL-346) as optional forms.</p> <p>4. The Legislature directs that the Judicial Council, by January 1, 2012, develop a form for the information that must be submitted to the court to obtain an award of attorney’s fees and costs under Family Code sections 2030 and 3121. The committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (form FL-158), and <i>Order</i> (form FL-346) as optional forms to preserve flexibility.</p>
6.	Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County	AM	See comments on specific provisions below.	
7.	Family Violence Law Center Kristie Whitehorse Managing Attorney	A	No narrative comments submitted.	No response required.
8.	Rod Firoozye	AM	Note that the forms do not seem to reflect	After considering public comment on the issue,

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
	Attorney at Law Law Offices of Rod Firoozye		circumstances where moving party may be seeking attorney’s fees against the other party (e.g. - sanctions) and in response, the responding party objects to the issuance of sanctions against them and wants to request sanctions issued against the moving party instead.	the committee and task force recommend that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms. The moving party may seek attorney’s fees and costs based on financial need by completing the <i>Request</i> (form FL-319). The responding party may either consent or object to the order requested by completing item 5 of the <i>Responsive Declaration</i> (form FL-320). The moving and responding party may complete the <i>Supporting Declaration</i> (form FL-158) as an attachment to the <i>Request</i> or <i>Responsive Declaration</i> to provide the court with more information. If the responding party wants to request attorney’s fees and costs, the responding party can make the request by filing the <i>Request</i> (form FL-319), or in certain circumstances, by making an oral motion in open court, as described in Family Code section 2031(b).
9.	Frieda Gordon Certified Family Law Specialist Cooper-Gordon, LLP	A	As former President of ACFLS and board member for 22 years, I have had the privilege to review and comment many times on proposed legislation. This bill is well-worthy of support, and I appreciate all the effort it took to put it all together.	No response required.
10.	Harriett Buhai Center for Family Law Erin Dabbs Senior Staff Attorney	AM	See comments on specific provisions below.	

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
11.	Robert K. Holmes Attorney and Certified Family Law Specialist Holmes & Holmes, Attorneys at Law	A	No narrative comments submitted.	No response required.
12.	Virginia Johnson Staff Attorney Superior Court of San Diego County	AM	See comments on specific provisions below.	
13.	Los Angeles County Bar Association Family Law Section Executive Committee (FLEXCOM) Debra S. Frank Chair	NI	The LACBA does not believe that the rule and forms should apply to Family Code section 271 fees for sanctions. These fees are not necessarily needs-based or related to the respective income of the parties, and the requirement to fill out the forms is therefore both irrelevant and onerous. LACBA endorses proposed rule 5.427 and its associated forms with modifications. See comments on specific provisions below.	The committee and task force agree. After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.
14.	Matthew Mesnik Attorney at Law Wilkinson & Finkbeiner, LLP	AM	Family Code section 2030 should be modified to force the court to rule on a fees request immediately or within a short period of time. Far too often the Court will simply reserve over a fee request which is tantamount to a denial, leaving the litigant without recourse or funds to retain or maintain an attorney's services. Reserving over a fees request also forces the attorney into choosing whether to gamble on the court ruling in favor of the fee award request later in the case (rarely happens), drop the client, leaving the client unrepresented, or involuntarily provide pro-bono work knowing	It is not within the Judicial Council’s purview to modify Family Code section 2030. Section 2031(a)(2), which concerns applications for temporary orders, states that the court must rule on an application for a temporary order making, augmenting, or modifying an award of attorney’s fees within 15 days of the hearing on the motion or order to show case.

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Family Law: Attorney's Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
			<p>the client cannot afford to pay the bill without a fee award.</p> <p>Lastly, why make a litigant or attorney argue the same issue more than once. Very frustrating and very inefficient.</p> <p>Forcing courts to rule immediately on fee requests will help unrepresented litigants hire an attorney early on in a case or pay back the loan to family members they used to retain an attorney or keep the attorney they have without forcing the attorney to choose between abandonment of the client or working for free.</p>	
15.	Neighborhood Legal Services of Los Angeles County Carmen McDonald-Goldberg, Esq. Attorney at Law	NI	See comments on specific provisions below.	
16.	Maralee Nelder Attorney at Law, CFLS Grass Valley	AM	See comments on specific provisions below.	
17.	Orange County Bar Association John Hueston President	A	No narrative comments submitted.	No response required.
18.	Lee C. Pearce Attorney at Law	A	I support making it easier for people to get fee orders at the beginning of the case. It makes no sense if they have to hire an attorney they don't have the money for before they find out if they are going to get a fee order. Similarly, it isn't fair to the attorney to have to take the case on faith, and risk being held in by the court if a fee order isn't made.	No response required.

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
19.	Robert Sainburg	A	Suggest a line-by-line information sheet geared towards pro pers as part of the form, defining, for example, what is meant by a "legal service client" and what "fully completed" means when addressing an Income and Expense Declaration (does "unk" satisfy fully?); overly simplified forms create problems - including for the truly honest that want to take the oath seriously - many litigants believe the other side has ability to pay some of one's fees, not all but the form is black/white; similarly, when it is said where can attorney’s fees be paid for, it should be more where is being requested - honest litigants will struggle - they CAN be paid from my inherited \$10,000 savings account but they SHOULD be paid from our community property \$10,000 bank account in H's name alone...	The committee and task force agree that certain terms used in the forms, such as “legal service client” and “fully completed” should be better defined. The committee and task force recommend clarifying those terms on the forms themselves. The committee and task force may consider recommending the development of an information sheet in a future Rules and Projects (RUPRO) cycle.
20.	Sonoma County Bar Association, Family Law Section Carla Boyd Terre Attorney at Law and Mediator	AM	See comments on specific provisions below.	
21.	Sonoma County Bar Association Family Law Section Jeanne Miskel, Esq. Santa Rose	A	No narrative comments regarding FL-157 – which is the form that was reviewed by this commentator.	
22.	Sonoma County Bar Association Joyce MacLaury, Family Law Facilitator Sonoma Superior Court Santa Rosa	AM	See comments on specific provisions below.	
23.	Thomas P. Stabile Attorney at Law	N	With the recent case law on requests for attorney’s fees and costs, such a form is not	While there is informative case law on the issue of attorney’s fees in family law proceedings,

SPR11-35**Family Law: Attorney's Fees and Costs** (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
	Law Offices of Stabile and Cowhig		necessary.	legislative mandate necessitates the development of a form for a request of attorney's fees and costs. Assembly Bill 939 requires that the Judicial Council, by January 1, 2012, develop a form for the information that must be submitted to the court to obtain an award of attorney's fees and costs under Family Code sections 2030 and 3121. Based on this directive, the committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (FL-158), and <i>Order</i> (FL-346) as optional forms.
24.	State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch Legislative Counsel	AM	See comments on specific provisions below.	
25.	Superior Court of Los Angeles County Los Angeles County Superior Court	AM	See comments on specific provisions below.	
26.	Superior Court of Monterey County Minnie Monarque Director of Civil and Family Law Division	AM	See comments on specific provisions below.	
27.	Superior Court of Orange County Family Law Operations Staff	AM	See comments on specific provisions below.	
28.	Superior Court of Riverside County, Staff Michael Capelli	AM	See comments on specific provisions below.	
29.	Superior Court of San Bernardino County Debra Myers	AM	This proposal should provide substantial benefit to all the court users (self represented litigants, attorneys, and court staff/judges) in	No response required.

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
	Director		being able to connect more self represented litigants with attorneys. The litigant can now more easily seek a court order that the party with the assets pay for an attorney; the goal of access to the courts will be enhanced by the parties achieving a better balance of power in their family law dispute. See comments on specific provisions below.	
30.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	See comments on specific provisions below.	
31.	Superior Court of Santa Clara County, Family Court Hon. Mary E. Arand Judge	AM	See comments on specific provisions below.	
32.	Superior Court of Santa Clara County, Family Court Hon. Mary Ann Grilli Judge	AM	See comments on specific provisions below.	
33.	Superior Court of Shasta County Stacy Larson Family Law Faciliator	AM	Family Code sections 271, 2030, and 2032 refer to “attorney’s fees” throughout, so we should amend “attorney fees” to “attorney’s fees” in rule 5.427 and all the proposed new forms for consistency. See comments on specific provisions below.	The committee and task force agree to change “attorney fees” to “attorney’s fees” to be consistent with the Family Code and other Judicial Council rules and forms.
34.	Hon. M. Sue Talia Private Family Law Judge	A	I strongly agree with the proposed rule and accompanying forms. My practice is limited to private judging, and I am often faced with fee requests that lack the information to make the required findings. The forms are simple,	No response required.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
			<p>intuitive, and I believe will make it much easier for unrepresented litigants to make a successful case for a fee order. It defeats the purpose if a litigant has to first hire a lawyer in order to just get the funds to pay the lawyer because the application process is too difficult for them to navigate alone.</p> <p>I like the explicit requirement that the assets portion of the Income and Expense Declaration be fully filled out. I'm tired of seeing "unknown" or "TBD" there. If I can't find a source for fees, I can't make the required findings. Sadly, even these new rules and forms won't help the many people who truly can't afford an attorney in the traditional full case representation. However, they make it more likely that even those who can't do full service can at least obtain a fund to be used to consult with a limited scope attorney and better protect their rights. I support the attempt to make it easier for self represented litigants to obtain early fee orders, as well as providing the court with more complete information to make its findings, rather than leaving litigants in the catch-22 position of having to hire a lawyer in order to obtain an order which will allow them to hire a lawyer. I recommend adoption of these changes.</p>	
35.	Hon. B. Scott Thomsen Judge Superior Court of Nevada County	A	See comments on specific provisions below.	

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee and Task Force Response
36.	Charles K. Wake, Esq. Attorney at Law Los Angeles County Bar Association, Family Law Section	AM	I am a member of the Los Angeles County Bar Association Family Law Section Executive Committee and task force (“LACBA FlexComm”) and of the LACBA FlexComm Legislative and Amicus Brief Subcommittee and task force (“Leg/Amicus SubComm”). I am submitting a comment on my own behalf to supplement the Leg/Amicus SubComm’s comments on proposed rule 5.427, which comments were authored by Claudia Ribet. See comments on specific provisions below.	

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
<p>Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County</p>	<ol style="list-style-type: none"> 1. I generally agree with the proposed adoption of rule 5.427. However, I suggest two modifications as indicated below. 2. Rule 5.427(c). Consider permitting a party to file a declaration in lieu of an updated Income and Expense Declaration that states under penalty of perjury there have been no changes since the previous filing. This would eliminate the need to file a four-page form when the information from a previous form is unchanged. 3. Rule 5.427(c)(2). If the intention is to prohibit the use of form FL-155 in proceedings concerning attorney’s fees, then the rule should clearly say so. Also, I suggest moving subsection (c)(2) to the introductory sentence because I believe it fits and flows better. Therefore, rule 5.427(c) would state “Both parties must complete, file, and serve a current <i>Income and Expense Declaration</i> (form FL-150). <u>A <i>Financial Statement (Simplified)</i> (form FL-155) may not be used in proceedings to determine or modify attorney fees and costs.</u>” 	<ol style="list-style-type: none"> 1. No response required. 2. The committee and task force do not recommend permitting a party to file a declaration in lieu of an updated <i>Income and Expense Declaration</i> (form FL-150). 3. The committee and task force agree to move this sentence (formerly subdivision (c)(2), as submitted for public comment) to the introductory sentence in subdivision (d) so that it states “Both parties must complete, file, and serve a current <i>Income and Expense Declaration</i> (form FL-150). <u>A <i>Financial Statement (Simplified)</i> (form FL-155) is not appropriate for use in proceedings to determine or modify attorney’s fees and costs.</u>” <p>The committee and task force recommend using the language “not appropriate for use” because it is more definitive than “may not be used”, as suggested by the commentator.</p>
<p>Virginia Johnson Staff Attorney Superior Court of San Diego County</p>	<ol style="list-style-type: none"> 1. Rule 5.427. It would help the court to make the forms mandatory. 	<ol style="list-style-type: none"> 1. During the public comment process, commentators expressed varying opinions as to whether the forms should be mandatory or optional. In order to effectuate both uniformity

¹ Proposed new rule 5.93 was circulated for public comment as rule 5.427. Therefore, any comments or committee and task force responses referencing rule 5.427 should be interpreted as referencing rule 5.93.

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>2. Rule 5.427(a), (b). Delete the “or a comparable declaration....” language.</p>	<p>and flexibility, the committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (form FL-158), and <i>Order</i> (form FL-346) as optional forms. Given that the <i>Supporting Declaration</i> (form FL-158) went out for public comment as a proposed optional form, it would have to be re-circulated to be adopted as a mandatory form. If time and experience demonstrate that the forms should be mandatory forms, the Judicial Council may consider changing the forms in a future cycle.</p> <p>2. The committee and task force do not recommend deleting the “or a comparable declaration” language in rule 5.427 (b) and (c) (formerly subdivisions (a) and (b), as submitted for public comment). To provide flexibility, rule 5.427 and the <i>Request</i> (form FL-319) allow the party to complete, file, and serve a personal declaration in support of the request for attorney’s fees and costs—either the <i>Supporting Declaration</i> (form FL-158) or a comparable declaration that addresses the factors covered in the <i>Supporting Declaration</i>.</p>
<p>Superior Court of Los Angeles County Los Angeles County Superior Court</p>	<p>1. Rule 5.427(c)(1). The term “sufficiently completed” should be changed to read “fully completed.” Income and Expense Declarations that are not filled out are one of the most challenging aspects in resolving financial issues in family law. Since the Income and Expense Declaration is a document signed and filed under the penalty of perjury, having</p>	<p>1. The committee and task force do not recommend changing the term “sufficiently completed” to “fully completed”. The term “sufficiently completed” comes from current rule 5.128, <i>Financial declaration</i>, which states that the <i>Income and Expense Declaration</i> “must be sufficiently completed to allow determination</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>all spaces filled out, even if the response is “\$0” or “N/A” is important.</p> <p>2. Rule 5.427(c). Language should also be added indicating that entries like: “TBD,” “UNK,” and “MIN” are not acceptable.</p>	<p>of the issue.” The committee and task force recommend using the term “sufficiently completed” to be consistent with current rule 5.128(a).</p> <p>Also, subdivision (d)(1) (formerly subdivision (c)(1), as submitted for public comment) should be read in conjunction with (d)(2) (formerly subdivision (c)(3), as submitted for public comment), which makes clear that “[w]hen attorney’s fees are requested by either party, the section on the <i>Income and Expense Declaration</i> (form FL-150) related to the amount in savings, credit union, certificates of deposit, and money market accounts must be <i>fully completed</i>, as well as the section related to the amount of attorney’s fees incurred, currently owed, and the source of money used to pay such fees.” (emphasis added.) This language mirrors the language in rule 5.128(b).</p> <p>2. The committee and task force do not recommend adding language indicating that entries like “TBD”, “UNK”, and “MIN” are not acceptable. While the committee and task force appreciate that there is an issue with incomplete entries on the <i>Income and Expense Declaration</i> (form FL-150), it is not appropriate to use a rule of court as a means of precluding certain acronyms or shorthand text.</p>
<p>Superior Court of Monterey County Minnie Monarque</p>	<p>1. It is noted that 5.427 appears to indicate that a form FL-155 is not appropriate for a request for attorney’s</p>	<p>1. <i>Financial Statement (Simplified)</i> (form FL-155) may be used instead of the <i>Income and Expense</i></p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
<p>Director of Civil and Family Law Division</p>	<p>fees and costs; however this form appears to be authorized generally “when relevant” to the relief requested (see proposed rules 5.92 (a)(4) and 5.260 (a)(2) and (3).</p> <p>2. It may be advisable to allow that a party may, in lieu of filing an updated Income and Expense Declaration, file a declaration stating under penalty of perjury that there have been no changes since the prior filing, which would eliminate the need for filing a four page form when there have been no changes to the information in the previously filed Income and Expense Declaration</p>	<p><i>Declaration</i> (form FL-155) if the person is eligible to use form FL-155. However, FL-155 is not appropriate for use in proceedings to determine or modify attorney’s fees and costs because a party requesting or responding to a request for attorney’s fees and costs in family law proceedings is not eligible to use this form.</p> <p>2. The committee and task force do not recommend permitting a party to file a declaration in lieu of an updated <i>Income and Expense Declaration</i> (form FL-150).</p>
<p>Superior Court of Riverside County Staff Michael Capelli</p>	<p>1. Rule 5.427(c)(3). Delete subdivision (c)(3). (3) When attorney’s fees are requested by either party, the section on the <i>Income and Expense Declaration</i> (form FL-150) related to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section related to the amount of attorney’s fees incurred, currently owed, and the source of money used to pay such fees. A clerk cannot reject the Income and Expense Declaration if the form is incomplete, so it is recommended that subdivision (c)(3) be removed.</p> <p>2. Rule 5.427(d). Add “recorded in the court’s minutes” between “costs” and “using” so that it states “The court must make an order regarding attorney fees and costs</p>	<p>1. The committee and task force do not recommend deleting subdivision (d)(2) (formerly subdivision (c)(3), as submitted for public comment). The language in subdivision (d)(2) mirrors rule 5.128(b), <i>Financial declaration</i> and ensures that the litigant provides the court with information related to assets and attorney’s fees. Form FL-150 is a four-page form, and litigants do not always complete all of the sections of the form. Subdivision (d)(2) makes clear that, when attorney’s fees are requested by either party, the sections of form FL-150 related to assets and attorney’s fees must be fully completed.</p> <p>2. The committee and task force do not recommend adding the language “recorded in</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>recorded in the court’s minutes or using <i>Attorney Fees and Costs Order Attachment</i> (form FL-346).” The court suggests adding a statement that the order can be on the court’s minutes so courts do not have to use form FL-346.</p>	<p>the court’s minutes” to subdivision (e) (formerly subdivision (d), as submitted for public comment).</p> <p>However, to provide flexibility, the committee and task force recommend that the Judicial Council approve the <i>Order</i> (form FL-346) as an optional form instead of a mandatory form. It is within each court’s discretion to determine whether or not to use an optional form. The court can record the order in the court’s minutes rather than use the optional form, if that works best for that particular court.</p>
<p>Superior Court of San Bernardino County Debra Myers Deputy Court Executive Officer</p>	<ol style="list-style-type: none"> 1. Rule 5.427. It would be very helpful to discuss more about the process itself, such as the type of service required (personal or mail). Who needs to be served – just the other party or also the attorney who supplies a declaration? Do you need to file an initiating petition first or is it possible to get a case number without it? 2. Rule 5.427(a). Subdivision (a) leaves out form FL-150, form FL-157, and attorney declaration. 	<ol style="list-style-type: none"> 1. This information will be included in <i>Request for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which is scheduled to be considered by the Judicial Council at a future meeting. 2. The committee and task force recommend adding a reference to the <i>Income and Expense Declaration</i> (form FL-150) in subdivision (b)(1)(C) (formerly subdivision (a), as submitted for public comment) because it must be filed with a request for attorney’s fees and costs. <p>It is no longer necessary to include a reference to the attorney declaration in the rule because this requirement has been eliminated from the <i>Request</i> (form FL-319). However, the committee and task force recommend adding</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>3. Rule 5.427(b). Subdivision (b) leaves out form FL-150.</p> <p>4. Rule 5.427(c). Capitalize the first letter of “expense” and “declaration”.</p> <p>5. Rule 5.427(c)(1). For the Income and Expense</p>	<p>subdivision (b)(2), which states that “The party requesting attorney’s fees and costs must provide the court with sufficient information about the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable.”</p> <p>The committee and task force also recommend adding a new provision in subdivision (b)(1)(D) and (c)(4), which states that the party must also complete, file, and serve “[a]ny other papers relevant to the relief requested.”</p> <p>3. The committee and task force agree to add a reference to the <i>Income and Expense Declaration</i> (form FL-150) in subdivision (c)(2) (formerly subdivision (b), as submitted for public comment) to clarify that it must be filed with a request for attorney’s fees and costs.</p> <p>4. The committee and task force do not recommend capitalizing the first letter of “expense” and “declaration”. According to the Administrative Office of the Courts’ (AOC) Style and Correspondence Guide, a title in a rule of court follows a sentence style, with an initial capital letter followed by lowercase text.</p> <p>5. The committee and task force recommend that the requesting or responding party attach the</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>Declaration within 3 months, do you have to “republish” it or will having filed and served within 3 months be sufficient? Rule seems to suggest that you need to “republish” which sounds like send a copy of the Income and Expense Declaration previously filed.</p>	<p><i>Income and Expense Declaration</i> (form FL-150) to the <i>Request</i> (form FL-319) or <i>Responsive Declaration</i> (form FL-320) as a package. If there is already a “current” <i>Income and Expense Declaration</i> on file, the party should attach a copy of the form. Information about filing requirements and service of process will be described in <i>Request for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which will be considered by the Judicial Council at a future meeting.</p>
<p>Superior Court of Santa Clara County, Family Court Hon. Mary E. Arand Judge</p>	<ol style="list-style-type: none"> 1. Rule 5.427(a), (b). The request pleadings should include a fully completed FL-150, filed at the same time as the original request and the response. The rule is not clear, and parties may delay filing and service. 2. Rule 5.427(c)(3). The section 11 on the form that describes assets also should be fully completed, not just the part that describes accounts. Other assets may be available to pay fees. 	<ol style="list-style-type: none"> 1. The committee and task force recommend adding a reference to the <i>Income and Expense Declaration</i> (form FL-150) in subdivisions (b)(1)(C) (formerly subdivision (a), as submitted for public comment) and (c)(2) (formerly subdivision (b), as submitted for public comment). Information about filing requirements and service of process will be described in <i>Request for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which is scheduled to be considered by the Judicial Council at a future meeting. 2. Subdivision (d)(2) (formerly subdivision (c)(3), as submitted for public comment) is referring to section 11, the section on the <i>Income and Expense Declaration</i> (form FL-150) that describes assets, and it states that this section must be fully completed.

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>3. Rule 5.427(c). The rule should state that the FL-150 cannot refer to or incorporate other documents, such as the Schedule of Assets and Debts that are not required to be filed with the court.</p>	<p>3. The committee and task force do not recommend adding language to state that the <i>Income and Expense Declaration</i> (form FL-150) cannot refer to or incorporate other documents that are not required to be filed with the court. The rule is intended to identify the basic steps and main forms for requesting and awarding attorney’s fees—it is not intended to be exhaustive in describing attachments.</p>
<p>Superior Court of Santa Clara County, Family Court Hon. Mary Ann Grilli Judge Hon. Mary E. Arand Judge</p>	<p>1. Rule 5.427(a), (b). It should include a reference to the Income and Expense Declaration.</p> <p>2. Rule 5.427(a), (b). It should clearly state that the forms are to be fully competed.</p> <p>3. Rule 5.427(c). It should indicate that the Income and Expense Declaration is to be served with the application or response. The forms are often filed separately and much later than the original application.</p>	<p>1. The committee and task force agree to add a reference to the <i>Income and Expense Declaration</i> (form FL-150) in subdivision (b)(1)(C) (formerly subdivision (a), as submitted for public comment) and (c)(2) (formerly subdivision (b), as submitted for public comment).</p> <p>2. The committee and task force do not recommend adding the word “fully” in subdivision (a) and (b). It is sufficient to state that the party must “complete” the forms.</p> <p>3. The committee and task force recommend that the requesting or responding party attach the <i>Income and Expense Declaration</i> (form FL-150) to the <i>Request</i> (form FL-319) or <i>Responsive Declaration</i> (form FL-320) as a package. Information about filing requirements and service of process will be described in <i>Request for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which is scheduled to</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>4. Rule 5.427. The rule should also require a declaration from the attorney about the requested fees, clearly setting forth the work done, rates charged, hours spent, and anticipated hours to complete the matter. It should also reflect costs incurred with details. Note: The form says that a fee declaration must be included if the fees are over \$2,000, but this does not appear in the rule. It must be consistent.</p>	<p>be considered by the Judicial Council at a future meeting.</p> <p>4. It is no longer necessary to include a reference to the attorney declaration in the rule because this requirement has been eliminated from the <i>Request</i> (form FL-319). However, the committee and task force recommend adding subdivision (b)(2), which states that “The party requesting attorney’s fees and costs must provide the court with sufficient information about the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable.”</p>
<p>Superior Court of Shasta County Stacy Larson Family Law Faciliator</p>	<p>Rule 5.427(c)(1). We should change “completed” on the last line to “complete.”</p>	<p>The committee and task force do not recommend changing the term “completed” to “complete” because this language tracks current rule 5.128, <i>Financial declaration</i>, which states that the <i>Income and Expense Declaration</i> “must be sufficiently completed to allow determination of the issue.” The committee and task force recommend using the term “completed” to be consistent with current rule 5.128(a).</p>
<p>Charles K. Wake, Esq. Attorney at Law Los Angeles County Bar Association., Family Law Section</p>	<p>Proposed Rule 5.427 requires that any “party requesting that the court award attorney fees and costs must complete, file, and serve” various documents, including but not limited to an income and expense declaration, in all cases. The stated rationale for requiring this procedure in all cases is to promote “consistency and clarity.”</p> <p>While that is a laudable goal, proposed rule 5.427 goes too far.</p>	<p>After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.</p> <p>The committee and task force agree to add language to</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>It imposes previously unnecessary requirements in many new circumstances, requiring superfluous additional time and imposing pointless new expense.</p> <p>Proposed Rule 5.427’s blanket application in all circumstances is also contrary to existing law.</p> <p>In <i>Burkle v. Burkle</i>, 144 Cal.App.4th 387, 403 (2006), the Second District specifically held that “filing an income and expense declaration [is] not a jurisdictional requirement for an award of fees under [Cal. Fam. Code] section 271, which ‘is in the nature of a sanction.’” In <i>Marriage of Corona</i>, 172 Cal.App.4th 1205, 1226-27 (2009), the Fourth District similarly held that: “Because section 271 is not a need-based statute and does not require a correlation between the sanctioned conduct and specific attorney fees, it was not essential that [applicant] demonstrate her current financial situation and attorney fees by submitting an income and expense declaration.”” No case has made a contrary holding.</p> <p>Proposed Rule 5.427 thus abrogates consistent case law. Such consistent case law should not be overturned without a sufficient debate about underlying policies. Yet, your invitation to comment does not even mention Proposed Rule 5.427’s effect on that undeviating case law.</p> <p>Moreover, proposed rule 5.427 on its face applies in many other situations when a party might request costs and attorney’s fees as a sanction, including but not limited to:</p> <ol style="list-style-type: none"> 1. Discovery sanctions under applicable provisions of the Code of Civil Procedure; 	<p>clarify the scope and recommend adding new subdivision (a) to clarify that the rule applies to attorney’s fees and costs based on financial need, as described in Family Code sections 2030, 2032, 3121, 3557, and 7605.</p>

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Rule 5.93¹—Steps for Requesting Attorney’s Fees and Costs

Commentator	Comment	Committee and Task Force Response
	<p>2. Costs and attorney’s fees in connection with an order to show cause for contempt (C.C.P. §1218);</p> <p>3. Filing a meritless pleading (C.C.P. §128.7); and,</p> <p>4. In connection with default relief based on an attorney’s affidavit of fault (C.C.P. §473(b)).</p> <p>No income and expense declaration has previously been required to obtain sanctions in any of those situations. Imposing such a requirement now will only increase litigations costs and create traps for the unwary, including especially self represented litigants. Imposing such a requirement now will also confuse the issues presented in such situations by implying that the requesting party’s need is somehow relevant.</p> <p>Finally, because of proposed rule 5.427’s inconsistency with existing case law under Cal. Fam. Code §271 and various statutes providing for awards of costs and attorney’s fees in the nature sanctions, a question exists about its validity if promulgated. Why raise such a question by promulgating an unnecessarily sweeping rule when it can be easily avoided by limiting proposed rule 5.427’s application to need-based fee awards?</p> <p>For all the foregoing reasons, I strongly urge that proposed rule 5.427 be amended by limiting its scope and application to need-based fee awards.</p>	

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

All comments are verbatim unless indicated by an asterisk (*).

Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
Association of Certified Family Law Specialists (ACFLS) Diane Wasznicky, President Lynn Pfeifer, Executive Director	<ol style="list-style-type: none"> 1. Item 2. Add a box for “grant in part”. 2. Item 3d. Add “or counsel” in between “party” and “that”. 3. Item 3d. Add “adversely” in between “be” and “affecting”. 4. Item 3e. This item is confusing as drafted. This provision needs to be redrafted to simply seek reasons why a joined party or claimant should (or should not) pay fees. 	<ol style="list-style-type: none"> 1. The committee and task force agree to add a check box for “grant in part”. 2. The committee and task force recommend eliminating item 3d, which requested information relevant to an award of sanctions-based attorney’s fees, from the <i>Supporting Declaration</i> (form FL-158). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms. 3. The committee and task force recommend eliminating item 3d, which requested information relevant to an award of sanctions-based attorney’s fees, from the <i>Supporting Declaration</i> (form FL-158). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms. 4. The committee and task force recommend clarifying the language in item 3d (formerly item 3e, as submitted for public comment). Item 3d is based on Family Code section 2030(d),

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
		<p>which states that “Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney’s fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.”</p> <p>To clarify, the committee and task force agree to reword item 3d so that it states “If appropriate, describe the reasons why a <u>non-spouse party or domestic partner</u> party who is not the spouse of another party is involved in the case and whether he or she should or should not pay attorney’s fees.”</p>
<p>Bay Area Legal Aid Staci Martin Staff Attorney</p>	<p>1. Item 4b(1)(b). Add a box for “have partially”.</p> <p>2. Item 5b(1)(b). Add a box for “have partially”.</p>	<p>1. The committee and task force agree to add a check box to account for payments that “have been made in part”.</p> <p>2. The committee and task force agree to add a check box to account for payments that “have been made in part”.</p>
<p>Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County</p>	<p>1. Caption box. I suggest the phrase “Joined Party” be revised to read “Joined Party/Other Parent. This makes it more consistent with other Judicial Council forms.</p> <p>2. Item 3a. I suggest the phrase “The other party has the ability to pay” be revised to read “The <input type="checkbox"/> petitioner <input type="checkbox"/> respondent <input type="checkbox"/> joined party has the ability to pay[.]” The</p>	<p>1. The committee and task force recommend changing “Joined Party” to “Other Party” in the caption box on the <i>Supporting Declaration</i> (form FL-158). The committee and task force believe that it is best to use the term “other party” instead of “joined party” or “other parent” in all of the proposed forms to be consistent.</p> <p>2. The committee and task force agree to change item 3a to “The petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party has the</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>phrase “other party” is ambiguous in that it could refer to more than one person. (For instance, if the requesting party is the petitioner and there is a joined party to the case, the reference to the “other party” could be to the respondent or the joined party.)</p> <p>3. Item 4b. This does not take into account the unusual but statutorily authorized possibility that a parent or grandparent can be ordered to pay child support to the other to cover the costs of the grandparent visitation. (Family code §§ 3103, 3104.) Because such an order can be separate from the order between the parents themselves, I suggest that an item (2) be added, such as the following:</p> <p>(2) The joined party pays \$ _____ per month for child support per Family Code §§ 3103 or 3104.</p> <p>(a) This order has been in effect since (<i>insert date</i>):</p> <p>(b) The payments <input type="checkbox"/> have <input type="checkbox"/> have not been made since the date of the order.</p> <p>The fact that support is being paid by a joined party may be relevant to a request for attorney’s fees and costs, so far as the request concerns custody litigation involving the joined party. This is consistent with Family Code § 2030.</p> <p>4. Item 7. If the Judicial Council agrees that permitting a party to file a declaration in lieu of an updated Income and Expense Declaration is acceptable, then this language on form would need to be revised accordingly.</p>	<p>ability to pay” for clarification.</p> <p>3. The committee and task force agree to add a check box in item 4b(1) for “other party” and room for explanation to account for the possibility of grandparent visitation, as described in Family Code sections 3103 and 3104. Revised item 4b(1) states “The <input type="checkbox"/> petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party must pay \$ _____ per month for child support.”</p> <p>The committee and task force also recommend adding a new item 4b(2), which states “Additional information (<i>specify</i>):”, to provide room for any additional explanation that may be necessary.</p> <p>4. The committee and task force do not recommend permitting a party to file a declaration in lieu of an updated <i>Income and Expense Declaration</i> (form FL-150). Therefore, it is unnecessary to revise item 7.</p>
Harriett Buhai Center for Family	1. Items 4b(1)(b) and 5b(1)(b). Add an additional option	1. The committee and task force agree to add a

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
Law Erin Dabbs Senior Staff Attorney	<p>with a box with the option “have been partially paid. There are child support arrears of _____.”</p> <p>2. Items 4b(1)(b) and 5b(1)(b). Add two more boxes with the option to check “with,” or “without” interest. For item 5b(1)(c), this should state spousal or partner support.</p> <p>3. There is an extra period following (b) at 5b (1)(b).</p>	<p>check box in both items to account for payments that “have been made in part”.</p> <p>The committee and task force do not recommend adding language specifically addressing child support arrears. Instead, the committee and task force recommend adding a new item 4b(2) and 5b(2), which states “Additional information (<i>specify</i>):” to provide room for any additional explanation that may be necessary. If there is information concerning child support arrears, the party completing the form may add that information in this section.</p> <p>2. The committee and task force do not recommend adding check boxes for “with” or “without” interest. The focus of the <i>Supporting Declaration</i> (form FL-158) is to provide primary information relevant to whether or not an award of attorney’s fees is appropriate under the circumstances of the case. It is unnecessary to specify all details of past orders on this form. However, if the party would like to provide information about whether or not interest was included, he or she may do so in the “<i>Additional information</i>” section added in item 4b(2) and 5b(2).</p> <p>3. The committee and task force agree to eliminate the extra period following (b).</p>
Los Angeles County Bar Association Family Law Section Executive	Item 6. *Add clarifying language to item 6 so that it states “If you are or were married <u>to the person you are seeking fees from</u> ...”	The committee and task force agree to clarify item 6 and add a reference to domestic partnership so that it states: “If you are or were married <u>to, or in a domestic</u>

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
Committee (FLEXCOM) Debra S. Frank Chair		<u>partnership with, the person you are seeking fees from,</u> the court must consider the factors in Family Code section 4320”
Los Angeles Superior Court	Item 4. Add language to indicate if child or spousal support has been only partly paid and room for explanation.	In items 4b(1)(b) and 5b(1)(b), the committee and task force agree to add a check box to account for child or spousal or partner support payments that have been made in part. The committee and task force also recommend adding a new item 4b(2) and 5b(2), which allows room for explanation and states “Additional information (<i>specify</i>):”.
Superior Court of Riverside County Staff Michael Capelli	<p>1. Form Title. The name of the form is confusing. For all “Attachment” pages, simply adding a hyphen would clarify what the form is for self-represented parties. Suggest: Supporting Declaration for Attorney Fees and Costs—Order Attachment.</p> <p>2. Item 3d. The language is confusing. Suggest: “If appropriate, Describe <u>the any</u> actions of a party that may be affecting the ability to resolve the <u>preventing resolution of this case,</u> and <u>state why</u> attorney fees and costs in the form of <u>may be necessary</u> as a sanction under Family Code section 271 may be necessary.”</p> <p>3. Item 3e. The language is confusing. Need to simplify “a party who is not the spouse of another party”. Suggest: “a non-spouse party” so that it states “ . . . the reasons why a</p>	<p>1. The committee agrees to remove “Order” from the title to eliminate confusion. The <i>Supporting Declaration</i> (form FL-158) is not an attachment to the <i>Order</i>—it is an attachment to the <i>Request</i> (form FL-319) or <i>Responsive Declaration</i> (form FL-320).</p> <p>2. The committee and task force recommend eliminating item 3d, which requested information relevant to an award of sanctions-based attorney’s fees, from the <i>Supporting Declaration</i> (form FL-158). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.</p> <p>3. The committee and task force agree to change the language in item 3d (formerly item 3e, as submitted for public comment) to “non-spouse</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>party who is not the spouse of another <u>non-spouse</u> party is involved ...”</p>	<p>party or domestic partner” for clarification. Item 3d is based on Family Code section 2030(d), which states that “Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney’s fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.”</p> <p>To clarify, the committee and task force agree to reword item 3d so that it states “If appropriate, describe the reasons why a <u>non-spouse party or domestic partner</u> party who is not the spouse of another party is involved in the case and whether he or she should or should not pay attorney’s fees.”</p>
	<p>4. Item 3e. Add a reference to registered domestic partners.</p>	<p>4. The committee and task force agree to add a reference to domestic partners in item 3d (formerly item 3e, as submitted for public comment). See the response above.</p>
	<p>5. Item 6. Add a reference to a domestic partnership so that it states “If you are or were married <u>or in a domestic partnership</u>...”</p>	<p>5. The committee and task force agree to add a reference to a domestic partnership and change the language to “If you are or were married <u>to, or in a domestic partnership with, the person you are seeking fees from,</u> the court must consider the factors in Family Code section 4320”</p>
	<p>6. New item. Add an item on form FL-158 to ask whether or not a fee waiver was filed in this matter, and if so, was the fee waiver granted or denied.</p>	<p>6. The committee and task force do not recommend adding an item on the <i>Supporting Declaration</i> (form FL-158) to ask whether or</p>

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
		not a fee waiver was filed and granted or denied. It is unclear what purpose this would serve in relation to a request for attorney’s fees and seems unnecessary. In addition, there are confidentiality issues around access to information contained in fee waiver applications. (see Government Code section 68633.)
Superior Court of San Bernardino County Debra Myers Director	<ol style="list-style-type: none"> 1. Form Title. At the top, shouldn’t it state that it will be attached to the <i>Request for Order</i> (FL-300) since it’s the supporting declaration to the <i>Request for Attorney Fees</i> (FL-319) which is attached to the <i>Request for Order</i> (FL-300)? 2. Item 3d. Delete extra space after reference to “Family Code section 271”. 3. Item 3e. The sentence is hard to follow—“party who is not the spouse of another party”. 	<ol style="list-style-type: none"> 1. The <i>Supporting Declaration</i> (form FL-158) will be attached to either the <i>Request</i> (form FL-319) which will be attached to either the <i>Responsive Declaration</i> (form FL-320), or the <i>Order to Show Cause</i> (FL-300) or <i>Notice of Motion</i> (FL-301) and <i>Application for Order</i> (FL-310) pending adoption of the <i>Request for Order</i> (form FL-300) by the Judicial Council. 2. The committee and task force eliminated item 3d, which requested information relevant to an award of sanctions-based attorney’s fees, from the <i>Supporting Declaration</i> (form FL-158). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms. 3. The committee and task force recommend changing the language in item 3d (formerly item 3e, as submitted for public comment) to “non-spouse party or domestic partner” for

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>4. Item 5. There is no section for Family Support.</p> <p>5. Item 8. Add “Number of pages attached to <u>Supporting Declaration</u>”.</p>	<p>clarification. Item 3d is based on Family Code section 2030(d), which states that “Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney’s fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.”</p> <p>4. To committee and task force agree to reference family support in item 5 and to add a check box for “family support” in item 5b(1) so that the party can indicate whether or not an order for payment of family support has been made in the case.</p> <p>5. The committee and task force agree to add a reference to the <i>Supporting Declaration</i> in item 8.</p>
<p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p>	<p>This form should be mandatory to hold promote consistency throughout the state.</p>	<p>Given that form FL-158 went out for public comment as a proposed optional form, it would have to be re-circulated to be adopted as a mandatory form. The Judicial Council may consider a proposal to make it a mandatory form in a future cycle.</p>
<p>Superior Court of Santa Clara County, Family Court Hon. Mary E. Arand Judge</p>	<p>1. Item 3b. The word “describe” is unnecessary.</p> <p>2. Item 5b(1). Add the words “is ordered to pay” or “must pay” instead of “pays”.</p>	<p>1. The committee and task force agree to delete the word “describe”.</p> <p>2. The committee and task force agree to change “pays” to “must pay”.</p>
<p>Superior Court of Shasta County Stacy Larson Family Law Faciliator</p>	<p>1. Caption Box, Item 1(c). The caption has a space for “joined party.” I agree that we need a space for joined parties, but other forms refer to this party as “Other Party” or the less favorable “Other Parent.” We should be consistent. I favor “Other Party” as this would encompass</p>	<p>1. The committee and task force agree and recommend changing “Joined Party” to “Other Party” in the caption box on the <i>Supporting Declaration</i> (form FL-158). The committee and task force recommend using the term “other</p>

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>a variety of parties that may be joined.</p> <p>2. Item 4b(1). We should include a box for “Other Party.”</p> <p>3. Item 5b(1). We should include a box for “Other Party.”</p>	<p>party” instead of “joined party” or “other parent” in all of the proposed forms to be consistent.</p> <p>2. The committee and task force agree to add a check box for “other party”.</p> <p>3. The committee and task force agree to add a check box for “other party”.</p>
<p>Sonoma County Bar Association, Family Law Section Carla Boyd Terre Attorney at Law and Mediator</p>	<p>Create more space to insert text under items 3a(4), 3b, 3c, 3d, and 3e. There is wasted space at the bottom of page two. More lines can be added underneath the above items to fill out the space at the bottom of page two. By increasing space, there is a decreased need for attaching additional pages, thus saving paper and room in court files.</p>	<p>The committee and task force agree to reformat the <i>Supporting Declaration</i> (form FL-158) and add more space under items 3a(4), 3b, 3c, and 3d.</p>
<p>State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch Legislative Counsel</p>	<p>1. Item 2. Add an option for those individuals who are willing to agree to contribute some amount toward attorney’s fees and costs, but not the amount requested. We are suggesting that another option be included so that the options would read: “...court__grant__deny__grant in part the request....”</p> <p>2. Item 3d. Insert “or counsel” after “party” and “adversely” before “affecting.” These additions would help unrepresented parties in particular to understand the behaviors sanctions are intended to address, and would clarify that parties can be sanctioned for actions by counsel.</p>	<p>1. The committee and task force agree to add a checkbox option in item 2 for the party to request that the court “grant in part” the request for attorney’s fees and costs.</p> <p>2. The committee and task force recommend eliminating item 3d, which requested information relevant to an award of sanctions-based attorney’s fees, from the <i>Supporting Declaration</i> (form FL-158). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-158—Supporting Declaration for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>3. Item 3e. We find the wording of this section confusing. If this provision is intended to provide a place to request fees and costs from a joined party/claimant, it should say that.</p>	<p>and forms.</p> <p>3. The committee and task force agree to clarify the language in item 3d (formerly item 3e, as submitted for public comment). Item 3d is based on Family Code section 2030(d), which states that “Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney’s fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.”</p> <p>To clarify, the committee and task force recommend rewording item 3d so that it states “If appropriate, describe the reasons why a <u>non-spouse party or domestic partner party who is not the spouse of another party</u> is involved in the case and whether he or she should or should not pay attorney’s fees.”</p>

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
<p>Association of Certified Family Law Specialists (ACFLS) Diane Wasznicky, President Lynn Pfeifer, Executive Director</p>	<ol style="list-style-type: none"> Item 1a(1). This item is confusing in that most parties will not know what a “legal services client” means. If this provision is intended to notify the court that the party is paying either no fees or reduced fees because he/she is a client of some type of legal clinic which provides services to low income/needy clients, then it needs to be better stated. Legal service can refer to individuals who are provided legal services through an insurance policy, etc. Item 3b and 5b(3). The word “acquired” needs to be stricken and replaced with “incurred”. 	<ol style="list-style-type: none"> In item 1a (formerly item 1a(1), as submitted for public comment), the committee and task force recommend changing “legal service client” to “I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney” for clarification. The committee and task force agree to change “acquired” to “incurred” in items 3b and 5c(3) (formerly item 5b(3), as submitted for public comment).
<p>California Judges Association (CJA) Jordan Posamentier, Esq. Legislative Counsel</p>	<ol style="list-style-type: none"> Overall. There are two points of confusion in the proposal that would benefit from further clarification. First, what should the court do if the parties do not follow the rule? If a party fails to file the form, are they completely barred from recovery, no exceptions? What recourse do the parties have? It is unclear whether the court should or could deny a fee request outright or perhaps allow some portion. 	<ol style="list-style-type: none"> The committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319) as an optional form, rather than a mandatory form. The party does not have to use the form and is not completely barred from recovery if the party fails to file the form. An order may also be made by an oral motion in open court under circumstances described in Family Code section 2031(b). <p>The court can deny a fee request or grant a portion of the requested amount. The court may make findings and an order with respect to a party’s request for attorney’s fees and costs using the <i>Order</i> (form FL-346), which is an attachment to other mandatory family law order forms, such as the <i>Findings and Orders After Hearing</i> (form FL-340) and <i>Judgment</i> (form FL-180). In form FL-346, the court can</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>2. Overall. Second, it is unclear whether the form needs to be filed where a party has not retained counsel but intends to, or retains counsel on retainer.</p> <p>3. Item 5b. The suggested amount for requiring an attorney fee declaration seems too low at \$2,000. It should be over \$5,000 if the request requires that a factual declaration be completed and signed by counsel.</p>	<p>indicate whether or not an award of attorney’s fees and costs is appropriate—and if not, why not. The court may also use form FL-346 to indicate the amount of fees that is appropriate and what type of fees the amount includes.</p> <p>2. As stated above, the committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319) as an optional form. Therefore, the party may request needs-based attorney’s fees by filing the <i>Order to Show Cause</i> (FL-300) or <i>Notice of Motion</i> (FL-301) and <i>Application for Order</i> (FL-310) and <i>Request for Attorney’s Fees and Costs Order Attachment</i> (form FL-319) or a comparable declaration, or in certain circumstances, as described in Family Code section 2031(b), by making an oral motion in open court. If the party is requesting attorney’s fees and costs for a retainer, that party may check the box in item 3a of the <i>Request</i> (form FL-319) to indicate how much money is needed to hire an attorney in a timely manner before the proceedings in the matter go forward.</p> <p>3. The committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000. Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding a provision instructing the party requesting attorney’s fees</p>

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
		to “provide the court with sufficient information about the following factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the fees and costs are just, necessary, and reasonable.
Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County	<p>1. Overall. I understand from the form and the text of the invitation to comment that the form is designed for use in requesting fees based on need or as a sanction. However, the only sanction specifically referenced in this form is Family Code section 271. Other statutory sanctions exist, such as discovery sanctions for violations of local rules or California Rules of Court. Their absence on the form is inconsistent with the position that “It promotes consistency and clarity for a party in a family law proceeding to use the same form to request attorney’s fees and costs, whether it is based on income and need or a request for sanctions.”</p> <p>I therefore suggest that the form be expanded for use in requesting attorney’s fees under other statutes.</p> <p>2. Caption box. I suggest the phrase “Joined Party” be revised to read “Joined Party/Other Parent.”</p>	<p>1. After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.</p> <p>In regards to the suggestion that the <i>Request</i> (form FL-319) be expanded for use in requesting attorney’s fees under other statutes, such as discovery sanctions for violations of local rules or California Rules of Court, an expanded proposal would require re-circulation for public comment. The Judicial Council may consider this suggestion in a future Rules and Projects (RUPRO) cycle.</p> <p>2. The committee and task force recommend changing “Joined Party” to “Other Party” in the caption box on the <i>Request</i> (form FL-319). The committee and task force recommend using the term “other party”</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>3. Item 5b(6). Item (6), requiring that the attorney include a factual declaration concerning Family Code § 271 sanctions if the requested award exceeds \$2000, implicitly presumes that the basis for the sanctions is within the attorney’s personal knowledge. However, this may not always be the case.</p> <p>Proposed Rule 5.111 requires that all declarations be “based on personal knowledge” and be “admissible in evidence.” (See proposed rule 5.111 in Invitation to Comment SPR11-26). There is no stated exception—not should there be—for attorney declarations in support of attorney’s fees.</p> <p>I suggest revising item (6) as follows:</p> <p>“If sanctions are being requested under Family Code section 271, the basis for sanctions that is within the attorney’s personal knowledge.”</p>	<p>instead of “joined party” or “other parent” in all of the proposed forms to be consistent.</p> <p>3. The committee and task force recommend eliminating item 5c(6) (formerly item 5b(6), as submitted for public comment) from the <i>Request</i> (form FL-319). This item requested that information relevant to the basis for sanctions be included in the attorney declaration.</p> <p>After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.</p>
<p>Harriett Buhai Center for Family Law Erin Dabbs Senior Staff Attorney</p>	<p>1. We recommend that this form be made an attachment to the <i>Request for Order</i> (not vice versa). Therefore, on the top of the first page, the <i>Request for Order</i> box should read as follows: “Attached to Request for Order (Form FL-300)”.</p> <p>2. We are concerned that this form may create barriers to</p>	<p>1. Pending the adoption of the <i>Request for Order</i> (FL-300) by the Judicial Council, the <i>Request for Attorney’s Fees and Costs Attachment</i> (form FL-319) is an attachment to the <i>Order to Show Cause</i> (FL-300) or <i>Notice of Motion</i> (FL-301) and <i>Application for Order</i> (FL-310). When the <i>Request for Order</i> (form FL-300) is adopted, it will refer to form FL-319.</p> <p>2. The commentator raises important concerns. In</p>

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>self-represented litigants and preclude them from seeking attorney’s fees and costs. Family Code section 2030, from which this form arises, was revised to make it easier for self-represented to seek attorney’s fees and costs early on in the litigation so that they can then obtain representation.</p> <p>However, as written, the form implies that litigants must have already secured attorney representation and have obtained a declaration from that attorney prior to requesting attorney’s fees and costs. Item 5 states that the litigant must file and serve an attorney’s declaration of fees and costs. Self-represented litigants will not have the money to pay a retainer and may not be able to secure an attorney declaration prior to receiving an award for attorney’s fees and costs.</p> <p>This form should reflect the reality that many self-represented litigants will not be able to obtain an attorney declaration regarding fees and costs at this stage, nor is this mandated by statute or the proposed rule of court. We could find no authority requiring litigants to file attorney declarations prior to asking for attorney’s fees and costs under section 2030.</p> <p>We understand that the court must have some basis on which to make an award of attorney’s fees. However, we recommend that litigants be allowed to report information about the efforts they have made to secure an attorney in their own declaration and not require that an attorney declaration be filed along with their request. Litigants could be expected to include information about the hourly rate charged by the</p>	<p>drafting this form, it was not the intent to create barriers to self-represented litigants or require that litigants must have already secured a declaration from an attorney prior to any request for attorney’s fees and costs.</p> <p>To address this issue, the committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000. Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding language in item 6 which instructs the party requesting attorney’s fees to “provide the court with sufficient information about the following factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the fees and costs are just, necessary, and reasonable.</p>

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>attorney and the cost of a retainer. We recognize the hearsay difficulties presented by this option, but believe that the alternative, requiring a declaration from an attorney, would be prohibitively expensive for self-represented litigants. They don’t have fees to pay an attorney and likely could not afford the costs of securing an attorney’s declaration.</p> <p>3. Items 2 and 5b. These items might be difficult to complete for individuals seeking fees and costs in order to be able to retain an attorney and may deter self-represented litigants from seeking future fees and costs (see comment above).</p> <p>At a minimum, we recommend switching items 5b and 5c, so that the litigant’s supporting declaration is item 5b.</p> <p>4. Item 5b. We recommend using some qualifying language to make the attorney declaration (currently item 5b) optional or only to be submitted if possible.</p> <p>5. Item 5. We recommend that instead of the current language “You must do the following:” that more specific and instructive language be used here such as “Along with this Request form, you must complete, file and serve the following:”</p>	<p>3. See response above. Former item 5c is now item 5b.</p> <p>4. See response above. The committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000.</p> <p>5. The committee and task force agree to make the language more instructive by stating “Along with this <i>Request</i> form”.</p>
<p>Neighborhood Legal Services of Los Angeles County Carmen McDonald-Goldberg, Esq. Attorney at Law</p>	<p>1. Item 1. Add checkboxes to items 1a(1), 1a(2), and 1a(3).</p>	<p>1. The committee and task force do not recommend adding check boxes to Items 1a(1), 1a(2), and 1a(3) because the court needs demonstration of each of these issues to award</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<ol style="list-style-type: none"> 2. Item 1. Add the language “check all that apply” in parenthesis after “I am completing this form because” so that it reads “I am completing this form because <u>(check all that apply)</u>.” 3. Item 1a(2). Use the word “funds” instead of “other funding” so that it states “I have less money or limited access to other funding <u>funds</u> to retain an attorney ...” 	<p>attorney’s fees and costs under Family Code sections 2030, 3121, and 3557.</p> <ol style="list-style-type: none"> 2. See above response. The committee and task force do not recommend adding check boxes, so it is unnecessary to add “check all that apply” in item 1. 3. The committee and task force agree to change “other funding” to “funds” in item 1b (formerly item 1a(2), as submitted for public comment).
Superior Court of Orange County Family Law Operations Staff	<ol style="list-style-type: none"> 1. Form Title. Remove checkbox and Request for Order (form FL-300) language from underneath the form title. This form was created to be attached to form FL-300; it does not need the checkbox to say that form FL-300 is attached. 2. Item 1a(2). Remove extra space between “that” and “I” in the first line. 3. Item 4b. Include instructions to title the attachment as Attachment 4(b). 	<ol style="list-style-type: none"> 1. Since proposed <i>Request for Order</i> (form FL-300) will not go into effect on January 1, 2012, at the same time as this form, the reference has been removed. Form FL-300 will refer to form FL-319. 2. The committee and task force agree to make this change. 3. Rather than including instructions to title the attachment, the committee and task force recommend revising the language in item 4b to add check boxes and space for the party to provide information about any history of attorney’s fees and costs awarded in the case.
Superior Court of Riverside County Staff Michael Capelli	<ol style="list-style-type: none"> 1. Form Title. The name of the form is confusing. For all “Attachment” pages, simply adding a hyphen would clarify what the form is for self-represented parties. Suggest: “Request for Attorney Fees and Costs—Order Attachment”. 	<ol style="list-style-type: none"> 1. The committee and task force agree to eliminate the word “Order” to avoid confusion.

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>2. Item 5c. Delete the word “file” so that it states “Complete, file, and serve a personal declaration” The declaration would be attached to the <i>Request to Order</i> (FL-300) and would not need to be filed separately.</p>	<p>2. The committee and task force do not recommend deleting the word “file”. The declaration still needs to be filed, even if it is attached to the <i>Order to Show Cause</i> (FL-300) or <i>Notice of Motion</i> (FL-301) and <i>Application for Order</i> (FL-310) pending adoption of a new <i>Request for Order</i> (FL-300).</p>
<p>Superior Court of San Bernardino County Debra Myers Director</p>	<p>1. Item 4b. Item 4b requests a supporting declaration on an attached sheet, but doesn’t that really mean the Supporting Declaration form? As written, it sounds like it means a different piece of paper. Could avoid having a separate sheet for it by adding in that information to form FL-158. There seems to be enough room for it, since there is a large gap between the signature on page 2, and the bottom of the page.</p> <p>2. Item 5b. Why is an attorney’s declaration required? Can’t the person report in their declaration this information as learned from the attorney in order to make the paperwork simpler and also to save on attorney time? The attorney may be more inclined to become involved with this request if there is less of a work requirement, because the work is being done on the hope that (1) the judge makes the order, and (2) the other party pays the bill. If the attorney must do a declaration, why not add something to the form that the attorney can sign (like in the FL-150) to make it easier?</p>	<p>1. To clarify item 4b, the committee and task force recommend eliminating the request for a supporting declaration and adding check boxes and space for the party to provide information about any history of attorney’s fees and costs awarded in the case directly on the form.</p> <p>2. The committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000. Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding language in item 6 which instructs the party requesting attorney’s fees to “provide the court with sufficient information about the following factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the fees and costs are just,</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>3. Caption Box. There is not a lot of room in a fillable version to have 3 lines.</p> <p>4. Item 6c. The language is not clear. If an Income and Expense Declaration was filed/served within the last 3 months, do you have to send another copy?</p> <p>5. Item 7. Item 7 should read “Number of pages attached to <u>Request for Order</u>.”</p>	<p>necessary, and reasonable. These factors are based on case law (see <i>In re Marriage of Cueva</i> (1978) 86 Cal.App.3d 290; <i>In re Marriage of Keech</i> (1999) 75 Cal.App.4th 860).</p> <p>3. The committee and task force agree to make the caption box bigger so that there is enough room to fill in party names.</p> <p>4. The committee and task force recommend that the requesting or responding party attach the <i>Income and Expense Declaration</i> (form FL-150) to the <i>Request</i> (form FL-319) or <i>Responsive Declaration</i> (form FL-320) as a package. Therefore, if there is already a “current” <i>Income and Expense Declaration</i> (FL-150) on file, the party should attach a copy of the form. Information about filing requirements and service of process will be included in <i>Request for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court, which is scheduled to be considered by the Judicial Council at a future meeting.</p> <p>5. The committee and task force agree to change item 8 (formerly item 7, as submitted for public comment) to “Number of pages attached to this <i>Request</i> form.”</p>
Superior Court of San Diego County	<p>1. To assist litigants, it would be helpful to add a rule, or statutory reference on the form itself, and about service</p>	<p>1. Information about filing requirements and service of process will be provided in <i>Request</i></p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
Michael M. Roddy Executive Officer	requirements and timeliness. 2. Item 6. All items before 6 speak to the person requesting attorney’s fees and costs. Item 6 then switches to the other party, and we suggest that a header identifying/notifying that this item is for the other party be added.	<i>for Order</i> (form FL-300), <i>Information Sheet for Request for Order</i> (form FL-300-INFO), and rule 5.92 of the California Rules of Court which is scheduled to be considered by the Judicial Council at a future meeting. 2. Item 6 contains information intended for the respondent/defendant. The committee and task force agree to add a header before item 7 (formerly item 6, as submitted for public comment) which states “Notice to Responding Party”.
Superior Court of Santa Clara County, Family Court Hon. Mary E. Arand Judge	1. Item 1a(1). This paragraph is confusing. What is a “legal service client”? 2. Item 3a. Add a dollar sign where the amount is inserted.	1. To clarify, the committee and task force recommend changing “I am a legal services client” to “I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney.” 2. The committee and task force agree to make this change.
Superior Court of Santa Clara County, Family Court Hon. Mary Ann Grilli Judge Hon. Mary E. Arand Judge	1. Item 1a(1). This item indicates that a party is a “legal services client”. It is not clear what that means, and it should be clarified. 2. Item 1a(2), 1a(3). Add a box before 1a(2) and 1a(3) so that a party can select which sections apply to their situation.	1. The committee and task force agree to define “legal service client” in item 1a (item 1a(1), as submitted for public comment) for clarification. The committee and task force recommend changing “I am a legal services client” to “I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney.” 2. The committee and task force do not recommend adding check boxes to items 1a, 1b, and 1c (formerly items 1a(1), 1a(2), and 1a(3), as submitted for public comment)

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>3. Item 5b. This item refers to an attorney declaration if the fees are over \$2,000, but this is not in the rule. It needs to be in both places. There should be some reference to whether bills are to be attached or not and the maximum length of the declaration.</p> <p>4. After item 6, there should be a section with a box indicating that a declaration is attached. It should also state that it is not to be over 10 pages.</p>	<p>because the court needs demonstration of each of these issues to award attorney’s fees and costs under Family Code section 2030, 3121, and 3557.</p> <p>3. It is no longer necessary to include a reference to the attorney’s declaration in rule 5.427 because the committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000.</p> <p>Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding language in both rule 5.427(b)(2) and item 6 of the <i>Request</i> (form FL-319) which instructs the party requesting attorney’s fees to “provide the court with sufficient information about the following factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the fees and costs are just, necessary, and reasonable.</p> <p>4. It is no longer necessary to include a check box to indicate that a declaration is attached because the committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000. See response above.</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
Superior Court of Shasta County Stacy Larson Family Law Faciliator	Caption Box, Item 2. The caption has a space for “joined party.” I agree that we need a space for joined parties, but other forms refer to this party as “Other Party” or the less favorable “Other Parent.” We should be consistent. I favor “Other Party” as this would encompass a variety of parties that may be joined.	The committee and task force agree to change “Joined Party” to “Other Party” in the caption box on the <i>Request</i> (form FL-319). The committee and task force recommend using the term “other party” instead of “joined party” or “other parent” in all of the proposed forms to be consistent.
Sonoma County Bar Association, Family Law Section Carla Boyd Terre Attorney at Law and Mediator	There is a lot of wasted space at the bottom of page two. Text fields could be added to items 3, 4b, and 5b, eliminating the need for an attached page in some circumstances.	The committee and task force agree to add more space in each of these sections.
State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch Legislative Counsel	<ol style="list-style-type: none"> Item 1a(1). This item is confusing. The average user of this form may not understand what “I am a legal service client” is intended to mean, and many clients may think the box should be checked because they are represented by counsel. We suggest that the language be modified to state: “I am receiving free or reduced cost legal services from a nonprofit legal services lawyer or agency,” assuming that this is the information that the form is intended to ascertain. Items 3b and 5b(3): “Acquired” should be “incurred.” 	<ol style="list-style-type: none"> In item 1a (item 1a(1), as submitted for public comment), the committee and task force recommend changing “legal service client” to “I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney” for clarification. The committee and task force agree to make this change in items 3b and 6c (formerly item 5b(3), as submitted for public comment).
Hon. B. Scott Thomsen Judge Superior Court of Nevada County	Item 5b. Given the average hourly rate of counsel far exceeding \$200 per hour throughout the State (10 hours of work using 200/hr) which equates essentially to 1 full court day with prep time, I believe the \$2,000.00 should be raised to \$3000 to 3500 to justify the cost associated with such a declaration and the Court’s need for such a declaration.	The committee and task force recommend eliminating the requirement that a party file and serve an attorney’s declaration if the request for attorney’s fees exceeds \$2,000. Instead, to ensure that the court receives the necessary information, the committee and task force recommend adding language in item 6 which instructs the party requesting attorney’s fees to “provide the court with sufficient information about the following

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Form FL-319—Request for Attorney’s Fees and Costs Attachment		
Commentator	Comment	Committee and Task Force Response
		factors” which include the attorney’s hourly billing rate; the nature of the litigation; the attorney’s experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the fees and costs are just, necessary, and reasonable.

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
<p>Association of Certified Family Law Specialists (ACFLS) Diane Wasznicky, President Lynn Pfeifer, Executive Director</p>	<ol style="list-style-type: none"> 1. Item 5c. A box should be added to this provision, as the court does not always designate the payment source. If a box is added, then it can be checked when the court does so specify. 2. Item 5d(2)(c). This item is vague and confusing. It reads a bit like an acceleration clause without the accelerations language. It does not state when a payment is late or when interest commences. The language needs to be modified to make this provision clearer. Further “per annum” needs to be added to this provision. 	<ol style="list-style-type: none"> 1. The committee and task force agrees to add a check box to item 5d (item 5c, as submitted for public comment) and the language “(if specified)”. 2. Several commentators expressed concern that this item was vague and confusing. Therefore, the committee and task force recommend eliminating item 5d(2)(c), which stated that “If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent”. <p>To clarify the payment schedule and address commentator concerns, the committee and task force recommend adding a check box in item 4b(3), underneath the amount of fees designated, that states “Interest is not included and is not waived”. The committee and task force also recommend adding a check box in item 4e(3), underneath the option to designate installment payments, that “If any payment is not timely made and more than ____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.”</p> <p>Finally, there is a “NOTICE” box at the bottom of page 2, which states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>3. Notice box. The Notice provision at the end of the form needs to be modified to state 10 percent “per annum.”</p>	<p>currently 10 percent per year.”</p> <p>All of these additions provide clarification to the payment process, including whether interest is included and how it would commence.</p> <p>3. The committee and task force agree to add the words “per year”, so that the NOTICE box states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p>
<p>Bay Area Legal Aid Staci Martin Staff Attorney</p>	<p>Item 5. Add a box for “Payable to:”.</p>	<p>The committee and task force agree to add a new item 4c, which states “Payable to: <input type="checkbox"/> petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party” .</p>
<p>Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County</p>	<p>Caption box. I suggest the phrase “Joined Party” be revised to read “Joined Party/Other Parent.”</p>	<p>The committee and task force recommend changing “Joined Party” to “Other Party” in the caption box on the <i>Order</i> (form FL-346). The committee and task force recommend using the term “other party” instead of “joined party” or “other parent” in all of the proposed forms to be consistent.</p>
<p>Harriett Buhai Center for Family Law Erin Dabbs Senior Staff Attorney</p>	<p>1. Item 5a. We suggest listing the boxes for petitioner, respondent, and a joined party so that each box is on a separate line. Listing them in the same line might be confusing (litigants might check the wrong box).</p> <p>2. Item 5d(2)(b). Include lines after the amount of payment and the start date.</p>	<p>1. The committee and task force do not recommend listing the check boxes on separate lines. This form is intended to be completed by the court. Including several checkboxes on the same line is appropriate when the check boxes are part of a sentence.</p> <p>2. The committee and task force do not recommend adding lines after the amount of payment and the start date because it is not</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>3. Item 5d(2)(c). The form should define what a missed or overdue payment is. We suggest using the following language: “If any 1 installment remains unpaid for 10 or more days after the due date, the entire remaining balance shall become immediately due and payable and shall bear interest at the legal rate from the date of default.”</p>	<p>consistent with the Administrative Office of the Courts’ (AOC) Style and Correspondence Guide.</p> <p>3. Several commentators expressed concern that this item was vague and confusing. Therefore, the committee and task force recommend eliminating item 5d(2)(c), which stated that “If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent”.</p> <p>To clarify the payment schedule and address commentator concerns, the committee and task force recommend adding a check box in item 4b(3), underneath the amount of fees designated, that states “Interest is not included and is not waived”. The committee and task force also recommend adding a check box in item 4e(3), underneath the option to designate installment payments, that “If any payment is not timely made and more than ____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.”</p> <p>Finally, there is a “NOTICE” box at the bottom of page 2, which states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>4. Item 6a-e. Include lines after the amounts.</p>	<p>All of these additions provide clarification to the payment process, including whether interest is included and how it would commence.</p> <p>4. The committee and task force do not recommend adding lines after the amounts because it is not consistent with the Administrative Office of the Courts’ (AOC) Style and Correspondence Guide.</p>
<p>Los Angeles County Bar Association Family Law Section Executive Committee (FLEXCOM) Debra S. Frank Chair</p>	<p>1. Item 5d(2)(c). The form should stipulate when interest shall start to accrue; in other words, the form should state: <u>“The payment amount will be due with interest at the legal rate of ten percent commencing on”</u></p>	<p>1. Several commentators expressed concern that this item was vague and confusing. Therefore, the committee and task force recommend eliminating item 5d(2)(c), which stated that “If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent”.</p> <p>To clarify the payment schedule and address commentator concerns, the committee and task force recommend adding a check box in item 4b(3), underneath the amount of fees designated, that states “Interest is not included and is not waived”. The committee and task force also recommend adding a check box in item 4e(3), underneath the option to designate installment payments, that “If any payment is not timely made and more than ____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>2. Item 7. Form FL-346, perhaps at paragraph 7, should state whether the Order for fees is with or without prejudice to a later award.</p>	<p>payment is finally made.”</p> <p>Finally, there is a “NOTICE” box at the bottom of page 2, which states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p> <p>All of these additions provide clarification to the payment process, including whether interest is included and how it would commence.</p> <p>2. The committee and task force do not recommend adding language to indicate whether or not the court order for attorney’s fees and costs is with or without prejudice to a later award. The court may indicate whether the fees are with or without prejudice to a later award by including that information in the “Other orders” section in item 6.</p>
<p>Superior Court of Los Angeles County Los Angeles County Superior Court</p>	<p>1. Caption Box. The space provided at the top of the form to list the names of the parties does not provide sufficient space.</p> <p>2. Heading. After the heading “THE COURT FINDS,” the following language should be inserted: “The Court has reviewed the submissions of the parties, declarations, exhibits, and arguments made by the parties.”</p> <p>3. Item 3. Add a box indicating that the court has</p>	<p>1. The committee and task force agree to add more space in the caption box at the top of the form to list the names of the parties.</p> <p>2. The committee and task force do not recommend adding this language under the heading because, in making a finding, it is implied that the court has reviewed the submissions of the parties, declarations, exhibits, and arguments made by the parties.</p> <p>3. The committee and task force recommend</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>considered Family Code §270 and finds that the sanctions awarded under the order do not constitute a financial hardship as described in Family Code §270.</p> <p>4. Court Findings. Add a box in which the Court finds that the requested fees are not reasonable and necessary. It is crucial that this box be added; it is an important consideration in a significant number of cases.</p> <p>5. Heading. After the heading: “THE COURT ORDERS” the form should specify who is to pay the fees: party, counsel, etc.</p> <p>6. Left-hand bottom corner. The identification of the form on the bottom left-hand on first page says it is “FL-340.”</p> <p>7. Item 5d(1). The phrase “Due now” is vague.</p>	<p>eliminating item 3, which was a check box for a finding concerning sanctions-based attorney’s fees, from the <i>Order</i> (form FL-346). After considering public comment on the issue, the committee and task force recommend that that the proposed rule and forms only apply to needs-based attorney’s fees and costs; therefore, staff has eliminated any mention of sanctions under Family Code section 271 from the proposed rule and forms.</p> <p>4. The committee and task force agree to add check boxes in items 1 and 2 which address whether or not the requested fees are reasonable and/or necessary.</p> <p>5. Under “THE COURT ORDERS”, in item 4a, it states “The <input type="checkbox"/> petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party to pay attorney fees and costs in this legal proceeding”. The committee and task force also recommend adding “Payable to: <input type="checkbox"/> petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party” as the new item 4c.</p> <p>6. Staff reviewed the bottom left-hand corner of both pages of form FL-346 and found that it correctly stated “FL-346”.</p> <p>7. The committee and task force recommend changing “Due now” in item 4e(1) (formerly item 5d(1), as submitted for public comment)</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>8. Item 5d. A box should be added to the Payment Schedule indicating: “Reserved until time of trial.”</p> <p>9. The form should include spaces to allow finding to grant or deny a motion for attorney’s fees made in relation to a <i>Borson Motion</i> (<i>In re marriage of Borson</i> (1974) 37 Cal.App.3d 632).</p> <p>10. A finding that a <i>Keech</i> (<i>In re Marriage of Keech</i> (1999) 75 Cal.App.4th 860) declaration has been filed should be included on the form.</p>	<p>to “Due in full, on or before (<i>date</i>):” for clarification.</p> <p>8. The committee and task force do not recommend adding a check box indicating “Reserved until time of trial.” The payment schedule identifies a schedule so that the money gets to the appropriate party. If necessary, the court can use the “Other” check box in item 4e(4) (formerly item 5d(3), as submitted for public comment) to indicate that the matter is reserved until the time of trial.</p> <p>9. The committee and task force do not recommend adding space for the court to make a finding on a <i>Borson Motion</i> because is too specific to include as a separate item on the form. If the court wants to make a specific finding on a <i>Borson Motion</i>, the court can use the “Other” check box in item 3 of the court findings section and describe any other findings that the court wants to make.</p> <p>10. The committee and task force do not recommend adding space for the court to make a finding on a <i>Keech</i> declaration. This is too specific to include as a separate item on the form. If the court wants to make a specific finding on a <i>Keech</i> declaration, the court can use the “Other” check box in item 3 of the court findings section and describe any other findings that the court wants to make.</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>11. The form does not provide any provision for the payment for expert fees.</p> <p>12. A box should be added to allow a Court to indicate that the orders described in the form are made without prejudice and subject to reallocation at time of trial.</p>	<p>11. The committee and task force do not recommend adding a specific item for the payment of expert fees. If the court wants to make an order with respect to payment of expert fees, the court can use the “Other orders” check box in item 6 and describe any additional orders.</p> <p>12. The committee and task force do not recommend adding language to indicate whether or not the orders are made without prejudice and subject to reallocation at the time of trial. If the court wants to indicate that the orders are made without prejudice and subject to reallocation at time of trial, the court may utilize the “Other orders” check box in item 6.</p>
<p>Superior Court of Orange County Family Law Operations Staff</p>	<p>Add <i>Parentage Judgment</i> (form FL-250) to the list of forms at the top that form FL-346 can be attached to.</p>	<p>The committee and task force agree to make this change.</p>
<p>Superior Court of Riverside County Staff Michael Capelli</p>	<p>Form FL-346 should be optional, not mandatory.</p>	<p>The committee and task force agree that the <i>Order</i> (form FL-346) should be an optional form. During the public comment process, commentators expressed varying opinions as to whether the forms should be mandatory or optional. To effectuate both uniformity and flexibility, the committee and task force recommend that the Judicial Council approve the <i>Request</i> (form FL-319), <i>Supporting Declaration</i> (form FL-158), and <i>Order</i> (form FL-346) as optional forms.</p>
<p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p>	<p>Item 5d(2)(c). Is the payment amount immediately due for that installment payment only, or for the full amount? In other words, does the acceleration clause apply, because, if so, this is not clear.</p>	<p>Several commentators expressed concern that this item was vague and confusing. Therefore, the committee and task force recommend eliminating item 5d(2)(c), which stated that “If any payments are missed or</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
		<p>overdue, the payment amount will be due with interest at the legal rate of 10 percent”.</p> <p>To clarify the payment schedule and address commentator concerns, the committee and task force recommend adding a check box in item 4b(3), underneath the amount of fees designated, that states “Interest is not included and is not waived”. The committee and task force also recommend adding a check box in item 4e(3), underneath the option to designate installment payments, that “If any payment is not timely made and more than ____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.”</p> <p>Finally, there is a “NOTICE” box at the bottom of page 2, which states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p> <p>All of these additions clarify the payment process, including whether interest is included and how it would commence.</p>
<p>Superior Court of Santa Clara County, Family Court Hon. Mary E. Arand Judge</p>	<p>1. Item 5a. Change “joined party” to “claimant” to be consistent with other rules.</p>	<p>1. The committee and task force recommend changing “joined party” to “other party” in item 4a (formerly item 5a, as submitted for public comment). The committee and task force recommend using the term “other party” instead of “joined party” or “other parent” or “claimant” in all of the proposed forms to be</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<ol style="list-style-type: none"> 2. Item 5a. Add a colon after “joined party” or “claimant”. 3. Item 5c. It is unclear why this is here. The court is not required to specify the source of payment. This should be optional or not included. 	<p>consistent.</p> <ol style="list-style-type: none"> 2. Instead of a colon, the committee and task force recommend adding some extra space after “other party” for clarification. 3. The committee and task force agree to add a check box next to “From the payment sources of” and the words “if specified” to make clear that it is optional for the court to specify the source of payment. Item 4d (formerly item 5c, as submitted for public comment) would state “<input type="checkbox"/> From the payment sources of (<i>if specified</i>):”.
<p>Superior Court of Santa Clara County, Family Court Hon. Mary Ann Grilli Judge Hon. Mary E. Arand Judge</p>	<ol style="list-style-type: none"> 1. Item 5. It should clearly state to whom the party is ordered to pay fees. 2. Item 5c. The source of the payment should be optional. It is rarely used and should not be mandatory. 	<ol style="list-style-type: none"> 1. The committee and task force agree to add language to indicate to whom the party is ordered to pay fees in new item 4c that states “Payable to <input type="checkbox"/> petitioner/plaintiff <input type="checkbox"/> respondent/defendant <input type="checkbox"/> other party”. 2. The committee and task force agree to add a check box next to “From the payment sources of” and the words “if specified” to make clear that it is optional for the court to specify the source of payment. It would state “<input type="checkbox"/> From the payment sources of (<i>if specified</i>):”.
<p>Superior Court of Shasta County Stacy Larson Family Law Faciliator</p>	<p>Caption Box, Item 5(a): I agree that we need a space for joined parties, but other forms refer to this party as “Other Party” or the less favorable “Other Parent.” We should be consistent. I favor “Other Party” as this would encompass a variety of parties that may be joined.</p>	<p>The committee and task force agree to change “Joined Party” to “Other Party” in the caption box and item 4a (formerly item 5a, as submitted for public comment). The committee and task force recommend using the term “other party” instead of “joined party” or “other parent” in all of the proposed forms to be consistent.</p>

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
<p>Sonoma County Bar Association, Family Law Section Carla Boyd Terre Attorney at Law and Mediator</p>	<ol style="list-style-type: none"> 1. Item 1. Add the words “or maintain” between “retain” and “counsel” so that it states “ ... there is a demonstrated disparity in access to funds to retain <u>or maintain</u> counsel” 2. Item 2. Add the words “or maintain” between “retain” and “counsel” so that it states “ ... there is not a demonstrated disparity in access to funds to retain <u>or maintain</u> counsel” 3. Item 3. There is a lot of wasted space at the bottom of page two of this form. Add additional lines under item numbers 4, 5d(3), and 7 to use up all of the space at the bottom of page two. 	<ol style="list-style-type: none"> 1. The committee and task force agree to make this change. 2. The committee and task force agree to make this change. 3. The committee and task force agree to add space to better utilize the space on the form.
<p>State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch Legislative Counsel</p>	<ol style="list-style-type: none"> 1. Item 5c. This item as written would appear to require the court to specify the source of attorney’s fees and costs. This should be a check box item, and the parenthetical language should be changed from “(specify)” to “(if specified).” The court may, but is not required to specify the source of attorney’s fees and costs. This change would facilitate either option for the court. 2. Item 5d(2)(c). After “10 percent” add “per annum” so the language reflects the statute, and there is no confusion as to calculating interest. 	<ol style="list-style-type: none"> 1. The committee and task force agree to add a check box next to “From the payment sources of” and the words “if specified” to make clear that it is optional for the court to specify the source of payment. It would state “<input type="checkbox"/> From the payment sources of <i>(if specified)</i>:”. 2. Several commentators expressed concern that this item was vague and confusing. Therefore, the committee and task force recommend eliminating item 5d(2)(c), which stated that “If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent”. <p>To clarify the payment schedule and address commentator concerns, the committee and task</p>

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Family Law: Attorney’s Fees and Costs (adopt Cal. Rules of Court, rule 5.93 (circulated as rule 5.427); approve forms FL-157, FL-158, 319 and FL-346; revise form FL-340)

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Form FL-346—Attorney’s Fees and Costs Order Attachment

Commentator	Comment	Committee and Task Force Response
	<p>3. Notice Box. After “10 percent” add “per annum” so the language reflects the statute, and there is no confusion as to calculating interest.</p>	<p>force recommend adding a check box in item 4b(3), underneath the amount of fees designated, that states “Interest is not included and is not waived”. The committee and task force also recommend adding a check box in item 4e(3), underneath the option to designate installment payments, that “If any payment is not timely made and more than _____ days overdue, the entire unpaid balance will immediately become due with interest at the legal rate, which is currently 10 percent per year, from the date of default to the date payment is finally made.”</p> <p>Finally, there is a “NOTICE” box at the bottom of page 2, which states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p> <p>All of these additions clarify the payment process, including whether interest is included and how it would commence.</p> <p>3. The committee and task force agree to add the words “per year”, so that the NOTICE box states “Any party required to pay attorney’s fees and costs must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.”</p>

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Form FL-340—Findings and Order After Hearing²

Commentator	Comment	Committee and Task Force Response
Bay Area Legal Aid Staci Martin Staff Attorney	FL-340, Item 1. Add a box for review hearing.	The committee and task force do not recommend adding a box for review hearing in item 1. Item 1 contains check boxes for those who are present at the hearing, and it is not the appropriate place to add information about a review hearing. However, the committee and task force agree to add a new item 9 which states “This matter is continued for further hearing on (<i>date</i>): at (<i>time</i>): in Dept.: on the following issues: .” Any scheduled review hearing can be entered in new item 9.
Christine N. Donovan Senior Staff Attorney and Certified Family Law Specialist Superior Court of Solano County	1. FL-340. Caption box. I suggest the phrase “Other” be revised to read “Joined Party/Other Parent.”	1. For consistency purposes, as described above, the committee and task force recommend changing the phrase “Other” to “Other Party”.
Superior Court of Orange County Family Law Operations Staff	1. FL-340. Replace “Visitation” with “Parenting Time” throughout form.	1. The committee and task force agree to add a reference to “parenting time” next to “visitation” in form FL-340.
State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch Legislative Counsel	1. FL-340. The caption provides for identification of “Petitioner/Plaintiff,” “Respondent/Defendant,” and “Other.” Other forms (FL-346, for example) provide for “Petitioner,” “Respondent,” and “Joined Party.” Whatever captions are utilized, we recommend they be uniform across the spectrum of forms to the extent possible. 2. FL-340. “THE COURT ORDERS” (midway down the	1. The committee and task force agree that it is important to be consistent in the captions and recommends changing the caption box from “Other” to “Other Party”. To avoid confusion, the committee and task force recommend using “other party” instead of “joined party” throughout the forms. 2. The committee and task force do not

² Form FL-320, *Responsive Declaration to Order to Show Cause or Notice of Motion*, was also circulated to change the form’s title to *Responsive Declaration to Request for Order* to make it consistent with the change in title to form FL-300, which was included as a recommended change in another report. The proposal to revise form FL-300 will be considered at a different Judicial Council meeting. Therefore, form FL-320 has been removed from this proposal and will be included with the form FL-300 proposal when it is considered by the Judicial Council.

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Form FL-340—Findings and Order After Hearing²

Commentator	Comment	Committee and Task Force Response
	<p>form) should be numbered “2.” The remaining numbered paragraphs should be lettered as subparagraphs of “2. THE COURT ORDERS” and should be lettered “a” through “f”.</p> <p>3. We also propose adding “g. __ This matter is continued for further hearing on (date) in Department __ on the following issues: .”</p>	<p>recommend changing the numbering. There should not be a number next to “THE COURT ORDERS”.</p> <p>3. The committee and task force agree to add a new item 9 check box which states “This matter is continued for further hearing on (date): at (time): in Dept.: on the following issues:”.</p>

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Form FL-157—Spousal or Partner Support Declaration Attachment		
Commentator	Comment	Committee and Task Force Response
Association of Certified Family Law Specialist (ACFLS) Diane Wasznicky, President, ACFLS San Rafael	FL-157 is a Spousal or Partner Support Attachment. In the commentary on this proposal, the Judicial Council committee indicates that this form is for attachment to Declaration for Default or Uncontested Judgment, the form itself states that it is to be attached also to a Request for Order or Responsive Declaration to RFO. It is a mandatory form. This form contains the factors of 4320 and seeks declarative facts as to each factor. The form seems to be slanted toward a request for support and is not drafted in a neutral way. ACFLS proposes that this form be an optional form, not mandatory. It is not drafted in a way that it can be utilized in all the pleadings to which it must be attached. In addition, each factor needs to be redrafted so that it is more neutral. Instead of seeking declarative facts, there could be check boxes so that someone opposing a request for spousal support can insert facts opposing the assertions which appear to be a given in the current version of this form.	<p>The form has been modified to clarify the purposes for which it should be used.</p> <p>The Elkins Family Law Implementation Task Force (the task force) and the Family and Juvenile Law Advisory Committee (the committee) agree that this can be an optional form.</p> <p>The task force and the committee designed the form so that it could be used by both a person requesting spousal support or attorney fees and one who is opposing such a request. Items 1 and 2 on the form specifically provide a box to indicate whether you are requesting or responding to a request for an order. The factors that the court must consider in are the same for either party to address.</p>
Hon. John Chemeleski, Trial Court Commissioner Superior Court of Los Angeles County Long Beach	Form FL-157: This should not be listed as a mandatory form. There are very few 2336 applications that require the court to determine spousal support. This form may be helpful in some contested situations but in most cases involving motion/OSC requests for support the facts are provided by the declarations of the parties supplemented by the testimony at the hearing. Narrative declarations are usually much easier to read than information crammed into a court form. Unless the purpose is to increase the complexity of such proceedings make this one optional.	<p>The form has been modified to clarify the purposes for which it should be used.</p> <p>The task force and the committee have recommended that this form be optional.</p>
Harriett Buhai Center for Family Law Erin Dabbs	Spousal or Partner Support Declaration Attachment (FL-157):	

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Form FL-157—Spousal or Partner Support Declaration Attachment		
Commentator	Comment	Committee and Task Force Response
Senior Staff Attorney Los Angeles	<p>We agree to the use of this form at the time of Judgment, but we strongly object to its use at the time a pendente lite spousal support order is requested through a Request for Order. As detailed below, courts need not consider the Family Code section 4320 factors at the time pendente lite support is requested, so requiring litigants to attach this declaration to their requests for pendente lite spousal support is inappropriate and potentially misleading. We therefore propose that the option to attach this form to a Request for Order (FL-300) or Responsive Declaration to Request for Order (FL-320) be eliminated. At the top of the form, it should thus just state “SPOUSAL OR PARTNER SUPPORT DECLARATION ATTACHMENT TO Declaration for Default or Uncontested Judgment, Other.”</p> <p>Family Code section 3600 sets out the rights of parties to request pendente lite spousal support. The statute mandates that any order made be consistent with two requirements from 4320 - whether there has been domestic violence in the relationship and the criminal record of an abusive spouse. However, the other 4320 factors are not referenced and case law supports the idea that the 4320 factors need not be considered at the time a pendente lite spousal support order is made. See <i>In Re Marriage of Wittgrove</i>, (2004) 120 CA 4th 1317 at 1327 (holding that temporary spousal support is not subject to any statutory scheme and is instead based on one party’s need and the other’s ability to pay).</p> <p>Further, we recommend that litigants be given the option to include all relevant information in an attached declaration. Currently, the form only allows for litigants to write their facts directly on the form. Our practice is to draft a separate declaration that covers each substantive issue in the default</p>	<p>The task force and the committee agree with the commentator that the intended use of the form is unclear and have modified it to correct this.</p> <p>See response above. The form was not intended to be attached to a request for temporary spousal support or a response to such a request.</p> <p>The concern expressed by the commentator should be addressed by making the form an optional form.</p>

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Form FL-157—Spousal or Partner Support Declaration Attachment		
Commentator	Comment	Committee and Task Force Response
	<p>judgment. Consequently, we believe the form would be more user friendly if it gave the user the option to attach a declaration. We suggest that at item 3, following “The facts in support of my request are:,” there should be two boxes: one that says “Discussed below” and another that says “Discussed in the attached declaration.”</p> <p>Adding this brief language allows the users of the form to simply type up all the relevant details rather than having to write them directly on the form.</p>	
<p>Los Angeles Center For Law & Justice Suma Mathai, JD/MSW Supervising Family Law Attorney Los Angeles</p>	<p>Form FL-157 This form is for mandatory use as an attachment to form FL-170. We recommend that the form be listed for optional use only. In many dissolution cases, particularly those where the parties were only married a short time or the parties intend to request a reservation or termination of jurisdiction regarding support, this form would be superfluous and the vast majority essentially left blank. In addition, the party should have the option of providing all the relevant information in a comprehensive declaration attached to FL-170.</p>	<p>The task force and the committee have recommended that this form be optional</p>
<p>Maralee Nelder Attorney at Law, CFLS Grass Valley</p>	<p>In general, these forms are rules are ideas whose time has long come. This should simplify the processing of this for many self-represented parties.</p> <p>FL 157 For most of the factors, I would find it helpful to have a check box for <input type="checkbox"/> not applicable to this case.</p> <p>FL 157 - Item 3c Can there be an additional line and check box? <input type="checkbox"/> The parties <input type="checkbox"/> have / <input type="checkbox"/> have not had the earnings based on this education since _____,</p>	<p>All of the factors should be addressed, even if only to indicate that they are not applicable and why.</p> <p>That would be part of the narrative to be included in the explanations in that section.</p>

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Form FL-157—Spousal or Partner Support Declaration Attachment		
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	<p>FL 157 - Item d2 should refer to earnings from employment or self-employment.</p> <p>FL 157 - Items f1 and f2 could be shortened by a check box for <input type="checkbox"/> As stated in <input type="checkbox"/> FL 160 (Community Property / Debts and <input type="checkbox"/> FL 160 ((Separate Property and Debts) dated _____.</p>	<p>The change has been made.</p> <p>If those forms have been previously submitted, they can be references in this section.</p>
<p>Sonoma County Bar Association Joyce MacLaury, Family Law Facilitator, Sonoma Superior Court Santa Rosa</p>	<p>FL-157 Spousal or Partner Support Declaration Attachment</p> <p>Approve use of form that organizes a declaration addressing all of the factors in 4320 because this form makes it easier for both self-represented litigants and private counsel to provide information the court needs when considering long term spousal support.</p> <p>Concerns: That self-represented litigants may believe they have to write facts into each area in the statement that prompts a response whether or not the facts apply to their situation. A suggested solution is to add "Explain or state if not applicable".</p>	<p>The proposed form FL-157 sets out each section to mirror, as in as clear language as possible, the statutory considerations set out in Family Code section 4320. In a request for spousal support, or a request to deny spousal support, all of the factors much be considered for a judgment. It is not clear which of the factors would not be applicable.</p>
<p>State Bar of California, Executive Committee of the Family Law Section (FLEXCOM) Jill L. Barr, FLEXCOM Saul Bercovitch, State Bar Legislative Counsel</p>	<p>FLEXCOM suggests the following modifications:</p> <p>A. FL-157: Spousal or Partnership Support Declaration Attachment.</p> <p>1. Mandatory form: FLEXCOM perceives this form as a valiant effort to oversimplify a very complex subject. For that reason, we would prefer to see the form labeled for “optional” use, instead of “mandatory.”</p> <p>2. Item 3: We perceive that, while the form is purported to be used by both those requesting and those opposing spousal</p>	<p>The task force and the committee have recommended that this form be optional</p> <p>The form is intended to be used by a litigant that is requesting support, or one that is responding to a</p>

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	<p>support, the language appears slanted in favor of a party requesting spousal support. To that end, we propose that each lettered subparagraph under Item 3 be preceded by a checkbox to indicate its use is optional, and that the language be rendered more neutral. For example:</p> <p>(a) Item 3b reads: “The supported party’s earning ability is lower than it might be if he or she had not had periods of unemployment because of the time needed to attend to domestic duties (explain).” We would propose instead: “The supported party’s earning ability __ is __ is not lower...” Or perhaps language such as this: “Provide any facts which indicate the support party’s earning ability is, or is not, lower than it might be if he or she had not had periods of unemployment because of time needed to attend to domestic duties.” That way, either party would understand the subject matter of the statute and could comment for or against spousal support.</p> <p>(b) Item 3c reads: “The supported party contributed to the education, training, career position, or license of the supporting party as follows.” Again, the language is clearly slanted to support a request for spousal support. We would propose instead, words to this effect: “ The supporting __supported party__ did __did not contribute to the education, training, career position, or license of the __supporting__supported party as follows.” Or perhaps, “State whether the supported party contributed to the education, training, career position, or license of the supported party, and if so, provide details.”</p> <p>All of the available entries under Item 3 should be edited so as to be presented in neutral language.</p>	<p>request for support. The factors to be considered by the court are the same for both.</p> <p>The suggested language has been incorporated into the form.</p> <p>The suggested language has been incorporated into the form</p> <p>Similar modification has been made to Item 3h.</p>

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	3. This form appears to be applicable to requests for temporary orders of support. If this is the case, then there should be another entry available to request or oppose temporary guideline spousal support.	This form is not designed for requests for temporary spousal support.
Superior Court of Monterey County Minnie Monarque, Director Civil & Family Law Division	Agree with proposed changes.	No response required.
Superior Court of Orange County Family Law Operations Santa Ana	Form FL-157 <ul style="list-style-type: none"> Item 3(d)(5), “standard of living” is not a term normally dealt with; this item should include some guidance for the party; suggest the description under Item 3(e) be included here instead and “entertainment, transportation, out-sourced household duties” be added to get a more clear picture of the standard of living. Once 3(d)(5) is complete, Item 3(e) doesn’t need the description. Item 3(g), suggest “Length of marriage or domestic partnership” be changed to “Time from marriage to date of separation:” to be consistent with Petition and Response. 	The prompting about the marital standard of living will be moved to Item 3(d)(5). This language is intended to mirror the language in Family Code section 4320, not necessarily the language on the Petition.
Superior Court of Riverside County, Staff	On the FL-157 Spousal or Partner Support Declaration Attachment, it is suggested that either an INFO sheet be created to assist the parties in completing the FL-157 form, or change the form to phrase the “facts in support” as questions. For example: Does each party earn enough money to maintain the same standard of living that was established during marriage or domestic partnership? The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage. (§ 4320(a).)	The idea of an information sheet will be referred to the task force and the committee for consideration in the next RUPRO cycle. The language on the current proposed form FL-157 mirrors the language in Family Code section 4320. An information sheet containing a set of definitions for this form seems like an excellent suggestion.

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	<p>Does the party receiving support have job skills? Are there jobs available for someone with those employment skills? What, if anything, does the party receiving support have to do to improve his or her skills in order to get a job?</p> <p>The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. (§ 4320(a)(1).)</p> <p>Was the party receiving support unemployed during the marriage in order to devote time to domestic duties?</p> <p>The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties. (§ 4320(a)(2).)</p> <p>Further, the form should be made optional not mandatory. An instruction sheet is also recommended to help the litigants regarding the spousal/partner support factors. Riverside’s instructions are attached hereto as an example. (See below)</p>	<p>The task force and the committee have recommended that this form be optional</p>
<p>Superior Court of San Bernardino County Debra Meyers, Director</p>	<p>Forms:</p> <ul style="list-style-type: none"> Spousal or Partner Support Declaration (FL-157): <p>What if the parties are waiving? For many self represented litigants with moderate to no means, spousal support is waived. If the option for waiver was near the beginning of the form, it would make it easier for the litigants to fill out as they wouldn’t have to read through all the paragraphs that don’t apply to them</p>	<p>If the parties are waiving spousal or partner support, there would be no reason to use form FL-157. This form sets out the factors listed in Family Code section 4320 for those that are requesting specific judgment or post-judgment orders for support, including the termination of jurisdiction over the issue, and those that</p>

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	<p>to find the correct box. Hopefully, the parties waiving wouldn’t need to fill out everything on this form.</p> <p>Page 3 – why include another list of property/debts if the party has already filed a Property Declaration?</p>	<p>are responding to such requests. The parties may waive support on form FL-170, Item 8(a), or in the written agreement between the parties.</p> <p>If the information on a previously filed Property Declaration is current, there is no reason that a party could not refer to it in the sections of this form asking for similar information. However, in cases where the issues is a post-judgment request for modification of spousal or partner support, current information about the assets and obligations of the parties is required.</p>
<p>Superior Court of San Diego County Mike Roddy, Court Executive Officer</p>	<p>Form FL-157: Our court likes this form.</p>	<p>No response required.</p>
<p>Superior Court of Shasta County Stacy Larson, Family Law Facilitator</p>	<ul style="list-style-type: none"> • FL-157, page 3, subdivision 3(e): We should add “domestic partnership” to make the form equally applicable to domestic partnerships, e. g., “enjoyed during the marriage or domestic partnership.” • FL-157, page 3, subdivision (f)(2): “List” should not be capitalized for consistency. • FL-157, page 4, subdivision (j): The code section should be provided above these “Additional factors” to be consistent with the rest of the form, e. g., Family Code section 4320(i)-(l). Additionally, subsection (j)(3) should be revised to read, “Documented evidence of any history of domestic violence between the parties and/or criminal conviction of an abusive spouse in reducing or eliminating support.” This will be more consistent with FC §4320(i) in conjunction with FC 	<p>This change has been made.</p> <p>This change has been made.</p> <p>The reference to the Family Code sections have been added. The task force and the committee wanted to keep the language as short and simple as possible.</p>

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	<p>§4320(m) and reduce the chance that parties will mistakenly assume that criminal convictions are required.</p> <ul style="list-style-type: none">• FL-157, page 4, subdivision (j)(4). We should replace the semi-colon at the end of the verbiage with a period and eliminate the “and,” e. g., “reasonable period of time.”	<p>The current format follows Family Code section 4320.</p>