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INVITATION TO COMMENT

SPR11-35

Title	Action Requested
Family Law: Attorney Fees and Costs	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.427; adopt forms FL-158, FL-319, and FL-346; revise forms FL-320 and FL-340	January 1, 2012
Proposed by	Contact
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Hon. Laurie D. Zelon, Chair	

Summary

Assembly Bill 939 mandates that the Judicial Council, effective January 1, 2012, adopt a rule of court and develop a form to implement certain statutory provisions regarding attorney fees and costs in family law proceedings. The proposed new and revised forms address legal requirements with respect to requesting and awarding attorney fees and costs in family law proceedings, including new provisions based on AB 939. The proposed rule sets out the steps for requesting and awarding attorney fees and costs in family law proceedings.

Discussion

Effective January 1, 2011, AB 939 (Committee on Judiciary; Stats. 2010, ch. 352) amended Family Code sections 2030, 2032, 3121, and 3557 regarding attorney fees and costs. 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 fees and costs under these sections.

The proposed new and revised forms include the statutory requirements resulting from AB 939 and address additional statutory and case law requirements for the information that must be

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submitted to the court to obtain an award of attorney fees and costs. These forms would allow a party in a family law proceeding to request attorney 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. The proposed rule sets out the steps for requesting and awarding attorney fees and costs in family law proceedings and creates a procedure to implement sections 2030 and 3121, as directed by Assembly Bill 939.

Family Code sections 2030, 2032, 3121, and 3557 identify factors and issues for the court to consider in determining whether an award of attorney 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 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 fees and costs is made, the court must make findings regarding whether an award of attorney 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 fees and costs if the findings demonstrate disparity in access and ability to pay. These changes are reflected in sections 2030(a)(2) and 3121(b).

The proposed new forms also encompass Family Code sections 270, 271, and 7605, all of which address attorney fees and costs in family law proceedings but which were not 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 fees or costs prior to ordering an award of attorney fees and costs under the Family Code. Section 7605 allows the court to order attorney 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. Section 271 addresses attorney fees and costs in the form of a sanction or penalty and states that "the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys."

It promotes consistency and clarity for a party in a family law proceeding to use the same form to request attorney fees and costs, whether it is based on income and need or a request for sanctions.

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Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt proposed rule 5.427, *Attorney fees and costs*, effective January 1, 2012, to address the appropriate court protocol related to attorney fees and costs and to comply with AB 939. The proposed rule identifies the process that a party must complete to request or respond to a request for attorney fees and costs, and the court process for making an order with respect to attorney fees and costs.

The Family and Juvenile Law Advisory Committee further recommends adopting the following three new forms to implement the provisions of AB 939 and to clarify the statutory and case law with respect to attorney fees and costs in family law proceedings:

1. Mandatory form FL-319, *Request for Attorney Fees and Costs Order Attachment*. This form must be used by a party in a family law proceeding to request attorney fees and costs based on income and need, as described in Family Code sections 2030, 2032, 3121, and 3557 or as a form of sanction, as described in section 271. It is an attachment to *Request for Order* (revised form FL-300).
2. Optional form FL-158, *Supporting Declaration for Attorney Fees and Costs Order Attachment*. This form can be used by a party to provide the court with information either in support of or in opposition to a request for attorney fees and costs. It is an attachment to *Request for Attorney Fees and Costs Order Attachment* (form FL-319) or *Responsive Declaration to Request for Order* (revised form FL-320).
3. Mandatory form FL-346, *Attorney Fees and Costs Order Attachment*. This form can be used by the court to identify court findings and orders with respect to attorney fees and costs, as required by Assembly Bill 939. It is an attachment to *Findings and Order After Hearing* (form FL-340) or *Judgment* (form FL-180).

The committee further recommends revising the following three forms to implement the provisions of AB 939 and to provide clarification and consistency regarding attorney fees and costs in family law proceedings:

1. In *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320):
 - Add a new item 5d to notify the respondent to complete, file, and serve additional documents relating to attorney fees and costs as part of the response; and
 - Change the title of the form to *Responsive Declaration to Request for Order* to be consistent with the proposed change in title to form FL-300 (see proposal SPR11-40).
2. In *Findings and Orders After Hearing* (form FL-340):

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- Change the wording in item 1 from “On the order to show cause or motion filed” to “On the request for order filed” to be consistent with the proposed change in title;
 - Add letters (a, b, c) in item 1 for better organization;
 - Adjust the numbering so that item 2 begins with “Custody and visitation” instead of “THE COURT ORDERS” to correct a previous error in numbering; and
 - Add a new item 6 check box to allow the court to attach proposed *Attorney Fees and Costs Order Attachment* (form FL-346).
3. In *Judgment* (form FL-180), add a new item 4p check box to allow the court to attach proposed *Attorney Fees and Costs Order Attachment* (form FL-346). Form FL-180 is included in a separate proposal, SPR11-47.

Attachments

Proposed new rule 5.427, *Attorney fees and costs*, is attached at pages 5–6.

Proposed new optional form FL-158, *Supporting Declaration for Attorney Fees and Costs Order Attachment*, is attached at pages 7–8.

Proposed new mandatory form FL-319, *Request for Attorney Fees and Costs Order Attachment*, is attached at pages 9–10.

Proposed revised form FL-320, *Responsive Declaration to Request for Order*, is attached at pages 11–12.

Proposed revised form FL-340, *Findings and Order After Hearing*, is attached at page 13.

Proposed new mandatory form FL-346, *Attorney Fees and Costs Order Attachment*, is attached at pages 14–15

Family Code sections 270, 271, 2030, 2032, 3121, 3557, and 7605 are attached at pages 16–20.

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Rule 5.427 of the California Rules of Court would be adopted, effective January 1, 2012, to read:

1 **Article 2. Attorney Fees and Costs**

2
3 **Rule 5.427. Attorney fees and costs**

4
5 **(a) Request**

6
7 A party requesting that the court award attorney fees and costs must
8 complete, file, and serve *Request for Order* (form FL-300) and *Request for*
9 *Attorney Fees and Costs Order Attachment* (form FL-319). The party must
10 also file a personal declaration in support of the request for attorney fees and
11 costs, either using *Supporting Declaration for Attorney Fees and Costs*
12 *Order Attachment* (form FL-158) or a comparable declaration that addresses
13 the factors covered in form FL-158.

14
15 **(b) Response to request**

16
17 A party responding to the request for attorney fees and costs must complete,
18 file, and serve *Responsive Declaration to Request for Order* (form FL-320).
19 The party must also file a personal declaration responding to the request for
20 attorney fees and costs, either using *Supporting Declaration for Attorney*
21 *Fees and Costs Order Attachment* (form FL-158) or a comparable
22 declaration that addresses the factors covered in form FL-158.

23
24 **(c) Income and expense declaration**

25
26 Both parties must complete, file, and serve a current *Income and Expense*
27 *Declaration* (form FL-150).

28
29 (1) "Current" is defined as being completed within the past three months,
30 provided that no facts have changed. The form must be sufficiently
31 completed to allow determination of the issues.

32
33 (2) *A Financial Statement (Simplified)* (form FL-155) is not appropriate for
34 use in proceedings to determine or modify attorney fees and costs.

35
36 (3) *When attorney fees are requested by either party, the section on the*
37 *Income and Expense Declaration* (form FL-150) related to the amount
38 in savings, credit union, certificates of deposit, and money market
39 accounts must be fully completed, as well as the section related to the
40 amount of attorney fees incurred, currently owed, and the source of
41 money used to pay such fees.

1 **(d) Court findings and order**

2

3 The court must make an order regarding attorney fees and costs using
4 *Attorney Fees and Costs Order Attachment* (form FL-346).

Petitioner: Respondent: Joined Party:	CASE NUMBER:
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SUPPORTING DECLARATION FOR ATTORNEY FEES AND COSTS ORDER ATTACHMENT**Attached to:**

- Request for Attorney Fees and Costs Order Attachment (FL-319)**
 Responsive Declaration to Request for Order (form FL-320)

1. I am
 - a. the petitioner.
 - b. the respondent.
 - c. a joined party.

2. I request that the court grant deny the request for attorney fees and costs.

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

 - b. The attorney fees and costs can be paid from the following sources (*describe*):

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

See attachment 3c.

 - d. If appropriate, describe the actions of a party that may be affecting the ability to resolve the case and why attorney fees and costs in the form of a sanction under Family Code section 271 may be necessary:

See attachment 3d.

 - e. If appropriate, describe the reasons why a 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 fees and costs:

See attachment 3e.

Petitioner: Respondent: Joined 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 respondent pays \$ _____ per month for child support.

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

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

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

a. No

b. Yes. If so, describe the order:

(1) The petitioner respondent pays \$ _____ per month for spousal support.

partner support.

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

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

6. If you are or were married, 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 fees and costs. Complete and attach *Spousal/Partner Support Declaration* (form FL-157) 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:

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: Respondent: Joined Party:	CASE NUMBER:
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REQUEST FOR ATTORNEY FEES AND COSTS ORDER ATTACHMENT

Request for Order (form FL-300) is attached

1. a. I am completing this form because:
 - (1) I need to have enough money for attorney fees and costs to present my case adequately;
 I am a legal service client.
 - (2) I have less money or limited access to other funding to retain an attorney compared to the party that I am requesting pay for my attorney fees and costs; and
 - (3) the party that I want the court to order to pay for my attorney fees and costs has or is reasonably likely to have the ability to pay for attorney fees and costs for me and himself or herself.
 - b. I am completing this form because a party or attorney is not being cooperative and is making it difficult to settle the case. I am asking that the court order the other party to pay attorney fees and costs in the form of a sanction under Family Code section 271.
2. I am asking the court to order that (*check all that apply*): petitioner respondent a joined party (*specify*):
 pay for my attorney 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 (*specify*) _____ to hire an attorney in a timely manner before the proceedings in the matter go forward.
 - b. attorney fees and costs acquired from the beginning of representation until now in the amount of (*specify*):
 - c. estimated attorney fees and costs in the amount of (*specify*):
 - d. attorney fees and costs for limited scope representation in the amount of (*specify*):
 - e. attorney fees and costs in the amount of (*specify*): _____ as a sanction under Family Code section 271.
4. Have attorney fees and costs been ordered in this case before?
- a. No.
 - b. Yes. If so, include the following information in a supporting declaration on an attached sheet:
 - (1) Name of the party whom the court ordered to pay for attorney fees and costs;
 - (2) The date each order was made;
 - (3) The amount of attorney fees and costs the party was ordered to pay;
 - (4) Whether or not the party paid the attorney fees and costs he or she was ordered to pay; and
 - (5) If known, the source of funds used to pay attorney fees and costs.
5. You must do the following:
- a. 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.
 - b. File and serve an attorney's declaration of fees and costs. Any request for an award of attorney fees and costs in excess of \$2,000 must include a factual declaration completed and signed by the attorney that describes:
 - (1) The attorney's hourly billing rate;
 - (2) The nature of the litigation, its difficulty, and the skill required and employed in handling the litigation;
 - (3) Fees and costs acquired until now, anticipated attorney fees and costs, and why the fees and costs are just, necessary, and reasonable;
 - (4) The attorney's experience in the particular type of work demanded;
 - (5) If it is a limited scope fee arrangement, the scope of representation; and
 - (6) If sanctions are being requested under Family Code section 271, the basis for sanctions.

Petitioner: Respondent: Joined Party:	CASE NUMBER:
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- c. Complete, file, and serve a personal declaration in support of your request for an order of attorney fees and costs that explains why you need an award of attorney fees and costs (either *Supporting Declaration for Attorney Fees and Costs Order Attachment* (form FL-158) or a declaration that covers the factors addressed on form FL-158).
6. To respond to this request, you must complete, file, and serve the following:
- a. A *Responsive Declaration to Request for Order* (form FL-320);
 - b. A personal declaration explaining why the court should grant or deny the request for attorney fees and costs (either *Supporting Declaration for Attorney Fees and Costs Order Attachment* (form FL-158) or a declaration that covers the factors addressed on form FL-158); and
 - c. 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.
7. Number of pages attached: _____

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>): <hr/> 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 Not approved by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
RESPONSIVE DECLARATION TO REQUEST FOR ORDER	CASE NUMBER:
HEARING DATE: _____ TIME: _____ DEPARTMENT OR ROOM: _____	

1. CHILD CUSTODY
- a. I consent to the order requested.
- b. I do not consent to the order requested, but I consent to the following order:

2. CHILD VISITATION
- a. I consent to the order requested.
- b. I do not consent to the order requested, but I consent to the following order:

3. CHILD SUPPORT
- a. I consent to the order requested.
- b. I consent to guideline support.
- c. I do not consent to the order requested, but I consent to the following order:
- (1) Guideline
- (2) Other (*specify*):

4. SPOUSAL OR PARTNER SUPPORT
- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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5. ATTORNEY FEES AND COSTS

- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

d. You must also complete, file, and serve the following documents:

- i. 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.
- ii. A personal declaration that explains why the court should grant or deny the request for attorney fees and costs (either *Supporting Declaration for Attorney Fees and Costs Order Attachment* (form FL-158) or a declaration that covers the factors addressed on form FL-158).

6. PROPERTY RESTRAINT

- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

7. PROPERTY CONTROL

- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

8. OTHER RELIEF

- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

9. SUPPORTING INFORMATION

Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

NOTE: To respond to domestic violence restraining orders requested in the *Request for Order (Domestic Violence Prevention)* (form DV-100), you must use the *Answer to Temporary Restraining Order (Domestic Violence Prevention)* (form DV-120).

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

Date:

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

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: _____	
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 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: As attached on form FL-341 Not applicable
- 3. Child support: As attached on form FL-342 Not applicable
- 4. Spousal or family support: As attached on form FL-343 Not applicable
- 5. Property orders: As attached on form FL-344 Not applicable
- 6. Attorney fees As attached on form FL-346 Not applicable
- 7. Other orders: As attached Not applicable
- 8. All other issues are reserved until further order of court.

Date: _____ ▶ _____
JUDICIAL OFFICER

Approved as conforming to court order.

▶ _____
 SIGNATURE OF ATTORNEY FOR PETITIONER / PLAINTIFF RESPONDENT/DEFENDANT

Petitioner: Respondent: Joined Party:	CASE NUMBER:
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ATTORNEY FEES AND COSTS ORDER ATTACHMENT

Attached to:

- Findings and Orders After Hearing (form FL-340)**
 Judgment (form FL-180)
 Other (specify):

THE COURT FINDS

1. An award of attorney fees and costs is appropriate because there is a demonstrated disparity in access to funds to retain counsel between the parties, and the party requested to pay attorney fees and costs has or is reasonably likely to have the ability to pay for legal representation for both parties.
2. An award of attorney fees and costs is not appropriate because there is not a demonstrated disparity in access to funds to retain counsel between the parties, or the party requested to pay attorney fees and costs does not have or is not reasonably likely to have the ability to pay for legal representation for both parties.
3. The conduct of a party or attorney made it difficult to settle the case. Attorney fees and costs in the form of a sanction under Family Code section 271 are necessary to encourage cooperation between the parties and attorneys and to promote settlement of litigation.
4. Other (*specify*):

THE COURT ORDERS

5. a. the petitioner respondent a joined party to pay attorney fees and costs in this legal proceeding
- b. in the amount of:
 - (1) Fees: \$ _____
 - (2) Costs: \$ _____
- c. From the payment sources of (*specify*):
- d. Payment schedule (*specify*):
 - (1) Due now
 - (2) On or before (*specify*):
 - (a) Date:
 - (b) Monthly payments of (*insert amount*) \$ _____, starting (*insert date*) _____ until paid in full.
 - (c) If any payments are missed or overdue, the payment amount will be due with interest at the legal rate of 10 percent.
 - (3) Other (*specify*):

Petitioner: Respondent: Joined Party:	CASE NUMBER:
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6. 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 fees and costs incurred to date in the amount of *(specify)*:
 - c. Estimated attorney fees and costs in the amount of *(specify)*:
 - d. Attorney fees and costs for limited scope representation *(specify)*:

 - e. Attorney fees and costs in the amount of *(specify)*: _____ as a sanction under Family Code section 271.
 - f. Any amounts previously ordered that have not yet been paid *(specify)*:
 - g. Other *(specify)*:
7. Other orders *(specify)*:

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

Family Code section 270. Order for attorney's fees and costs; ability to pay

If a court orders a party to pay attorney's fees or costs under this code, the court shall first determine that the party has or is reasonably likely to have the ability to pay.

Family Code section 271. Alternative basis for award; encouragement of cooperation; award as sanction; notice; property or income of sanctioned party

(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

Family Code section 2030. Award; findings; timing; modification; limitation; statewide rule of court

(a)(1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(2) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section 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. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) 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.

(e) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

Family Code section 2032. Reasonableness of award; findings; property from which fees can be awarded; allocation of fees and costs in light of complex issues

(a) The court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income.

(d) Either party may, at any time before the hearing of the cause on the merits, on noticed motion, request the court to make a finding that the case involves complex or substantial issues

of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion determine the appropriate, equitable allocation of attorney's fees, court costs, expert fees, and consultant fees between the parties. The court order may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only on agreement of the parties or, in the absence thereof, by court order. The court may order that a referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the allocation of fees and costs.

Family Code section 3121. Attorney's fees and costs; findings; temporary order; default; statewide rule of court

(a) In any proceeding pursuant to Section 3120, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section 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. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in Section 3120, or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in subdivision (f), 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 during the pendency of any proceeding described in Section 3120.

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

(g) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

Family Code section 3557. Award of attorney's fees

(a) Notwithstanding any other provision of law, absent good cause to the contrary, the court, in order to ensure that each party has access to legal representation to preserve each party's rights, upon determining (1) an award of attorney's fees and cost under this section is appropriate, (2) there is a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation for both parties, shall award reasonable attorney's fees to any of the following persons:

(1) A custodial parent or other person to whom payments should be made in any action to enforce any of the following:

(A) An existing order for child support.

(B) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(2) A supported spouse in an action to enforce an existing order for spousal support.

(b) This section shall not be construed to allow an award of attorney's fees to or against a governmental entity.

Family Code section 7605. Attorney's fees and costs; application for award by court; grounds for determination; augmentation or modification; temporary orders; time for determination of application

(a) In any proceeding to establish physical or legal custody of a child or a visitation order under this part, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in subdivision (a), or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in subdivision (f), 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 during the pendency of any proceeding described in subdivision (a).

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

Item SPR11-35 Response Form

Title: Family Law: Attorney Fees and Costs (adopt Cal. Rules of Court, rule 5.427; adopt forms FL-158, FL-319, and FL-346; revise forms FL-320 and FL-340)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

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

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

Email: invitations@jud.ca.gov

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

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

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

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