

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-38

Title

Family Law: Request for Order in Lieu of Existing Notice of Motion or Order to Show Cause, and Witness List for Use in Family Law Proceedings

Action Requested

Review and submit comments by June 20, 2011

Proposed Effective Date

January 1, 2012

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 5.92; revoke forms FL-301 and 310; adopt forms FL-300-INFO and FL-321; revise forms FL-300, FL-305, FL-306, FL-315, FL-347

Contact

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Proposed by

Family and Juvenile Law Advisory
Committee

Hon. Kimberly J. Nystrom-Geist, Cochair

Hon. Dean Stout, Cochair

Elkins Family Law Implementation Task
Force

Hon. Laurie D. Zelon, Chair

Discussion

The Judicial Council established the Elkins Family Law Task Force in response to the decision in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337. The charge of the task force was to study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for family law litigants, many of whom are self-represented.

The Elkins Family Law Task Force *Final Report and Recommendations* was accepted by the Judicial Council at its April 23, 2010, meeting. The Judicial Council also accepted the task force's recommendation that an implementation task force be established to assist in carrying out the

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 These proposals are circulated for comment purposes only.

recommendations contained in the final report. The final report¹ contained a recommendation that the forms for motions in family law proceedings should be simplified and that the notice of motion and order to show cause should be combined into a *Request for Order* form to be used in family law proceedings. The recommendation states:

Litigants in family law cases have two ways to bring an issue before the court: a notice of motion and an order to show cause. In most counties, these motions are used almost interchangeably. In other counties they are used for distinct purposes, although the intended differences are not written and may not be clear to self-represented litigants or attorneys.... To eliminate confusion and to standardize practice throughout the state, the Judicial Council should develop a new *Request for Order* that would replace the *Order to Show Cause* (FL-300) and the *Notice of Motion* (FL-301) for use in all matters except domestic violence and contempt (which currently have specific forms). The new form would incorporate the current *Application for Order and Supporting Declaration* (FL-310), which is an attachment to those two documents. The *Request for Order* would also be used for those matters that are motions as defined in the Code of Civil Procedure. The inconsistent statutory provisions in the Code of Civil Procedure, Civil Code, civil rules of court, and family rules of court regarding motions and law and motion practice need to be reconciled. Instructional materials regarding the *Request for Order* and its use should be developed.

This proposal seeks to implement the recommendation.

Proposed rule 5.92² requires that a notice of motion or order to show cause filed in a family law case be filed on the revised *Request for Order* (FL-300) form except in cases filed by the local child support agency, where there is a request for protective orders under the Domestic Violence Protection Act, or when there is another Judicial Council form for a specific motion or order to show cause.

The existing *Order to Show Cause* (FL-300) would be revised to become the proposed *Request for Order* (FL-300) form. The *Notice of Motion* (FL-301) form would be revoked. The *Application for Order and Supporting Declaration* (FL-310) would be revoked and its contents made part of the proposed *Request for Order*. Proposed *Request for Order Information Sheet* (FL-300-INFO) would also be adopted.

¹ See www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf.

² The Family and Juvenile Law Advisory Committee is proposing reorganized rules in a companion proposal. This proposed rule would become rule 5.92 of the reorganized family rules, effective January 1, 2012. Commentators may view the reorganized family rules in the proposal titled Family Law: New, Restructured, and Revised Family Law Rules of Court (SPR11-36).

The following forms would be revised to replace form references from *Notice of Motion or Order to Show Cause* to *Request for Order* or to add a reference to the *Request for Order* as appropriate: *Temporary Court Orders* (FL-305), *Application and Order for Reissuance of Order to Show Cause or Request for Order* (FL-306), *Application or Response to Application for Separate Trial* (FL-315) and *Bifurcation of Status of Marriage or Domestic Partnership* (FL-347).

Additionally, the forms *Responsive Declaration to Request for Order* (FL-320) and *Findings and Order After Hearing* (FL-340) would be modified to refer to the *Request for Order* as appropriate. Those forms are being circulated in a separate Invitation to Comment entitled Family Law: Attorney Fees and Costs (SPR11-35).

In response to the need to provide litigants with the opportunity to testify at hearings on requests for substantive relief and in order to provide judicial officers with the information they need to make an order, the Elkins Family Law Task Force recommended that live testimony be allowed in any hearing on an order to show cause or motion brought under the Family Code, absent a stipulation of the parties or a finding of good cause.

Effective January 1, 2011, Assembly Bill 939 (Assem. Com. on Judiciary; Stats. 2010, ch. 352) added section 217 to the Family Code, which requires that at hearings on orders to show cause or motions brought under the Family Code,² courts must receive competent live testimony that is relevant and within the scope of the hearing, unless the parties have stipulated otherwise or the court makes a finding of good cause to refuse to receive the live testimony. Section 217 also requires the Judicial Council to adopt a statewide rule of court listing the factors a court must consider in making a finding of good cause to refuse to receive live testimony at hearings on orders to show cause or motions filed under the Family Code.² In addition, it sets out the requirement that parties seeking to present nonparty live testimony must file and serve a witness list or make an offer or proof with a brief description of the anticipated testimony.

Proposed family law form *Witness List* (FL-321) would be an optional form for parties to use to submit their witness list to the court as required by Family Code section 217. The proposed form would ask parties to provide contact information for the witnesses that they anticipate will testify. In order to address concerns that have been raised about domestic violence and possible witness intimidation the proposed form states that the provision of this information is optional. However, others have expressed concern that not providing contact information will disadvantage the other party because he or she will not have the information necessary to contact the witness for additional information. Comments are sought on the best way to reconcile these two concerns.

The proposed rule and forms are attached at pages 4–22.

² The proposal Family and Juvenile Law Rules: Live Testimony at Hearings and Declarations (W11-06) was circulated for comment by the Judicial Council in Winter 2010 with a proposed effective date of July 1, 2011.

California Rules of Court, rule 5.92 would be adopted, effective January 1, 2012, to read:

1 Title 5. Family and Juvenile Rules

2
3 Division 1. Family Rules

4
5 Chapter 6. Request for Order

6
7 Article 2. Filing and Service

8
9 **Rule 5.92. Application for court order; response**

10
11 **(a) Application for order; procedures**

12
13 (1) In a family law proceeding, other than an action under the Domestic Violence
14 Prevention Act, local child support agency actions under the Family Code, or a
15 contempt proceeding relating to family law, a notice of motion or order to show
16 cause must be filed on a *Request for Order* (form FL-300), unless another Judicial
17 Council form has been adopted or approved for the specific motion or order to show
18 cause.

19
20 (A) If the request for order seeks court orders pending a hearing or seeks an order
21 that the other party attend the hearing, the *Request for Order* (form FL-300)
22 and attachments as appropriate to the case must be filed with the court before
23 service on the other party and a copy of the *Temporary Orders* (form FL-305)
24 endorsed by the clerk must be served in the manner specified for the service of
25 a summons in Code of Civil Procedure section 4.13.10 et seq., unless the other
26 party has made an appearance in the action, in which case service may be made
27 on the attorney of record.

28
29 (B) If the *Request for Order* (form FL-300) is filed after entry of a judgment of
30 dissolution of marriage, nullity of marriage, legal separation of the parties, or
31 paternity, or after a permanent order in any other proceeding in which the
32 visitation, custody, or support of a child was at issue, it must be served as
33 specified in Family Code section 215.

34
35 (2) The *Request for Order* (form FL-300) must set forth facts sufficient to notify the
36 other party of the declarant's contentions in support of the relief requested.

37
38 (3) No memorandum of points and authorities need be filed with an application for a
39 court order unless required by the court on a case-by-case basis.

40
41 (4) A completed *Income and Expense Declaration* (form FL-150) or *Financial*
42 *Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160) must
43 be attached to *Request for Order* (FL-300) when relevant to the relief requested.

44
45 (5) The moving party must file the documents with the court and serve a copy on the
46 person against whom relief is requested, along with a blank copy of the following:

1
2 (A) Responsive Declaration to Request for Order (form FL-320);

3
4 (B) Income and Expense Declaration (form FL-150) or Financial Statement
5 (Simplified) (form FL-155) and Property Declaration (form FL-160), when
6 completed declarations are among the papers required to be served.

7
8 **(b) Responding papers**

9
10 To respond to the issues raised in Request for Order (FL-300) and attached papers, the
11 party must complete, file, and serve a Responsive Declaration to Request for Order (form
12 FL-320). The responding papers may request relief related to the orders requested in the
13 moving papers. Unrelated relief must be sought by filing a separate request for order as
14 specified in (a). Respondent may also be required to complete the following:

15
16 (1) A memorandum of points and authorities;

17
18 (2) Income and Expense Declaration (form FL-150) or Financial Statement (Simplified)
19 (form FL-155) and Property Declaration (form FL-160), when completed
20 declarations are among the papers required to be served; and

21
22 (3) The Responsive Declaration to Request for Order (form FL-320), which must set
23 forth facts sufficient to notify the other party of the declarant's contentions in response
24 to the request for order and in support of any relief requested.

25
26 **(c) Additional documents**

27
28 As specified in these rules, the moving and responding parties may be required to
29 complete, file, and serve additional papers to request or respond to a Request for Order
30 (FL-300) about child custody and parenting time, attorney fees and costs, support, and
31 other financial matters.

32
33 **Drafting Comment**

34
35 Existing rule 5.118 addressing the subject of applications for court order and supporting declarations
36 would be repealed. Proposed new rule 5.92 includes content on the same subject.

37

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <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:																									
<table style="width:100%; border: none;"> <tr> <td style="border: none;">REQUEST FOR ORDER</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;">MODIFICATION</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;">Injunctive Order</td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Child Custody</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/> Visitation</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/> Other (specify):</td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Child Support</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/> Spousal Support</td> <td style="border: none;"><input type="checkbox"/></td> <td colspan="2" style="border: none;"></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Attorney Fees and Costs</td> <td style="border: none;"><input type="checkbox"/></td> <td colspan="4" style="border: none;"></td> </tr> </table>	REQUEST FOR ORDER	<input type="checkbox"/>	MODIFICATION	<input type="checkbox"/>	Injunctive Order	<input type="checkbox"/>	<input type="checkbox"/> Child Custody	<input type="checkbox"/>	<input type="checkbox"/> Visitation	<input type="checkbox"/>	<input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> Child Support	<input type="checkbox"/>	<input type="checkbox"/> Spousal Support	<input type="checkbox"/>			<input type="checkbox"/> Attorney Fees and Costs	<input type="checkbox"/>					CASE NUMBER:
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<input type="checkbox"/> Child Support	<input type="checkbox"/>	<input type="checkbox"/> Spousal Support	<input type="checkbox"/>																						
<input type="checkbox"/> Attorney Fees and Costs	<input type="checkbox"/>																								

1. TO (name):

2. A hearing on the relief requested in the attached application will be held as follows:

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Room.:
----------	-------	---------------------------------	---------------------------------

b. Address of court same as noted above other (specify):

3. Supporting attachments:

- | | |
|--|---|
| a. Completed <i>Application for Order and Supporting Declaration</i> (form FL-310) and a blank Responsive Declaration (form FL-320)
b. <input type="checkbox"/> Completed <i>Income and Expense Declaration</i> (form FL-150) and a blank Income and Expense Declaration
c. <input type="checkbox"/> Completed <i>Financial Statement (Simplified)</i> (form FL-155) and a blank Financial Statement (Simplified) | d. <input type="checkbox"/> Completed <i>Property Declaration</i> (form FL-160) and a blank Property Declaration
e. <input type="checkbox"/> Points and authorities
f. <input type="checkbox"/> Other (specify): |
|--|---|

Date: _____

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

Do not complete this section unless you are asking the court to make orders that will be in effect before the hearing date.

COURT ORDER

4. Time for service hearing is shortened. Service must be on or before (date):
5. Any responsive declaration must be served on or before (date):
6. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed above. The parties are ordered to attend orientation and mandatory custody services as follows:

7. You are ordered to comply with the temporary orders attached.

Date: _____

JUDICIAL OFFICER

You must file a responsive declaration with the court. The original responsive declaration must be filed with the court and a copy of the responsive declaration must be served on the other party at least nine calendar days before the hearing date unless the court has ordered a shorter period of time. Add five calendar days if you serve the other party by mail within California. (See Code of Civil Procedure section 1005 for other situations.)

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

5. ATTORNEY FEES AND COSTS are requested on form FL-319 *Request for Attorney Fees and Costs Order Attachment*

6. PROPERTY RESTRAINT **To be ordered pending the hearing**

a. The petitioner respondent claimant is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.

The applicant will be notified at least five business days before any proposed extraordinary expenditures, and an accounting of such will be made to the court.

b. Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor children.

c. Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.

7. PROPERTY CONTROL **To be ordered pending the hearing**

a. The petitioner respondent is given the exclusive temporary use, possession, and control of the following property that we own or are buying (*specify*):

b. The petitioner respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:

<u>Debt</u>	<u>Amount of payment</u>	<u>Pay to</u>
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8. OTHER RELIEF (*specify*):

9. **I request** that time for service of the *Request for Order* and accompanying papers be shortened so that these documents may be served no less than (*specify number*): _____ days before the time set for the hearing. I need to have this order shortening time because of the facts specified in item 10 or the attached declaration.

10. FACTS IN SUPPORT of relief requested and change of circumstances for any modification are (*specify*):

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

The attached declaration must not exceed 10 pages in length unless permission from the court has been obtained to file a longer declaration.)

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 APPLICANT)

General Instructions

The *Request for Order* (FL-300) form replaces the old *Notice of Motion* and *Order to Show Cause* forms. Use the *Request for Order* form to ask for court orders in your family law case.

1. You must complete the top portion of page 1 including your name and address, court address, case name and number, and items 1–3. Then sign and date the form.
2. Complete the court order section on page 1 of the form (items 4–6) only when you are asking the court for temporary orders to go into effect before the hearing.
3. Complete the sections on pages 2 and 3 that apply to the orders that you are asking the court to make.

For example, if you are asking the court to make child custody orders, complete item 1 on page 2. If you are asking the court to make custody orders that go in effect before the hearing, check the box "To be ordered pending the hearing" and complete the Court Order section on page 1 and a *Temporary Court Orders* (FL-305) form.

These forms must be filed with this Request for Order:

- If you are asking the court to order child or spousal support: A completed *Income and Expense Declaration* (form FL-150) or a completed *Financial Statement (Simplified)* (form FL-155).
- If you are asking the court for orders concerning the use of your property or for the payment of debts: A completed *Property Declaration (FL-160)*.
- If you are asking the court to make temporary orders that will go into effect before the hearing: A completed *Temporary Court Orders* (FL-305).
- Other completed forms as may be required for child custody orders. See item 1 on page 2 of the *Request for Order* (FL-300).

Note: Do not use *Request for Order* (FL-300) if you are filing a motion or order to show cause:

- In a paternity or child support case filed by the local child support agency
- To set aside a child support order or a voluntary declaration of paternity

- For a domestic violence protective order under the Domestic Violence Protection Act *or*
- Other types of cases for which there are other Judicial Council forms

If you have a question about whether this is the right form for your situation, ask the family law facilitator, self help center, or the clerk's office at the court.

Instructions for giving the other party notice (Service)

You must inform the other party of your request. First:

- File your completed *Request for Order* and other forms with the court *and*
- Ask the clerk of the court for a court date and time.

Notice (Service) by Mail

If you are *not* asking the court for orders that will go into effect before the hearing:

- You can ask another person (who is at least 18) to mail the *Request for Order*, the appropriate attachments and blank responsive forms to the other party.
- After the person mails the forms, he or she should complete a *Proof of Service by Mail* (FL-335).
- You then file the completed *Proof of Service by Mail* with the clerk of the court before the hearing date.

Notice (Service) by Personal Delivery

If you *are* asking the court for orders that will go into effect before the hearing or you are asking the court to order the other party to attend the hearing:

- Ask the court clerk to have the judicial officer sign the completed *Request for Order* and other forms and return them to you.
- Have someone else (who is at least 18) personally give the papers to the other party.
- After the person mails the forms, he or she should complete a *Proof of Service* (FL-330).
- You then file the completed *Proof of Service* with the clerk of the court before the hearing date.

For more information about giving notice, see the instructions on the *Proof of Service by Mail* (FL-335) or *Proof of Service* (FL-330).

If you need additional assistance, contact the family law facilitator or self help center in your county.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____												
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:													
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:													
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<input type="checkbox"/> Attorney Fees and Costs													

1. TO (name):
2. A hearing on this motion for the relief requested in the attached application will be held as follows:

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Rm.:
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b. Address of court same as noted above other (specify):

3. Supporting attachments:

- | | |
|--|---|
| a. Completed <i>Application for Order and Supporting Declaration</i> (form FL-310) and a blank Responsive Declaration (form FL-320)
b. <input type="checkbox"/> Completed <i>Income and Expense Declaration</i> (form FL-150) and a blank Income and Expense Declaration
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e. <input type="checkbox"/> Points and authorities
f. <input type="checkbox"/> Other (specify): |
|--|---|

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)

ORDER

4. Time for service hearing is shortened. Service must be on or before (date):
5. Any responsive declaration must be served on or before (date):
6. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed above. The parties are ordered to attend orientation and mandatory custody services as follows:

Date: _____

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent.

You do not have to pay any fee to file declarations in response to this *Notice of Motion* (including a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least nine court days before the hearing date. Add five calendar days if you serve by mail within California. (See Code of Civil Procedure 1005 for other situations.) To determine court and calendar days, go to www.courtinfo.ca.gov/selfhelp/courtcalendars/.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

7. PROOF OF SERVICE BY MAIL

a. I am at least age 18, **not a party to this action**, and am a resident or employed in the county where the mailing took place. My residence or business address is:

b. I served copies of the following documents by enclosing them in a sealed envelope with postage fully prepaid, depositing them in the United States mail as follows:

(1) Papers served:

- (a) *Notice of Motion* and a completed *Application for Order and Supporting Declaration* (form FL-310) **and** a blank *Responsive Declaration* (form FL-320)
- (b) Completed *Income and Expense Declaration* (form FL-150) **and** a blank *Income and Expense Declaration*
- (c) Completed *Financial Statement (Simplified)* (form FL-155) **and** a blank *Financial Statement (Simplified)*
- (d) Completed *Property Declaration* (form FL-160) **and** a blank *Property Declaration*
- (e) Points and authorities
- (f) Other (*specify*):

(2) Manner of service:

- (a) Date of deposit:
- (b) Place of deposit (*city and state*):
- (c) Addressed as follows:

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

Date:

REVOKE 11/12/2012

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8.)

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

TEMPORARY COURT ORDERS
Attachment to Request for Order (FL-300)

The court makes the following orders, which are effective immediately and until the hearing:

1. PROPERTY RESTRAINT
- a. Petitioner Respondent is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- The other party is to be notified of any proposed extraordinary expenditures, and an accounting of such is to be made to the court.
- b. Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor child or children.
- c. Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.

2. PROPERTY CONTROL
- a. Petitioner Respondent is given the exclusive temporary use, possession, and control of the following property that the parties own or are buying (*specify*):
- b. Petitioner Respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:
- | <u>Debt</u> | <u>Amount of payment</u> | <u>Pay to</u> |
|-------------|--------------------------|---------------|
| | | |

3. MINOR CHILDREN
- a. Petitioner Respondent will have the temporary physical custody, care, and control of the minor children of the parties subject to the other party's rights of visitation as follows:
- b. Petitioner Respondent must not remove the minor child or children of the parties
- (1) from the state of California.
- (2) from the following counties (*specify*):
- (3) other (*specify*):
- c. Child abduction prevention orders are attached (see form FL-341(B)).
- d. (1) Jurisdiction: This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (part 3 of the California Family Code, commencing with section 3400).
- (2) Notice and opportunity to be heard: The responding party was given notice and an opportunity to be heard as provided by the laws of the State of California.
- (3) Country of habitual residence: The country of habitual residence of the child or children is the United States of America other (*specify*):
- (4) **Penalties for violating this order: If you violate this order, you may be subject to civil or criminal penalties or both.**

4. OTHER ORDERS (*specify*):

Date: _____ JUDGE OF THE SUPERIOR COURT

5. The date of the court hearing is (*insert date when known*): _____

CLERK'S CERTIFICATE

[SEAL] I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: _____ Clerk, by _____, Deputy

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:	
<input type="checkbox"/> APPLICATION AND ORDER FOR REISSUANCE OF <input type="checkbox"/> ORDER TO SHOW CAUSE <input type="checkbox"/> REQUEST FOR ORDER	CASE NUMBER(S):

1. Applicant is (*name*):
2. Applicant requests the court to reissue the *Order to Show Cause* or *Request for Order* *and Temporary Restraining Order* originally issued as
 - a. *Order to Show Cause* *Request for Order* issued on (*date*):
 - b. *Order to Show Cause* *Request for Order* last set for hearing on (*date*):
 - c. *Order to Show Cause* *Request for Order* has been reissued previously (*number of times*):
3. Applicant requests reissuance of the order because:
 - a. Respondent/Defendant Petitioner/Plaintiff Other party could not be served as required before the hearing date.
 - b. The hearing was continued because the parties were referred to court mediator or family court services.
 - c. Other (*specify*):

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)

ORDER

4. IT IS ORDERED that the *Order to Show Cause* *Request for Order* issued as shown in item 2 above is reissued and reset for hearing in this court as follows:

Date:	Time:	Dept.:	Room:
at the street address of the court shown above.			

- a. A copy of this order must be attached to documents that must be served on the Respondent/Defendant Petitioner/Plaintiff Other party as directed in the *Order to Show Cause* or *Request for Order*
- b. All other orders contained in the *Order to Show Cause* *Request for Order* and *Temporary Restraining Order* remain in full force and effect unless modified by this order. **THE ORDER TO SHOW CAUSE REQUEST FOR ORDER AND THIS ORDER EXPIRE AT THE TIME OF THE HEARING SHOWN IN THE BOX ABOVE UNLESS EXTENDED BY THE COURT.**
- c. Other (*specify*):

Date: _____

 JUDICIAL OFFICER

Page 1 of 1

PETITIONER:	CASE NUMBER:
RESPONDENT:	

APPLICATION FOR ORDER AND SUPPORTING DECLARATION
—THIS IS NOT AN ORDER—

Petitioner Respondent Claimant requests the following orders:

1. CHILD CUSTODY To be ordered pending the hearing
- a. Child (name, age)
- b. Legal custody to
 (person who makes decisions about health, education, etc.) (name)
- c. Physical custody to
 (person with whom child lives.) (name)

- Modify existing order
 (1) filed on (date):
 (2) ordering (specify):

As requested in form FL-311 FL-312 FL-341(C) FL-341(D) FL-341(E)

2. CHILD VISITATION To be ordered pending the hearing

a. As requested in: (1) Attachment 2a (2) Form FL-311 (3) Other (specify):

- b. Modify existing order
 (1) filed on (date):
 (2) ordering (specify):

c. One or more domestic violence restraining/protective orders are now in effect. (Attach a copy of the orders if you have one.) The orders are from the following court or courts (specify county and state):

- (1) Criminal: County/state: _____ Case No. (if known): _____
- (2) Family: County/state: _____ Case No. (if known): _____
- (3) Juvenile: County/state: _____ Case No. (if known): _____
- (4) Other: County/state: _____ Case No. (if known): _____

3. CHILD SUPPORT (An earnings assignment order may be issued.)

a. Child (name, age) b. Monthly amount (if not by guideline)
 \$

- c. Modify existing order
 (1) filed on (date):
 (2) ordering (specify):

4. SPOUSAL OR PARTNER SUPPORT (An earnings assignment order may be issued.)

a. Amount requested (monthly): \$ c. Modify existing order
 (1) filed on (date):
 (2) ordering (specify):

b. Terminate existing order
 (1) filed on (date):
 (2) ordering (specify):

5. ATTORNEY FEES AND COSTS a. Fees: \$ b. Costs: \$

NOTE: To obtain domestic violence restraining orders, you must use the forms *Request for Order (Domestic Violence Prevention)* (form DV-100) and *Temporary Restraining Order and Notice of Hearing (Domestic Violence Prevention)* (form DV-110).

REVOKE 1/11/2012

PETITIONER:	CASE NUMBER:
RESPONDENT:	

6. PROPERTY RESTRAINT **To be ordered pending the hearing**
- a. The petitioner respondent claimant is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- The applicant will be notified at least five business days before any proposed extraordinary expenditures, and an accounting of such will be made to the court.
- b. Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor children.
- c. Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.
7. PROPERTY CONTROL **To be ordered pending the hearing**
- a. The petitioner respondent is given the exclusive temporary use, possession, and control of the following property that we own or are buying (*specify*):
- b. The petitioner respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:
- | <u>Debt</u> | <u>Amount of payment</u> | <u>Pay to</u> |
|-------------|--------------------------|---------------|
| | | |
8. **I request** that time for service of the *Order to Show Cause* and accompanying papers be shortened so that these documents may be served no less than (*specify number*): _____ days before the time set for the hearing. I need to have the order shortening time because of the facts specified in the attached declaration.
9. OTHER RELIEF (*specify*):
10. **FACTS IN SUPPORT** of relief requested and change of circumstances for any modification are (*specify*):
 contained in the attached declaration.

REVOKE 11/1/2012

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 APPLICANT)

PETITIONER: RESPONDENT:	CASE NUMBER:
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APPLICATION FOR SEPARATE TRIAL OR RESPONSE TO APPLICATION FOR SEPARATE TRIAL

Attachment to **Request for Order (form FL-300)** **Responsive Declaration to Request for Order (form FL-320)**

1. I am the petitioner respondent, and request oppose the request that the court sever (bifurcate) and grant an early and separate trial on the following issue or issues:

- a. Permanent custody and visitation of the children of the marriage
- b. Date of separation of the parties
- c. Alternate valuation date for property
- d. Validity of agreement entered into before or during the marriage or domestic partnership
- e. Dissolution of the status of the marriage or domestic partnership
 - (1) I will serve with this application or response my preliminary *Declaration of Disclosure* (form FL-140) and completed *Schedule of Assets and Debts* (form FL-142) and *Income and Expense Declaration* (FL-150) unless they have been previously served or the parties have stipulated in writing to defer service.
 - (2) All pension or retirement plans in which the community has an interest are listed below or on attachment 1e(2):

(3) All pension or retirement plans listed in 1e(2) have been joined as a party to this proceeding, unless joinder is precluded or made unnecessary as a matter of law. (See Retirement Plan Joinder—Information Sheet (form FL-318-INFO) to determine if a joinder is required.)

(4) I understand that the court may make the orders specified or requested on pages 2 and 3 if the motion is granted to bifurcate the status of the marriage and the marriage is ended.

(5) I request that the court make the orders indicated on pages 2 and 3 and any attachments.

NOTE: A request for an early termination of your marital or partnership status may have a significant impact on your rights or responsibilities in your case. If you do not understand this form, you should speak with an attorney.

f. Other (specify):

2. a. I request that the court conduct this separate trial on the hearing date.

b. I will, at the hearing, ask the court to set a date for this separate trial.

3. The reasons in support of this request are (specify):

Memorandum attached. Supporting declarations attached.

PETITIONER: RESPONDENT:	CASE NUMBER:
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4. Conditions relating to bifurcation of the status of the marriage or partnership:

- a. I understand that the court must enter an order to preserve the claims of each spouse or domestic partner in all retirement plan benefits upon entry of judgment granting a dissolution of the status of the marriage or domestic partnership.
- b. I request that the court order the following as a condition of granting the bifurcation and ending the marriage upon an early and separate trial:

(1) **Division of property**

The petitioner respondent and his or her estate must indemnify and hold me harmless from any taxes, reassessments, interest, and penalties that I have to pay in connection with the division of the community estate that I would not have had to pay if we were still married or in a domestic partnership at the time the division was made.

(2) **Health insurance**

Until a judgment has been entered and filed on the remaining issues, the petitioner respondent must maintain all existing health and medical insurance coverage for me and any minor children as named dependents as long as he or she is eligible to do so. If at any time during this period, he or she is not eligible to maintain that coverage, he or she must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

To the extent that coverage is not available, the petitioner respondent must be responsible to pay, and demonstrate to the court's satisfaction the ability to pay, for health and medical care for me and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and must otherwise indemnify and hold me harmless from any adverse consequences resulting from the loss or reduction of the existing coverage.

(3) **Probate homestead**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in a termination of my right to a probate homestead in the residence in which I am residing at the time the severance is granted.

(4) **Probate family allowance**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my right to a probate family allowance as the surviving spouse or surviving domestic partner.

(5) **Retirement benefits**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated those benefits, to the extent that I would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner.

(6) **Social security benefits**

The petitioner respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent that I would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner.

PETITIONER: RESPONDENT:	CASE NUMBER:
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(7) **Beneficiary designation—nonprobate transfer**

The petitioner respondent must maintain the beneficiary designation specified for each Nonprobate Transfer Asset (Probate Code section 5000) identified on the attached list in the percentage indicated. *(See Attachment 7 (not a form), which lists each asset and proposed percentage.)* This designation must stay in effect until judgment has been entered with respect to the community ownership of that asset and until my interest in it has been distributed to me.

(8) **Individual Retirement Accounts**

To preserve the ability of the nonowner to defer the distribution of an Individual Retirement Account (IRA) or annuity upon the death of the owner, the court should make the attached orders assigning and transferring the community interest of petitioner respondent in each listed IRA to that party. *(See Attachment 8 (not a form), which lists names of IRAs, account numbers, and amount to be awarded.)*

(9) **Enforcement of community property rights**

Because it will be difficult to enforce either of our community property rights if one of us dies before the division and distribution or compliance with any court-ordered payment of any community property interest, the court should make the attached order to provide enforcement security for petitioner respondent. *(See attachment 9 (not a form), which specifies the security interest to be ordered as provided by Family Code section 2337(c)(9).)*

(10) **Other conditions that are just and equitable**

The court makes the following additional orders:

5. Number of pages attached after this page: _____

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)

CASE NAME:	CASE NUMBER:
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Attachment to Request for Order (FL-300) Responsive Declaration (FL-320) Other (specify):

WITNESS LIST

Petitioner Respondent intends to call the following witnesses to testify at the time of hearing or trial

Name	Relationship/Profession	Contact Information <i>(optional)</i>	Subject of Testimony and What Witness Will Say

PETITIONER:	CASE NUMBER:
RESPONDENT:	

BIFURCATION OF STATUS OF MARRIAGE OR DOMESTIC PARTNERSHIP

ATTACHMENT TO JUDGMENT (FL-180) FINDINGS AND ORDER AFTER HEARING (FL-340)

The court grants the request of petitioner respondent, to bifurcate and grant a separate trial on the issue of the dissolution of the status of the marriage or domestic partnership with petitioner respondent, apart from other issues.

Date marital or domestic partnership status ends (specify):

THE COURT FINDS

1. A preliminary declaration of disclosure with a completed schedule of assets and debts and income and expense declaration has been served on the nonmoving party, or the parties have stipulated in writing to defer service of the preliminary declaration of disclosure until a later time.
2. Each retirement or pension plan of the parties has been joined as a party to the proceeding for dissolution unless joinder is precluded or made unnecessary by applicable law.

THE COURT ORDERS:

3. a. To preserve the claims of each party in all retirement plan benefits on entry of judgment granting a dissolution of the status of the marriage or domestic partnership, the court makes one of the following orders for each retirement plan in which either party is a participant:
 - (1) A final domestic relations order or qualified domestic relations order under Family Code section 2610 disposing of each party's interest in retirement plan benefits, including survivor and death benefits.
 - (2) An interim order preserving the nonemployee party's right to retirement plan benefits, including survivor and death benefits, pending entry of judgment on all remaining issues.
 - (3) A provisional order on *Pension Benefits—Attachment to Judgment* (form FL-348) incorporated as an attachment to the judgment of dissolution of the status of marriage or domestic partnership (*Judgment (Family Law)* form FL-180). This order provisionally awards to each party a one-half interest in all retirement benefits attributable to employment during the marriage or domestic partnership.

b. Name of plan:	Type of order attached		
	3a(1)	3a(2)	3a(3)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

See attachment 3b for additional plans.

- c. The moving party must promptly serve on the retirement or pension plan administrator a copy of any order entered under item a and b above and a copy of the judgment granting dissolution of the status of the marriage or domestic partnership (form FL-180).
4. Jurisdiction is reserved for later determination of all other pending issues in this case.
5. The court makes the following additional orders as conditions for granting the severance on the issue of dissolution of the status of marriage or domestic partnership. In the case of the moving party's death, the order continues to be binding on that moving party's estate and will be enforceable against any asset, including the proceeds thereof, to the same extent that these obligations would have been enforceable before the person's death.

a. **Division of property**

The petitioner respondent must indemnify and hold the other party harmless from any taxes, reassessments, interest, and penalties payable by the other party in connection with the division of the community estate that would not have been payable if the parties were still married or domestic partners at the time the division was made.

PETITIONER: RESPONDENT:	CASE NUMBER:
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5. b. **Health insurance**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must maintain all existing health and medical insurance coverage for the other party, and that party must also maintain any minor children as named dependents, as long as that party is eligible to do so. If at any time during this period the petitioner respondent is not eligible to maintain that coverage, that party must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

If that coverage is not available, the petitioner respondent is responsible for paying the health and medical care for the other party and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and will otherwise indemnify and hold the other party harmless from any adverse consequences resulting from the loss or reduction of the existing coverage. "Health and medical insurance coverage" includes any coverage under any group or individual health or other medical plan, fund, policy, or program.

c. **Probate homestead**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

d. **Probate family allowance**

Until a judgment has been entered and filed on all remaining issues, the petitioner respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse or surviving domestic partner.

e. **Retirement benefits**

Except for any retirement plan, fund, or arrangement identified in any order issued and attached as set out in paragraph 3, until a judgment has been entered on all remaining issues, the petitioner respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the other party's rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated with them, to the extent that the other party would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner of the moving party.

f. **Social security benefits**

The moving party must indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner of the moving party.

g. **Beneficiary designation— Nonprobate transfer**

Attachment 5(g), Order Re: Beneficiary Designation for Non-Probate Transfer Assets, will remain in effect for each covered asset until the division of any community interest therein has been completed.

h. **Individual Retirement Account**

Attachment 5(h), Order Re: Division of IRA Under Internal Revenue Code section 408(d)(6), has been issued to preserve the ability of petitioner respondent to defer distribution of his or her community interest on the death of the IRA owner.

PETITIONER: RESPONDENT:	CASE NUMBER:
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5. i. **Enforcement of community property rights**

Good cause exists to make additional orders as set out in Family Code section 2337(c)(9). See Attachment 5(i).

j. **Other conditions that are just and equitable**

Other:

6. Number of attachments: _____

WARNING: *Judgment (Family Law)* (form FL-180) (status only) must be completed in addition to this form for the status of the marriage or domestic partnership to be ended.

Item SPR11-38 Response Form

Title: **Family Law: Request for Order in Lieu of Notice of Motion or Order to Show Cause and Witness List for Use in Family Law Proceedings** (adopt Cal. Rules of Court, rule 5.92; revise forms FL-300, FL-305, FL-306, FL-315, and FL-347; adopt FL-300-INFO and FL- 321; revoke FL-301 and FL-310)

- 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.