

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-46

Title	Action Requested
Family Law: Family Centered Case Resolution	Review and submit comments by June 20, 2011

Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt rule 5.83; approve new form <i>Case Information</i> (FL-172), and	January 1, 2012

Family Centered Case Resolution Order (FL-174)

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Proposed by
Family and Juvenile Law Advisory
Committee
Hon. Kimberley 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 Task Force was charged with studying and proposing measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for family law litigants.

The Elkins Family Law Task Force's *Final Report and Recommendations*, which was accepted by the Judicial Council on April 23, 2010, contained recommendations regarding the need for courts to employ efficient and effective caseflow management procedures to ensure timely resolution of family law cases, many of which involve self-represented parties¹ (recommendation number 1A, page 20). Chief among the recommendations for caseflow

¹ The Final Report of the Task Force may be found at <http://www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf>

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management procedures is the establishment of a set of procedural reviews at which the status of the case can be identified and the next steps required to reach disposition determined. These reviews can allow the court and the parties the opportunity to identify issues that often create delay, confusion, and frustration, particularly for self-represented parties. The *Final Report and Recommendations* also sets out recommended time standards for the disposition of family law cases. It is not unusual for family law cases to linger in court for years. Many litigants who have default or uncontested matters simply do not know that they need to obtain a judgment or other final determination regarding the status of their marriage or domestic partnership. Some remarry in the mistaken belief that their divorce was finalized automatically six months after filing. Courts cannot manage limited resources efficiently without the ability to manage the flow and the pace of cases. Judicial officers in family law should have the same authority to work with the parties to develop case management plans that judicial officers have in other types of civil cases. The *Final Report and Recommendations* highlighted the fact that Family Code section 2451 prohibited judicial officers from ordering a case management plan in family law absent the stipulation of the parties and recommended that the Legislature take appropriate action to eliminate the requirement of a stipulation from that section to allow courts greater flexibility in handling family law cases.

After the Judicial Council's acceptance of the *Final Report and Recommendations*, Assembly Bill 939 (Assem. Com. on Judiciary) [Stats. 2010, ch. 352] amended Family Code sections 2450 and 2451 to allow a judicial officer to order a family centered case resolution plan for management of a case in family law without a stipulation from the parties. Family centered case resolution plans are intended to assist parties to expedite the processing of their cases, reduce the expense of litigation, and focus on resolution by early settlement. Amended Family Code section 2451 sets out some of the types of family centered case resolution orders that may be made as part of the plan. Section 2451 also requires the Judicial Council to adopt a statewide rule of court by January 1, 2012, to implement family centered case resolution. This proposal is designed to address that legislative mandate.

Proposed rule 5.83 sets out a framework through which courts can develop effective processes and procedures to ensure that family law cases reach fair and timely dispositions. The proposed rule refers to this framework as "family centered case resolution." Subsection (c) of the rule would require each court to develop a family centered case resolution process designed to ensure that dissolution, legal separation, nullity, and parentage cases are moving forward from initiation through final disposition in a timely, fair, and effective manner.

The proposed rule allows the courts maximum flexibility in the design of the family centered case resolution process. Cases filed on or after January 1, 2012, must be reviewed no later than six months after initiation and at least twice a year thereafter until final disposition. However, the ways in which the reviews take place may vary. For example, some courts might elect to

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schedule all cases without a final disposition for review by status conference. Others might determine that certain cases are successfully meeting procedural milestones and moving toward final disposition without the need of court intervention. For more complex cases, courts may decide to implement a family centered case resolution plan as set out in Family Code section 2451. If, upon review, the court determines that a case is not meeting expected procedural milestones, a status conference or family centered case resolution conference must be scheduled so that appropriate assistance specific to the needs of the case can be provided. The proposed rule sets forth a list of substantive and procedural factors that courts may consider when determining whether a case is moving forward as expected and allows the court to consider other factors in deciding to set a status conference or a family centered case resolution conference.

A status conference is a court event scheduled with the parties for the purpose of determining the status of the case and the next best steps required to move toward disposition. Assistance in moving a case forward can be provided in a variety of ways; the proposed rule provides a list of the types of assistance that a court might choose to provide. The family centered case resolution conference is intended for more complex cases and differs from the status conference in that it is a meeting that must include a judicial officer and the parties. Its goal is to implement a family centered case resolution plan under Family Code section 2451. The proposed rule refers to Family Code sections 2450(b) and 2451 for a description of the types of orders that can be made as part of the family centered case resolution plan. If alternative dispute resolution services are to be part of the plan, participation must be voluntary by the parties, and if domestic violence is involved, separate sessions must be provided.

The *Final Report and Recommendations* recognized that effective caseload management begins at the initiation of a case and recommended that certain kinds of helpful information be provided to litigants at the start of the process. The proposed rule sets out information that must be provided to a litigant at the time he or she files the first papers in a case, such as a written description about how cases progress through the court, lists of local resources, instructions about keeping the court informed of current contact information, and information for self-represented litigants about services at the family law facilitator office or court self-help center. A family law information sheet designed to assist the court in meeting these general requirements has been developed in a separate proposal that is being circulated for comment.

The new form *Case Information–Family Law* (FL-172) is intended for court use only. Its purpose is to facilitate case file review and provide judicial officers with a quick reference to general information about the case. It contains statistical information that does not tend to change during the case, such as dates of marriage and separation and children’s names and dates of birth. Procedural items on the form require updating before court events such as a family centered case

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resolution conference. Examples of items that would need updating by the court are the list of related cases and whether or not a default has been entered.

The *Family Centered Case Resolution Order* (form FL-174) is optional and is intended to be completed by the parties or by the court and signed by a judicial officer. This form will provide the parties and the court with a written record of decisions made during the family centered case resolution conferences. The form will allow a judicial officer to easily review the family centered case resolution planning process throughout the case. It also makes the information easily accessible to the litigants and their attorneys. A written record of decisions made at the family centered case resolution conference will facilitate future case management planning and minimize disputes over previous decisions.

Attachments

1. Cal. Rules of Court, rule 5.83, at pages 5–10
2. Forms FL-172 and FL-173, at pages 11–15

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California Rules of Court, rule 5.83 would be adopted effective January 1, 2012 to read:

1 **Rule 5.83 Family Centered Case Resolution**
2

3 **(a) Purpose**
4

5 This rule establishes processes and procedures for courts to manage cases
6 from initial filing to final disposition in an effective and timely manner. It is
7 intended to advance the goals of Family Code section 2450(a) and Standards
8 of Judicial Administration, standard 5.30.
9

10 **(b) Definitions**
11

12 (1) “Family centered case resolution process” refers to the process
13 employed by the court to ensure that family law cases move through
14 the court process from filing to final disposition in a timely, fair, and
15 effective manner.
16

17 (2) “Disposition” refers to final judgment on all issues, dismissal, change
18 of venue, or consolidation of the case into a lead case. It does not
19 include judgments terminating marital status only.
20

21 (3) “Status conference” refers to court events scheduled with the parties
22 and attorneys for the purpose of identifying the current status of the
23 case and determining the next steps required to reach disposition.
24

25 (4) “Family centered case resolution conference” refers to a meeting
26 scheduled with parties, attorneys, and a judicial officer to develop and
27 implement a family centered case resolution plan under Family Code
28 section 2451.
29

30 **(c) Family centered case resolution process**
31

32 (1) Courts must implement a family centered case resolution process to
33 identify and assist all dissolution, legal separation, nullity, and
34 parentage cases to progress through the court process toward
35 disposition effectively in a timely manner. The court may identify
36 other family law case types and cases to include in the family centered
37 case resolution process.
38

39 (2) For cases filed on or after January 1, 2012, the court must include as
40 part of the family centered case resolution process a review of all
41 dissolution, legal separation, nullity, and parentage cases within 180
42 days from the date of the initial filing and at a minimum, at least every

1 180 days thereafter until disposition in order to determine the most
2 appropriate next steps to help ensure an effective, fair and timely
3 resolution. Unless the court determines that procedural milestones are
4 being met, the review must include at least one of the following: (1) a
5 status conference or; (2) a family centered case resolution conference.
6 Nothing in this section prohibits courts from setting more frequent
7 review dates.

8
9 (3) If, after 18 months from the date the petition was filed, both parties
10 have failed to participate in the case resolution process as determined
11 by the court, the court's obligation for further review of the case is
12 relieved until the case qualifies for dismissal under Code of Civil
13 Procedure section 583.210 or 583.310, or until the parties reactivate
14 participation in the case, and the case is not counted toward the goals
15 for disposition set out in (c)(5).

16
17 (4) In deciding whether a case is progressing in an effective and timely
18 manner, the court should consider procedural milestones including the
19 following:

20
21 (A) A proof of service of summons and petition should be filed within
22 60 days of case initiation;

23
24 (B) If no response has been filed, and the parties have not agreed on
25 an extension of time to respond, a request to enter default should
26 be submitted within 60 days after the date the response was due;

27
28 (C) The preliminary declaration of disclosure should be served within
29 60 days of the filing of the petition;

30
31 (D) When a default has been entered, a judgment should be submitted
32 within 60 days of the entry of default;

33
34 (E) Whether a trial date has been scheduled; and

35
36 (F) When the parties have notified the court that they are actively
37 negotiating or mediating their case, a written agreement for
38 judgment is submitted within six months of the date the petition
39 was filed, or a request for trial date is submitted.

40
41 (5) For dissolution, legal separation, and nullity cases initially filed on or
42 after January 1, 2012, the goals of any family centered case resolution
43 process should be to finalize dispositions as follows:

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- (A) At least 20 percent are disposed within 6 months from the date the petition was filed;
- (B) At least 75 percent are disposed within 12 months from the date the petition was filed; and
- (C) At least 90 percent are disposed within 18 months from the date the petition was filed.

(6) The court may select various procedural milestones at which to assist cases in moving toward disposition in an effective and timely manner. Types of assistance that can be provided include following:

- (A) Notifying the parties and attorneys by mail, telephone, email, or other electronic method of communication of the current status of the case and the next steps required to reach disposition.
- (B) Implementing a schedule of status conferences for cases to identify the status of the case and determine the next steps required to progress toward disposition;
- (C) Providing assistance to the parties at the time scheduled for hearings on requests for orders to identify the status of the case and determine the next steps required to reach disposition;
- (D) Providing financial and property settlement opportunities to the parties and their attorneys with judicial officers or qualified attorney settlement officers;
- (E) Scheduling a family centered case resolution conference to develop and implement a family centered case resolution plan under Family Code section 2451.

(7) In deciding that a case requires a family centered case resolution conference, the court should consider, in addition to procedural milestones, factors including the following:

- (A) Difficulty in locating and serving the respondent;
- (B) Complexity of issues;
- (C) Nature and extent of anticipated discovery;

- 1
2 (D) Number and locations of percipient and expert witnesses;
3
4 (E) Estimated length of trial;
5
6 (F) Statutory priority for issues such as custody and visitation of
7 minor children;
8
9 (G) Extent of property and support issues in controversy;
10
11 (H) Existence of issues of domestic violence, child abuse, or
12 substance abuse;
13
14 (I) Whether some or all issues can be arbitrated or resolved through
15 other alternative dispute resolution processes;
16
17 (I) Pendency of other actions or proceedings that may affect the case;
18
19 (J) Likelihood of review by writ or appeal; and
20
21 (K) Any other factor that would affect the time for disposition.

22
23 **(d) Family centered case resolution conferences**
24

- 25 (1) The court may hold an initial family centered case resolution
26 conference to develop a specific case resolution plan. The conference is
27 not intended to be either an evidentiary hearing or a settlement
28 conference.
29
30 (2) Family centered case resolution conferences must be heard by a judicial
31 officer. On the court’s initiative or at the request of the parties, to
32 enhance access to the court, the conference may be held in person, by
33 telephone, by videoconferencing, or by other appropriate means of
34 communication.
35
36 (3) At the conference, counsel for each party and each self-represented
37 litigant must be familiar with the case and must be prepared to discuss
38 the party’s positions on the issues.
39
40 (4) With the exception of mandatory child custody mediation, before
41 alternative dispute resolution (ADR) is included in a family centered
42 case resolution plan under Family Code section 2451(a)(2), the court
43 must inform the parties that their participation in ADR services offered

1 by the court is voluntary and that ADR services can be part of a plan
2 only if both parties voluntarily opt to use these services. Additionally,
3 the court must:

4
5 (A) Inform the parties that ADR may not be appropriate in cases
6 involving domestic violence and provide information about
7 separate sessions, and

8
9 (B) Ensure that all court-connected providers of ADR services that
10 are part of a family centered case resolution plan have been
11 trained in assessing and handling cases that may involve domestic
12 violence.

13
14 (5) Nothing in this rule prohibits an employee of the court from reviewing
15 the file and notifying the parties of any deficiencies in their paperwork
16 before the parties appear in front of a judicial officer at a family
17 centered case resolution conference. This type of assistance can occur
18 by telephone, in person, or in writing, on or before each scheduled
19 family centered case resolution conference. However, this type of
20 procedural assistance is not intended to replace family centered case
21 resolution plan management or to create a barrier to litigants' access to
22 a judicial officer.

23
24 **(e) Family centered case resolution plan order**

25
26 (1) Family centered case resolution plans as ordered by the court must
27 comply with Family Code sections 2450(b) and 2451.

28
29 (2) The family centered case resolution plan order should set a schedule for
30 subsequent family centered case resolution conferences and otherwise
31 provide for management of the case.

32
33 **(f) Family centered case resolution order without appearance**

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35 If the court determines that appearances at a family centered case resolution
36 conference are not necessary, the court may notify the parties and, if
37 stipulated, issue a family centered case resolution order without an
38 appearance at a conference.

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40 **(g) Family centered case resolution information**

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(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following:

(A) Written information summarizing the process of a case through disposition;

(B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities and domestic violence services;

(C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address;

(D) Information for self represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and

(E) Information for litigants on how to request a status conference or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

(THIS FORM IS FOR COURT USE ONLY)

FL-172

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>	<p style="text-align: right;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt;">DRAFT</p> <p style="text-align: center;">Not approved by the Judicial Council</p>
<p>PETITIONER/PLAINTIFF:</p> <p>RESPONDENT/DEFENDANT:</p>	
<p>CASE INFORMATION - FAMILY LAW</p>	<p>CASE NUMBER:</p>

1. **ASSIGNMENT**—Case assigned to:

2. **PETITION**

The petition for dissolution of marriage/registered domestic partnership (RDP) legal separation
 nullity parentage other(*specify*): _____ was filed on (*date*): _____

3. **STATISTICAL DATA**

- a. Date of marriage/RDP: _____
- b. There is a dispute about the length of the marriage.
Date of separation on the petition: _____ on the Response (*if different*): _____
Length of marriage/RDP: _____
- c. Language: Petitioner: _____ Respondent: _____

4. **CHILDREN**

<u>Name of child or children</u>	<u>Birthdate</u>	<u>Age</u>	<u>Gender</u>
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Additional children listed on Attachment 3.

5. **RELATED CASES**

- a. One or both of the parties, or a child or children of the parties, have been involved in other related court cases. (*List county or district and case number, if known*): _____
- b. Custody/parenting time for the children of this case: _____
- c. Juvenile delinquency: _____
- d. Juvenile dependency: _____
- e. Domestic violence/protective order: _____
- f. Bankruptcy: _____
- g. Criminal (*only if reasonably related to the issues of this case*): _____
- h. Other: _____

6. Judgment terminating status has been entered

- a. Date of Termination: _____
- b. Date Status Judgment Entered: _____

PETITIONER: RESPONDENT:	CASE NUMBER:
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7. SERVICE AND RESPONSE

- a. Respondent **was served** with the petition on *(date)*: _____, by *(method)*:
 personal service substituted service publication notice/acknowledgement of receipt
 other *(specify)*: _____
- b. Respondent **has not been** served with the petition.
- c. Respondent **filed a response** on *(date)*: _____
- d. Respondent **has not filed a response** with the court.
- e. Default has been entered against respondent.

8. DISCLOSURE

- a. Petitioner's Respondent's FC 2107 request granted.
- b. Service of declarations of disclosure has been completed by:
- | | | |
|--|-------------------------------------|-------------------------------------|
| (1) <u>Preliminary</u> | <input type="checkbox"/> Petitioner | <input type="checkbox"/> Respondent |
| (2) <u>Final</u> | <input type="checkbox"/> Petitioner | <input type="checkbox"/> Respondent |
| (3) <u>Filed Declaration re Service (FL-141)</u> | <input type="checkbox"/> Petitioner | <input type="checkbox"/> Respondent |

9. PROTECTIVE ORDERS

- The parties have a restraining order that expires on *(date)*: _____
- a. Protected party *(name)*: _____
- b. Children are included as protected persons.

10. DEPARTMENT OF CHILD SUPPORT SERVICES

- a. The Department of Child Support Services has a separate case open.
- b. The Department of Child Support Services has intervened in this case.

11. RELATED CASES

- a. The parties have participated in child custody/parenting time mediation.
- b. An agreement has been reached.
- c. Counsel has been appointed to represent the minor child or children.
- d. A child custody evaluation has been ordered. report has been filed.

12. EXPERTS

The following experts have been appointed *(include issues)*: _____

13. OTHER

PETITIONER:	CASE NUMBER:
RESPONDENT:	

4. Declaration of disclosure

- a. Petitioner must serve the other party with the *Preliminary Declaration of Disclosure* and the *Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration* (form FL-141) by (date):
- b. Respondent must serve the other party with the *Preliminary Declaration of Disclosure* and the *Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration* (form FL-141) by (date):
- c. The parties must submit *Declaration Regarding Service of Final Declaration of Disclosure* (form FL-141) or a waiver by (date):

5. Income and expense declarations

- a. Petitioner must serve and file a current *Income and Expense Declaration* by (date):
- b. Respondent must serve and file a current *Income and Expense Declaration* by (date):

6. Other discovery

- a. Discovery is completed.
- b. Discovery is suspended pending settlement discussions or other alternative dispute resolution services.
- c. The parties must complete the following discovery as follows:

<u>Party</u>	<u>Description</u>	<u>By (Date)</u>
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7. Experts

- a. Pursuant to agreement of the parties, experts will be as follows:

<u>Name</u>	<u>To address the issue of</u>
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- b. Pursuant to agreement of the parties, the experts will be paid as follows:

PETITIONER: RESPONDENT:	CASE NUMBER:
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8. Trial Setting

- a. A trial is set for *(date)*:
- b. A mandatory settlement conference is set for *(date)*:
- c. Other orders related to trial setting:

9. Other Family Centered Case Resolution Orders:

9. Total number of pages attached *(if any)*: _____

Date: _____

JUDGE OF THE SUPERIOR COURT

Item SPR11-46 Response Form

Title: Family and Juvenile Rules: Family Centered Case Management Rule and Forms (adopt rule 5.83; approve forms FL-172 and FL-174)

- 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

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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.