

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR12-17

Title	Action Requested
Family Law: Amend Forms for Dissolution of Domestic Partnership or Marriage to Correct Substantive Omissions and Other Issues	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms FL-103 and FL-123	January 1, 2013
Proposed by	Contact
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Executive Summary and Origin

Family law practitioners have indicated that forms FL-103 and FL-123 contain substantive omissions and formatting errors which make them unusable by some parties for whom the forms were intended. The Family and Juvenile Law Advisory propose correcting the forms so that they are consistent with their stated purpose.

Background

To implement the mandates of Assembly Bill 2700, the Judicial Council, effective January 1, 2012, revised *Petition—Domestic Partnership* (form FL-103) and *Response—Domestic Partnership* (form FL-123). Following the posting of the revised forms to the California Courts website, family law practitioners identified areas on the forms that require revision.

Forms FL-103 and FL-123 are intended to serve multiple purposes. Item 6 on form FL-103 and item 8 on form FL-123 allow the respective petitioner and respondent to request any of the following: (1) dissolution of a marriage or domestic partnership, (2) legal separation of a marriage or domestic partnership, or (3) nullity of a void or voidable marriage or domestic partnership. Under Family Code section 2010, the forms can also be used by married persons of the same sex who are not California residents but were married in California and currently reside in a state or nation that will not dissolve their marriage.

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 These proposals are circulated for comment purposes only.

Prior Circulation

In Spring 2011, a proposal circulated to revise *Petition—Domestic Partnership* (form FL-103) and *Response—Domestic Partnership* (form FL-123) to allow parties to request dissolution, legal separation, or nullity of both their domestic partnership and their marriage in a single court proceeding by checking two boxes on a form instead of filing two separate actions, paying two filing fees, and unnecessarily burdening themselves and wasting judicial resources.

With the passage of Senate Bill 651 on October 9, 2011, forms FL-103 and FL-123 were circulated for a second time in 2011 in an expedited cycle to ensure that they reflected recent amendments to Family Code section 2320. Effective January 1, 2012, Family Code section 2320 authorized a judgment for dissolution, nullity, or legal separation of a marriage between persons of the same sex to be issued in California if the marriage was entered in California and neither party to the marriage resides in a jurisdiction that will dissolve the marriage. It provided that the superior court in the county where the marriage was entered is the proper court for the proceeding. The forms were further revised to include this statutory language and were adopted by the Judicial Council, effective January 1, 2012.

The Proposal

Family law practitioners have indicated that forms FL-103 and FL-123 contain formatting issues and substantive omissions inconsistent with their stated purposes. The caption areas on both pages of both forms include only the term domestic partnership and not marriage, for example, while the lack of check boxes next to the statistical facts of a domestic partnership in item 1 presumes in effect that every party has a domestic partnership, causing confusion for a party who wants to dissolve a marriage and has never registered a domestic partnership. Further, neither form's item 2 offers a place for a party to indicate that they meet the residency requirements for a marriage that was established in California or in a place outside of California, even though it recognizes and will dissolve the same sex marriage.

The corrections are urgently needed to conform FL-103 and FL-123 to the law relating to dissolutions of domestic partnerships, same sex marriages, and marriages between a man and a woman who also wish to dissolve their domestic partnership. The changes include:

- Revising the caption area and item 1 of both forms to allow parties to choose whether the action relates to a domestic partnership or a marriage or both;
- Revising item 2 on both forms to include all types of cases covered; and
- Modifying the language in item 2c to refer specifically to married persons of the same sex and to married persons of the opposite sex who also have a domestic partnership. This change will allow the forms to be used by all persons eligible to become domestic partners under Family Code section 297 (including persons of the same sex and persons of the opposite sex who meet the eligibility criteria.)¹

¹ Family Code section 297(b) establishes the eligibility criteria to establish a domestic partnership. Among those, section (b)(5) requires either of the following: (A) that both persons be members of the same sex or (B) one or both

- Revising item 4 on both forms to require the parties to attach a separate property declaration instead of listing the property on the form itself. This change is needed to accommodate the additional space taken by the proposed changes to item 2.

These changes will eliminate the possibility of parties or their counsel filing two separate petitions to dissolve a marriage and a domestic partnership. It will also eliminate confusion for court clerks who file the petitions and avoid the need to refund filing fees.

Alternatives Considered

The advisory committee considered including the changes in a technical report to the council. After further consideration of the number of substantive changes required to revise the forms, the committee concluded that the proposal would not fall within the Judicial Council's purview to adopt a proposal without circulation under rule 10.22(d)(2) of the California Rules of Court, as the proposed changes do not involve purely technical changes. In addition, education, training, or guidelines would not be sufficient to correct the substantive omissions on the forms identified in this proposal.

The committee considered deferring the action but recommends making the required changes now to simplify the situation for litigants and court clerks. Litigants are currently faced with filing separate cases or hand-marking forms to indicate a request to dissolve both a marriage and a domestic partnership. Court clerks are currently faced with spending additional time reviewing and filing the hand-marked forms or consolidating separately filed cases and refunding filing fees.

Implementation Requirements, Costs, and Operational Impacts

There will be minimal costs for implementing the revised forms for courts that provide blank copies of forms or forms packets to court users. Initial costs should be offset by savings achieved through more efficient case processing once the forms are implemented and in use.

persons meet the eligibility criteria under the Social Security Act in 42 U.S.C. Section 1381 for aged individuals. Section 297(b)(5)(B) further provides that persons of the opposite sexes may not establish a domestic partnership unless one or both of the persons are over the age of 62.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the language in item 4 on forms FL-103 and FL-123 sufficiently convey to litigants the information that must be included in the separate property attachment?
- If the language in item 4 is not sufficient, please provide alternative language that will help users understand what information is required to be included in a separate property attachment.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

The two proposed revised forms are attached at pages 5–8.

Assembly Bill 939 (Stats. 2010, ch. 352) http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_939_bill_20100927_chaptered.pdf

Petitioner: _____	CASE NUMBER: _____
Respondent: _____	

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. There are no such assets or debts subject to disposition by the court in this proceeding.
- b. All such assets and debts are listed in *Property Declaration* (form FL-160) in Attachment 5b
 below (*specify*):

6. Petitioner requests

- a. dissolution of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- b. legal separation of the domestic partnership marriage based on
 - (1) irreconcilable differences. (Fam. Code, § 2310(a).)
 - (2) incurable insanity. (Fam. Code, § 2310(b).)
- c. nullity of void domestic partnership marriage based on
 - (1) incest. (Fam. Code, § 2200.)
 - (2) bigamy. (Fam. Code, § 2201.)
- d. nullity of voidable domestic partnership marriage based on
 - (1) petitioner's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).)
 - (2) prior existing marriage or domestic partnership. (Fam. Code, § 2210(b).)
 - (3) unsound mind. (Fam. Code, § 2210(c).)
 - (4) fraud. (Fam. Code, § 2210(d).)
 - (5) force. (Fam. Code, § 2210(e).)
 - (6) physical incapacity. (Fam. Code, § 2210(f).)

7. Petitioner requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Physical custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child visitation granted to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As requested in form: <input type="checkbox"/> FL-311 <input type="checkbox"/> FL-312 <input type="checkbox"/> FL-341(C) <input type="checkbox"/> FL-341(D) <input type="checkbox"/> FL-341(E) <input type="checkbox"/> Attachment 9c.				
d. <input type="checkbox"/> Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage.				
e. Attorney fees and costs payable by	<input type="checkbox"/>	<input type="checkbox"/>		
f. Partner or spousal support payable to	<input type="checkbox"/>	<input type="checkbox"/>		
g. <input type="checkbox"/> Terminate the court's jurisdiction (ability) to award partner or spousal support to respondent.				
h. <input type="checkbox"/> Determine property rights.				
i. <input type="checkbox"/> Restore petitioner's former name (<i>specify</i>):				
j. <input type="checkbox"/> Other (<i>specify</i>):				

Continued on Attachment 7j.

8. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children on request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

9. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

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)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

▶ _____
(SIGNATURE OF ATTORNEY FOR PETITIONER)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your partner or spouse or a court order (see Fam. Code, §§ 231–235).

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 DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> DOMESTIC PARTNERSHIP OF <input type="checkbox"/> MARRIAGE OF PETITIONER: RESPONDENT:	
RESPONSE <input type="checkbox"/> and REQUEST FOR <input type="checkbox"/> AMENDED <input type="checkbox"/> Dissolution of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Legal Separation of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage <input type="checkbox"/> Nullity of <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Marriage	CASE NUMBER:

1. STATISTICAL FACTS

- a. (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent: _____
- (2) Time from date of registration of domestic partnership to date of separation *(specify)*: _____ Years _____ Months
- (3) Date of separation: _____
- b. (1) Date of marriage: _____ (3) Date of separation: _____
- (2) Time from date of marriage to date of separation *(specify)*: _____ Years _____ Months

2. RESIDENCE *(check all that apply):*

- a. Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
- b. Our domestic partnership was established in a place other than California. Petitioner Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition*.
- c. We are the same sex and are married. We are the opposite sex and are married. We are also domestic partners. Petitioner Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition*.
- d. We are the same sex and were married in California but are not residents of California. Neither of us lives in a state or nation that will dissolve the marriage. This case is filed in the county in which we married.
 Petitioner's residence *(state or nation)*: _____ Respondent's residence *(state or nation)*: _____

3. DECLARATION REGARDING MINOR CHILDREN *(include children of this relationship born or adopted prior to or during this domestic partnership or marriage)*

- a. There are no minor children.
 - b. The minor children are
- | Child's name | Birthdate | Age | Sex |
|--------------|-----------|-----|-----|
| | | | |

Continued on Attachment 3b.

c. If there are minor children of the petitioner and the respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

4. SEPARATE PROPERTY

Respondent requests that the assets and debts listed in *Property Declaration* (form FL-160) in Attachment 4 be confirmed to petitioner or respondent as separate property.

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or partner support.

Petitioner: _____	CASE NUMBER: _____
Respondent: _____	

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN
- a. There are no such assets or debts subject to disposition by the court in this proceeding.
- b. All such assets and debts are listed in *Property Declaration* (form FL-160) in Attachment 5b below (*specify*):

6. **Respondent contends** that there is not a valid domestic partnership, marriage, or equivalent.

7. **Respondent denies** the grounds set forth in item 6 of the petition.

8. **Respondent requests**

- a. dissolution of the domestic partnership marriage based on
 (1) irreconcilable differences. (Fam. Code, § 2310(a).) (2) incurable insanity. (Fam. Code, § 2310(b).)
- b. legal separation of the domestic partnership marriage based on
 (1) irreconcilable differences. (Fam. Code, § 2310(a).) (2) incurable insanity. (Fam. Code, § 2310(b).)
- c. nullity of void domestic partnership marriage based on
 (1) incest. (Fam. Code, § 2200.) (2) bigamy. (Fam. Code, § 2201.)
- d. nullity of voidable domestic partnership marriage based on
 (1) respondent's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).) (3) unsound mind. (Fam. Code, § 2210(c).)
 (2) prior existing marriage or domestic partnership. (Fam. Code, § 2210(b).) (4) fraud. (Fam. Code, § 2210(d).)
 (5) force. (Fam. Code, § 2210(e).) (6) physical incapacity. (Fam. Code, § 2210(f).)

9. **Respondent requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Physical custody of children to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child visitation granted to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As requested in form: <input type="checkbox"/> FL-311 <input type="checkbox"/> FL-312 <input type="checkbox"/> FL-341(C) <input type="checkbox"/> FL-341(D) <input type="checkbox"/> FL-341(E) <input type="checkbox"/> Attachment 9c.				
d. <input type="checkbox"/> Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage.				
e. Attorney fees and costs payable by	<input type="checkbox"/>	<input type="checkbox"/>		
f. Partner or spousal support payable to	<input type="checkbox"/>	<input type="checkbox"/>		
g. <input type="checkbox"/> Terminate the court's jurisdiction (ability) to award partner or spousal support to the petitioner.				
h. <input type="checkbox"/> Determine property rights.				
i. <input type="checkbox"/> Restore respondent's former name (<i>specify</i>):				
j. <input type="checkbox"/> Other (<i>specify</i>):				

Continued on Attachment 9j.

10. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children on request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

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 RESPONDENT)

Date: _____

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE OF ATTORNEY FOR RESPONDENT)

The original response must be filed in the court with proof of service of a copy on petitioner.