

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT W16-12

Title	Action Requested
Family Law: Changes to Petition and Response	Review and Submit Comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms FL-100 and FL-120	July 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Gabrielle D. Selden, 415-865-8085 gabrielle.selden@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising *Petition—Marriage/Domestic Partnership* (form FL-100) and *Response—Marriage/Domestic Partnership* (form FL-120) to reflect the U.S. Supreme Court decision in *Obergefell v. Hodges*,¹ which requires all states in the U.S. to license marriage between two people of the same sex and recognize a lawful marriage between two people of the same sex which was performed out-of-state.

The Proposal

Forms FL-100 and FL-120 contain a provision in item 2(b) based on provisions in Family Code section 2320 (b)(1).² Section 2320 allows same sex couples who married but no longer reside in California to file for divorce in this state if the jurisdiction where they live does not recognize their marriage. If it does not, then the code includes a rebuttable presumption that the jurisdiction will not dissolve the same-sex marriage. The specific language in current forms FL-100 and FL-120 is as follows:

¹ *Obergefell v. Hodges* (2015) 575 U.S. ____

² The complete text of Family Code section 2320 is at:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=2320.

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 These proposals are circulated for comment purposes only.

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*):

In light of the Supreme Court's decision in *Obergefell v. Hodges*, it would seem that there will no longer be any state in the U.S. which will *not* recognize same sex marriages. Thus, the Family and Juvenile Law Advisory Committee suggests revising item 2b on forms FL-100 and FL-120 by deleting "state or nation" and replacing it with "jurisdiction" in the first sentence. This and other proposed changes are illustrated below and shown in the attached forms:

We are the same sex and were married in California, but are not residents of California. Neither of us lives in a jurisdiction that will dissolve the marriage. This case is filed in the county in which we married. Petitioner's residence (specify): Respondent's residence (specify):

Alternatives Considered

The committee considered revising the forms using other terms instead of "jurisdiction." It considered the term "country" but rejected this since the word is often misread as "county" and could cause some confusion. The committee considered maintaining "nation" but thought it could be misinterpreted as excluding geographic regions that are considered "territories," "commonwealths," or "kingdoms."

The committee considered making technical changes to forms FL-100 and FL-120 to take effect on January 1, 2016, as the committee initially believed that the changes suggested to the forms were noncontroversial and would not require public comment. However, because the committee recognizes that "jurisdiction" is not a common term for self-represented litigants, it decided to seek comment from Family Law Facilitators, Self-Help Centers, attorneys, and other court professionals as to the proposed revised language.

The committee considered when to propose the changes to forms FL-100 and FL-120. For example, consideration was given about any potential legislation that would require other revisions to the forms in the near future. Having found none, the committee decided to submit this propose for the winter 2016 public comment cycle for an effective date of July 1, 2016.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, train court staff about the changes to the forms included in this proposal.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following issues about item 4 on *Petition—Marriage/Domestic Partnership* (form FL-100):

- Should the heading at item 4 should be changed as follows: “**Minor Children (children ~~born~~ conceived before (or born or adopted during) the marriage or domestic partnership)**”
- Are there any objections to revising item 4 to include the following statement below the list of children: “If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage.”

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

- Would 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 systems, or modifying case management systems.
- Would two 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?
- Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including self-represented litigants?

Attachments

Forms FL-100 and FL-120, at pages 4-9.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER: _____ RESPONDENT: _____	
PETITION FOR <input type="checkbox"/> AMENDED <input type="checkbox"/> Dissolution (Divorce) of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Legal Separation of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Nullity of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership	CASE NUMBER: _____

1. **LEGAL RELATIONSHIP** (check all that apply):
 - a. We are married.
 - b. We are domestic partners and our domestic partnership was established in California.
 - c. We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS** (check all that apply):
 - a. Petitioner Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition*. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)
 - b. We are the same sex and were married in California but are not residents of California. Neither of us lives in a jurisdiction that will dissolve the marriage. This case is filed in the county in which we married.
 Petitioner's residence (specify): _____ Respondent's residence (specify): _____
 - c. 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.

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

4. **MINOR CHILDREN** (children born before (or born or adopted during) the marriage or domestic partnership):
 - a. There are no minor children.
 - b. The minor children are:

<u>Child's name</u>	<u>Birthdate</u>	<u>Age</u>	<u>Sex</u>
(1) <input type="checkbox"/> continued on Attachment 4b .			
(2) <input type="checkbox"/> a child who is not yet born.			
 - c. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form [FL-105](#)) must be attached.
 - d. Petitioner and Respondent signed a voluntary declaration of paternity. A copy is is not attached.

PETITIONER: RESPONDENT:	CASE NUMBER:
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Petitioner requests that the court make the following orders:

5. LEGAL GROUNDS (Family Code sections 2200–2210, 2310–2312)

- a. Divorce or Legal separation of the marriage or domestic partnership based on (*check one*):
 - (1) irreconcilable differences.
 - (2) permanent legal incapacity to make decisions.
- b. Nullity of void marriage or domestic partnership based on:
 - (1) incest.
 - (2) bigamy.
- c. Nullity of voidable marriage or domestic partnership based on:
 - (1) petitioner’s age at time of registration of domestic partnership or marriage.
 - (2) prior existing marriage or domestic partnership.
 - (3) unsound mind.
 - (4) fraud.
 - (5) force.
 - (6) physical incapacity.

6. CHILD CUSTODY AND VISITATION (PARENTING TIME)

- | | 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 (parenting time) be granted to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| As requested in: <input type="checkbox"/> form FL-311 <input type="checkbox"/> form FL-312 <input type="checkbox"/> form FL-341(C) | | | | |
| <input type="checkbox"/> form FL-341(D) <input type="checkbox"/> form FL-341(E) <input type="checkbox"/> Attachment 6c(1) | | | | |
| d. <input type="checkbox"/> Determine the parentage of children born to Petitioner and Respondent before the marriage or domestic partnership. | | | | |

7. CHILD SUPPORT

- a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
- b. An earnings assignment may be issued without further notice.
- c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
- d. Other (*specify*):

8. SPOUSAL OR DOMESTIC PARTNER SUPPORT

- a. Spousal or domestic partner support payable to Petitioner Respondent
- b. Terminate (end) the court’s ability to award support to Petitioner Respondent
- c. Reserve for future determination the issue of support payable to Petitioner Respondent
- d. Other (*specify*):

9. SEPARATE PROPERTY

- a. There are no such assets or debts that I know of to be confirmed by the court.
- b. Confirm as separate property the assets and debts in *Property Declaration* (form [FL-160](#)) [Attachment 9b](#)
 the following list. Item Confirm to

PETITIONER: RESPONDENT:	CASE NUMBER:
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10. COMMUNITY AND QUASI-COMMUNITY PROPERTY

- a. There are no such assets or debts that I know of to be divided by the court.
- b. Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
 - in *Property Declaration* (form [FL-160](#)) in [Attachment 10b](#).
 - as follows (*specify*):

11. OTHER REQUESTS

- a. Attorney's fees and costs payable by Petitioner Respondent
- b. Petitioner's former name be restored to (*specify*):
- c. Other (*specify*):

Continued on [Attachment 11c](#).

12. 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)	▶	_____ (SIGNATURE OF PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR PETITIONER)

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, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: 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. Some changes may require the agreement of your partner or spouse or a court order.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	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:	
PETITIONER: RESPONDENT:	
RESPONSE <input type="checkbox"/> AND REQUEST FOR <input type="checkbox"/> AMENDED <input type="checkbox"/> Dissolution (Divorce) of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Legal Separation of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Nullity of: <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership	CASE NUMBER:

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 - a. We are married.
 - b. We are domestic partners and our domestic partnership was established in California.
 - c. We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS** (check all that apply):
 - a. Petitioner Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition*. (For a *divorce*, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)
 - b. We are the same sex and were married in California but are not residents of California. Neither of us lives in a jurisdiction that will dissolve the marriage. This case is filed in the county in which we married.
 Petitioner's residence (specify): _____ Respondent's residence (specify): _____
 - c. 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.

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

4. **MINOR CHILDREN** (children born before (or born or adopted during) the marriage or domestic partnership):
 - a. There are no minor children.
 - b. The minor children are:

Child's name	Birthdate	Age	Sex

(1) continued on [Attachment 4b](#).
 (2) a child who is not yet born.

 - c. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form [FL-105](#)) must be attached.
 - d. Petitioner and Respondent signed a voluntary declaration of paternity. A copy is is not attached.

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- a. There are no such assets or debts that I know of to be divided by the court.
- b. Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
 - in *Property Declaration* (form [FL-160](#)) in [Attachment 10b](#).
 - as follows (*specify*):

11. OTHER REQUESTS

- a. Attorney's fees and costs payable by Petitioner Respondent
- b. Respondent's former name be restored to (*specify*):
- c. Other (*specify*):

Continued on [Attachment 11c](#).

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)

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, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: 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. Some changes may require the agreement of your partner or spouse or a court order.

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