



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2011

Title	Agenda Item Type
Family Law: Dissolution, Legal Separation, or Nullity of Same-Sex Marriage	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms FL-103 and FL-123	January 1, 2012
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	November 29, 2011
Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Dean Stout, Cochair	Contact Bonnie Hough, 415 865-7668 bonnie.hough@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising the domestic partnership petition and response forms to include dissolution, legal separation, and nullity of same-sex marriage. These revisions would implement the mandate of Assembly Bill 2700,¹ which requires the Judicial Council to prescribe a form for couples who are concurrently married and registered as domestic partners to dissolve both unions in a single court proceeding. They also include the requirements of Senate Bill 651,² which allows same-sex couples who married in California, but now live in a jurisdiction that does not recognize their marriage, to divorce in California.

¹ Assem. Bill 2700 is available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2651-2700/ab_2700_bill_20100927_chaptered.html.

² Sen. Bill 651 is available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0651-0700/sb_651_bill_20111009_chaptered.html

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, in order to implement the mandate of Assembly Bill 2700 (Stats. 2010, ch. 397), prescribe a form that would allow same-sex couples to dissolve their coexisting marriages and domestic partnerships in a single court proceeding and, to address the jurisdictional requirements of Senate Bill 651 (Stats. 2011, ch. 721), effective January 1, 2012:

1. Revise the *Petition—Domestic Partnership* (form FL-103); and
2. Revise the *Response—Domestic Partnership* (form FL-123).

Copies of the revised mandatory forms are attached at pages 6–9.

Previous Council Action

The Judicial Council adopted forms FL-103 and FL-123, effective January 1, 2005.

Rationale for Recommendation

AB 2700, effective January 1, 2011, amended Family Code section 2010(a) to specify that the superior court’s jurisdiction over the status of a marriage includes those out-of-state same-sex marriages contracted on or after November 5, 2008. This bill also amended Family Code section 299 by adding subdivision (e) to provide that parties to a registered domestic partnership who are also married to one another may petition the court to dissolve both their domestic partnership and their marriage in a single proceeding, using a form to be prescribed by the Judicial Council.

Currently, couples who are registered domestic partners dissolve their domestic partnership by filing a *Petition—Domestic Partnership* (form FL-103) and respond using a *Response—Domestic Partnership* (form FL-123) or, if they are eligible, by filing a *Notice of Termination of Domestic Partnership* with California’s Secretary of State. If they are also married, they must also file a second court action to dissolve the marriage and pay additional filing fees to file a *Petition—Marriage* (form FL-100) and respond using a *Response—Marriage* (form FL-120).

This report recommends revising the *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.

For those parties eligible for summary dissolution under Family Code section 2400, a separate report on this meeting’s agenda recommends that, among other changes, summary dissolution forms be modified to allow those couples who qualify for summary dissolution of both their marriage and their domestic partnership to use the *Joint Petition for Summary Dissolution of Marriage* (form FL-800) for both unions. They would then not have to file a separate Notice of Termination of Domestic Partnership with the Secretary of State.

On October 9, 2011, Governor Edmund G. Brown, Jr. signed SB 651, which becomes effective January 1, 2012. The bill amends Family Code section 2320 to authorize 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. The bill provides a rebuttable presumption that if the jurisdiction does not recognize the marriage, it will not dissolve the marriage. It provides that the superior court in the county where the marriage was entered is the proper court for the proceeding.

FL-103 and FL-123 were recirculated in an expedited cycle to ensure that the forms could be in place by the effective date of SB 651, January 1, 2012, and to avoid the need to change the forms twice in one year, which would cause difficulties for courts, practitioners, and the public.

Comments, Alternatives Considered, and Policy Implications

Comments

The invitation to comment was first circulated from April 21, 2011, through June 20, 2011, to the standard mailing list for family and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other family law professionals, such as family law facilitators and family court services directors, managers, supervisors, and staff.

Of a total of nine commentators, four agreed with the original proposal, four agreed if modifications were made, and one did not indicate a position but suggested modifications to the forms. No commentators disagreed with the proposal. A chart of comments, providing the full text of the comments and the committee's responses, is attached at pages 10–12.

One commentator suggested that the forms would be clearer if the concepts of “void” and “voidable” marriage were combined. Because void marriages and voidable marriages have different legal ramifications, the committee chose not to follow this suggestion but rather attempted to make these form items easier to read.

Another comment suggested that persons of the same sex who entered into a valid marriage in a state other than California before November 5, 2008, should be eligible to file for dissolution here. However, Family Code section 308(c),³ quoted below, specifically states that jurisdictional date, and expanding that jurisdiction does not appear to be within the council's purview:

Notwithstanding any other provision of law, two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same

³ Assem. Bill 2700 incorporated Fam. Code, § 308 by reference in its amendments to § 2010 of that code.

rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from the California Constitution, the United States Constitution, statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses with the sole exception of the designation of “marriage.”

Another commentator pointed out that the check boxes regarding residency were unclear. The committee agreed and reorganized the questions so that it is clear that residency to terminate a domestic partnership is not required for those persons who registered their partnership in California. This change supports Family Code section 299(d), which provides that “proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.”

Another commentator suggested that the notice regarding the legal interest rate on child support arrears be eliminated. California Code of Civil Procedure section 695.211 requires that every child support judgment or order provide notice that interest on arrearages accrues at the legal rate. This requirement was added by legislation effective September 28, 1994, whose legislative history notes that it was designed to “increase public awareness regarding interest.”⁴ Following this legislative intent, the Judicial Council added this notice requirement to the petition for dissolution and other requests for support at the same time. The committee thinks that this notice is still important and that the legal interest rate of 10 percent is sufficiently different from other interest rates that litigants might encounter that it is valuable to include this rate information in the notice.

In response to SB 651, a second invitation to comment (SP-16) was circulated during a special cycle from October 21, 2011, though November 1, 2011. Because of the shortened comment period, in addition to being posted on the California Courts web site, the invitation to comment was circulated to both the general and a targeted mailing list that included appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, attorneys, mediators, family law facilitators, and self-help center attorneys and other family law professionals and attorney organizations, including those specializing in the legal issues of same-sex couples.

Of a total of seven commentators, one agreed with the original proposal, three agreed if modifications were made, and three did not indicate whether they agreed but suggested modifications to the rule and forms. A chart of comments providing the full text of the comments and the committee’s responses is attached at pages 13–18.

⁴ See *Official California Legislative Information [Legislative Counsel of California]* www.leginfo.ca.gov/pub/93-94/bill/asm/ab_3051-3100/ab_3072_cfa_940531_180127_sen_comm for an analysis of Assem. Bill 3072: (Stats. 1994, ch. 959), § 1, effective September 28, 1994, which adds Code Civ. Proc., § 695.211.

Based on a number of comments, the committee removed the modifier of “same-sex” before marriage in the caption for the form. It also changed the language regarding filing to make it clear that there is no requirement of a joint filing of this petition.

The committee considered whether FL-103 and FL-123, which are existing forms that were initially designed for domestic partnerships and have since been adapted to reflect same-sex marriages, should be merged with FL-100 and FL-120. The committee concluded that the jurisdictional facts for domestic partnerships and same-sex marriages are fairly complicated and are likely to confuse married couples of mixed genders. Different forms allow the courts to keep track of the number of dissolutions filed for domestic partners and same-sex married couples. They also prompt judicial officers—when making orders regarding property division, spousal support, and other rulings—to consider the fact that federal and state laws differ for same-sex couples. Thus, it seems appropriate to maintain these separate forms at this time.

Alternatives considered

Because AB 2700 requires that the Judicial Council prescribe a form to allow registered domestic partners who are also married to one another to petition the court to dissolve both their domestic partnership and their marriage in a single proceeding, the committee rejected the option of taking no action. The committee considered deferring the action but recommends making the required changes now to simplify the situation for court clerks, who are currently faced with hand-marked pleadings indicating that dissolution of both marriages and domestic partnerships are sought with a single form, or who may have to consolidate separately filed cases.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal and may save the court resources that otherwise would be needed to establish and maintain two separate actions. These forms are not generated by a court case management system. Reproduction costs will be incurred only in distributing the revised forms if courts provide those forms. Litigants and counsel may also obtain the forms on the California Courts website and from public law libraries, thus reducing the need for courts to maintain a large number of copies on site.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed revisions to forms FL-103 and FL-123 support the policies underlying Goal I, Access, Fairness, and Diversity, because they remove barriers to the courts for parties who have both domestic partnerships and marriages.

Attachments

1. Forms FL-103 and FL-123, at pages 6–9
2. Chart of comments, at pages 10–12
3. Second chart of comments in response to SB 651; at pages 13–17

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 Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DOMESTIC PARTNERSHIP OF PETITIONER: RESPONDENT:	
PETITION 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) Date of registration of domestic partnership or equivalent:
 (2) Date of separation:
 (3) Time from date of registration of domestic partnership to date of separation (specify): _____ Years _____ Months
 - b. (1) Date of marriage:
 (2) Time from date of marriage to date of separation (specify): _____ Years _____ Months
2. RESIDENCE
 - 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 or marriage to a person of the same sex was established in a place other than California and a dissolution is requested. 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 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

<u>Child's name</u>	<u>Birthdate</u>	<u>Age</u>	<u>Sex</u>

Continued on Attachment 3b.

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

Petitioner requests that the assets and debts listed in *Property Declaration* (form FL-160) in Attachment 4 below be confirmed as separate property.

Item _____ Confirm to _____

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.

DOMESTIC PARTNERSHIP OF <i>(Last name, first name of each party):</i>	CASE NUMBER:
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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 7c. | | | | |
| 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)

Date: _____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF 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 Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
DOMESTIC PARTNERSHIP 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) Date of registration of domestic partnership or equivalent:
- (2) Date of separation:
- (3) Time from date of registration of domestic partnership to date of separation (*specify*): _____ Years _____ Months
- b. (1) Date of marriage:
- (2) Time from date of marriage to date of separation (*specify*): _____ Years _____ Months

2. RESIDENCE

- 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 or marriage to a person of the same sex was established in a place other than California and a dissolution is requested. Petitioner Respondent has been a resident of this 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 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

<u>Child's name</u>	<u>Birthdate</u>	<u>Age</u>	<u>Sex</u>
- 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 below be confirmed as separate property.

Item _____ Confirm to _____

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.

DOMESTIC PARTNERSHIP OF <i>(Last name, first name of each party):</i>	CASE NUMBER:
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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).)
 - (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).)

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)

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF RESPONDENT)

▶ _____
(SIGNATURE OF ATTORNEY FOR RESPONDENT)

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

SPR11-41**Family Law: Dissolution, Legal Separation, or Nullity of Same-Sex Marriage** (revise forms FL-103 and FL-123)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Irma Poole Asberry Supervising Judge Superior Court of Riverside County	A	Thank you for correcting obvious oversight in prior form.	No response required.
2.	Superior Court of Los Angeles County	AM	Page 2; section 6 (c) and (d) of form FL-103 & form FL-123 are confusing. Restructure the sections and combine to reflect: “Nullity of void/voidable domestic partnership marriage based on incest, bigamy, etc...” #8 on both forms has the word marriage misspelled.	Given that there are different legal ramifications of a void or voidable marriage or domestic partnership, it does not seem appropriate to merge the concepts. This would also make the forms different than the FL-100 and FL-120. Will make this change
3.	Superior Court of Monterey County Minnie Monarque Director of Civil & Family Law Division	A	Agree with proposed changes. (<i>Revision to Petition-Domestic Partnership</i> FL 103, and <i>Response-Domestic Partnership</i> FL-123) Revise Domestic Partnership Forms to Include Dissolution, Legal Separation, or Nullity of Same Sex Marriage.	No response required.
4.	Superior Court of Orange County Family Law Operations	AM	Agree with proposed changes.	No response required.
5.	Superior Court of Riverside County Sherri R. Carter Court Executive Officer	A	No narrative comments.	No response required.
6.	Superior Court of Sacramento County Robert Turner, ASO II Finance Division Sacramento	NI	Form FL-103, page 1: #2. DP's living in California but married before Nov 5, 2008, in another state, should still be able to file for dissolution. Remove 2.b.	#2 – The jurisdiction is limited by statute. Family Code Section 308 (c) provides that “Notwithstanding any other provision of law, two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same rights, protections, and benefits, and shall be subject to the same

SPR11-41**Family Law: Dissolution, Legal Separation, or Nullity of Same-Sex Marriage** (revise forms FL-103 and FL-123)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>#2c. should say "petition for dissolution of DP or marriage."</p> <p>Page 2: #8. The legal rate is the same for all cases across California. There is no need to add this reference. Remove the sentence.</p>	<p>responsibilities, obligations, and duties under law, whether they derive from the California Constitution, the United States Constitution, statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses with the sole exception of the designation of 'marriage.'"</p> <p>Will change to refer simply to "this petition" to minimize confusion</p> <p>California Code of Civil Procedure section 695.211 requires that every child support judgment or order provide notice that interest on arrearages accrues at the legal rate. This requirement was added by legislation effective September 28, 1994, to "increase public awareness regarding interest." Following this legislative intent, the Judicial Council added this notice requirement to the petition for dissolution and other requests for support at the same time. The committee thinks that this notice is still important and that the legal interest rate of 10 percent is sufficiently different than other interest rates that litigants might encounter that it is valuable to include this in the notice.</p>
7.	Superior Court of San Diego County Mike Roddy	AM	Forms FL-103 and FL-123, Item 2: Remove or clarify "(Partnerships established out-of-state	Agree to reorganize to clarify the distinction between marriages and domestic partnerships

SPR11-41**Family Law: Dissolution, Legal Separation, or Nullity of Same-Sex Marriage** (revise forms FL-103 and FL-123)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Court Executive Officer		and marriages only)” – This statement is very confusing. Does it mean partnerships and marriages out-of-state, or out-of-state partnerships and all marriages, regardless of state? Perhaps this should just be removed entirely since subsections a, b, and c set forth that information. The information in the parenthesis is more confusing than clarifying, and subsections a, b, and c are sufficient. Forms FL-103 & FL-123, Items 1 & 2: These items should be switched, where residency comes first and statistical facts come second.	regarding residency requirements. Family Code section 299 (d) provides that “...proceedings for dissolution, nullity or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.” Given that residency is different for domestic partners and married persons, the committee thinks that it should remain, as on the existing form, as item 2. This is the current practice which is different than FL -100 and FL-120 which only cover marriages.
8.	Superior Court of Shasta County Stacy Larson, Family Law Facilitator	A	No narrative comments.	No response required.
9.	Superior Court of Shasta County John Zeis, Asst. Court Executive Officer Redding	AM	Add “Marriage” to the title of all documents in the footer.	These forms can only be used if they involve a domestic partnership. Adding marriage is likely to be confusing for litigants.

SP11-16**Family Law: Family Law: Domestic Partnerships and Same Sex Marriages** (revise forms FL-103, FL-123) - *Petition—Domestic Partnership (Family Law)* (form FL-103), *Response—Domestic Partnership (Family Law)* (form FL-123).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Katheel Crouch, Attorney Law Offices of Mark Pachowicz, A Professional Corporation Camarillo, CA	A	No narrative comments.	No response required.
2.	Kevin J. Lane Assistant Clerk - Administrator California Court of Appeal, Fourth Appellate District, Div. 1 San Diego, CA	NI	These forms are very much like forms FL-100 and FL-120 (Petition and Response). Instead of creating new forms and distinguishing differences between Marriage (FL-120) and Same Sex Marriage (FL-123), modifying some of the language in FL-100 and FL-120 and adding domestic partnerships would be more appropriate.	FL-103 and FL-123 are existing forms that were initially designed for domestic partnerships and have been adapted to reflect same-sex marriages. They were designed as separate forms from FL-100 and FL-120 since the jurisdictional facts are fairly complicated and are likely to confuse married couples who are differently gendered. Different forms allow the courts to keep track of the number of dissolutions filed for domestic partners and same sex married couples. They also provide notice to judicial officers that in making orders regarding property division, spousal support and other rulings, they should take into account the fact that federal and state laws differ for same sex couples.
3.	Helen Lynn Safe Child Coalition	NI	*The commentator, a family law litigant, provided information relating to child sexual abuse, parental alienation, child custody laws, and child custody proceedings in family courts. The commentator did not address the forms in the proposals circulating for comment in the special cycle.	The commentator did not indicate a position on the forms included in the invitation to comment.
4.	National Center for Lesbian Rights Catherine Sakimura, Esq. Staff Attorney San Francisco	AM	The National Center of Lesbian Rights (NCLR) thanks the Committee for its prompt action to incorporate S.B. 651 into the necessary Family Law Judicial Council forms. We are grateful for the thoughtful consideration this Committee has given to the needs of same-sex married couples	

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			<p>and registered domestic partners who are accessing the Family Courts.</p> <p>NCLR is a national legal organization committed to advancing the civil and humans rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. We are based in California and have litigated numerous cases involving the rights of same-sex couples in California. NCLR submits the following comments to the Committee for consideration.</p> <p>1. Designation of “Same Sex Marriage.” The draft FL-103 and FL-123 forms provide a check box for dissolution of “Same Sex Marriage.” We recommend that this option be listed solely as “Marriage.” Providing a separate option that requires only same-sex spouses to indicate their gender creates an inference that marriage between same-sex spouses is a different kind of marriage, rather than just a marriage. Additionally, this option can create confusion for transgender spouses, especially those who have legally changed their gender since marrying.</p> <p>If the gender of the spouses must be indicated on this form, we recommend using the term “Marriage (Same Sex Spouses),” or something similar, rather than “Same Sex Marriage.” Although this is a slightly longer phrase, we feel</p>	<p>The committee was hoping to avoid confusion of those persons who are in marriages with a partner of the other gender. However, these forms may also be used by persons of different genders who meet the requirements of Family Code 297 (5) (b), thus, will remove the term “same sex” from the caption and check boxes.</p>

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			<p>that the term “same sex marriage” reinforces the inference that marriage between same-sex couples is a different kind of marriage.</p> <p>2. Unnecessary inclusion of the place of marriage in Question 2(b)(2). We do not believe that it is necessary to include the place of marriage for couples who meet dissolution residency requirements in question 2(b)(2) of FL-103 and FL-123. Because this residency question is already complicated, we believe this additional information should be deleted to make the question simpler.</p> <p>3. Potential confusion in questions for non-resident same-sex married spouses. We believe that the checkbox option intended for non-resident same-sex married spouses may be confusing to <i>resident</i> same-sex married spouses, who may be unsure whether this option applies to them. This option appears in FL-1-3, FL-123, FL-800, and the checklist in Part III of the Summary Dissolution Information publication. We believe that including the phrase “but are not residents of California” may make it more clear immediately that this option only applies to non-residents:</p> <p>We are the same sex and were married in California, <u>but are not residents of California.</u> Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married. (underlined text added)</p>	<p>The committee has removed the word “specify” from 2 (b) (1) and 2 (b) (2).</p> <p>The committee has added the phrase “but are not residents of California” to address this concern.</p>

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5.	Orange County Bar Association by John C. Hueston, President Newport Beach	AM	Consider revision of proposed form FL-103 and FL-123 to reduce clutter in “Petition for” and “Response to” areas, respectively.	The committee has eliminated the words “same sex” in the caption which helps to address this concern.
6.	Charles Spiegel, Esq. Attorney at Law San Francisco, CA	NI	<ol style="list-style-type: none"> 1. I believe that same gender is a preferred term to same sex. People should think about our gender, not our sex(ual acts). 2. Don't FL 170 and 180 need to be modified as well to allow for termination of a DP AND a Marriage simultaneously. Right now the only option is DP OR Marriage. 3. For FL 103, I think point 2 could be clarified in the how many items need to be checked, and MIGHT be better off with an (a) for marriage and (b) for DP. I am also not sure all the proposed changes are shaded in that section. 	<ol style="list-style-type: none"> 1. The term “same-sex” is plainer English than “same-gender.” 2. FL-170 and FL-180 are being modified in a separate forms package called <i>Family Law: Default and Uncontested Judgment Checklist and Related Forms</i>. Each form can be used to terminate both a domestic partnership and marriage by noting that in the box for “Other” on each of the forms. 3. The term “or” has been added to the end of 2. (b) (1) to clarify that only one of the boxes must be checked.
7.	Superior Court of Los Angeles Los Angeles	AM	Item 2(c) on each form states “We are filing this case in the county in which we were married.” This language should be changed. “We” are not filing the form – an individual (“I”) is filing the form. Further, the use of “we are filing this case” is suggests the procedure for dissolving a same sex marriage only applies	2c on the forms has been revised to state: “This case is filed in the county in which we were married.”

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			where the parties agree. The statute does not seem to contemplate that. Item 2(c) should read “This case is filed in the county in which we were married.” While it is not good form to use the passive, if it is desirable to use the same wording for both the Petition and the Response, this phrasing would be the most succinct language (rather than, “I am filing . . .” for Petitioner and “The petition has been filed . . .” for the Respondent).	