



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

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Title	Agenda Item Type
Family Law: Technical Change to Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership	Action Required
	Effective Date
	January 1, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
Revise form FL-120	November 20, 2014
Recommended by	Contact
Family and Juvenile Law Advisory Committee	Bonnie Rose Hough, 415-865-7668
Hon. Jerilyn L. Borack, Cochair	<a href="mailto:bonnie.hough@jud.ca.gov">bonnie.hough@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	Gabrielle Selden, 415-865-8085
	<a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending *Response–Marriage/Domestic Partnership (Family Law)* (form FL-120) to correct an error in a notification regarding when automatic restraining orders become effective on the respondent and to reinstate a provision notifying the respondent that a proof of service must be filed with the *Response*. These changes to the existing form were inadvertently made when the form was revised to look more similar to the *Petition–Marriage/Domestic Partnership (Family Law)* (form FL-100) and the error was identified after the Judicial Council meeting on October 24, when the revised form was adopted.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise the *Response–Marriage/Domestic Partnership (Family Law)* (form FL-120) effective January 1, 2015, to correct an inaccurate reference to when restraining orders are effective on the

respondent and to add information inadvertently removed which alerts the respondent that a proof of service must be filed with the *Response*.

### **Previous Council Action**

The proposed form was circulated as part of item SPR14-09, *Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership*. Following review of comments received, the Family and Juvenile Law Advisory Committee recommended that the Judicial Council amend the form at its October 28, 2014, meeting.<sup>1</sup> When the form was created in a new forms program before circulating for comment, this language was inadvertently placed on the form.

### **Rationale for Recommendation**

The recommended change is necessary to correct a mistaken statement of law on the recently revised *Response–Marriage/Domestic Partnership (Family Law)* (form FL-120) effective January 1, 2015. On page 3 of 3 of the form, item 12, the *Response* indicates, “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.” This is legally incorrect. Although the automatic restraining orders on the back of the summons apply to the Petitioner upon filing of the petition and issuance of the summons, they apply to the Respondent **only after he or she is personally served with the petition and summons** (Fam. Code, § 233). Information about when restraining orders go into effect on the respondent has not previously been included on the *Response* form as the Respondent is served with the *Summons (Family Law)* (form FL-110) and *Response* at the same time.

This error was not identified in the process of circulation for comment and was only brought to Judicial Council staff’s attention after the form was adopted by the Judicial Council. It appears that in conforming the *Response* form to the redesigned *Petition* format, this information was inadvertently added. This could cause serious problems if there is confusion regarding when respondents are bound to the terms of the automatic restraining orders. These orders include not removing the children from the State of California and not making any withdrawals from bank accounts (Fam. Code § 2040). Violation of the restraining orders has significant consequences (Fam. Code § 233) and, thus, it is critical that the information regarding when those orders take effect is accurate.

In reviewing the form, staff realized that the former notice that the Respondent must file a proof of service concurrently with the *Response* was inadvertently omitted. While this may not be a

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<sup>1</sup> See *Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership* (item A9 on the agenda for the October 28, 2014, Judicial Council meeting), [www.courts.ca.gov/documents/jc-20141028-itemA9.pdf](http://www.courts.ca.gov/documents/jc-20141028-itemA9.pdf).

significant problem, it would improve court effectiveness if litigants were warned about the need to serve the *Response* before filing. Since many litigants in family law matters are unrepresented, they generally do not know the service requirements. If the inaccurate notice regarding restraining orders is removed, there is sufficient space to include that notification.

Unless the council acts as proposed in this report, the form that takes effect on January 1, 2015, will include language that is legally incorrect, and will not provide direction for respondents regarding filing requirements.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was not circulated for public comment because it recommends a technical amendment. The same form was circulated for comment in spring 2014. No comments were received with respect to the amendments in the current proposal.

### **Implementation Requirements, Costs, and Operational Impacts**

There will be an operational impact for courts that provide informational packets which contain *Response* forms. Because the proposed revised form will become effective on the same date as the revisions approved on October 28, 2014, the modified form will be published and take effect at the same time. Information will be provided to publishers and courts regarding this error, and a proposed revised form will be provided to them.

### **Attachment**

1. Proposed revised form *Response–Marriage/Domestic Partnership (Family Law)* (form FL-120) at pages 4–6.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>   <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
<b>RESPONSE</b> <input type="checkbox"/> <b>AND REQUEST FOR</b> <input type="checkbox"/> <b>AMENDED</b> <input type="checkbox"/> <b>Dissolution (Divorce) of:</b> <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> <b>Legal Separation of:</b> <input type="checkbox"/> Marriage <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> <b>Nullity of:</b> <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 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): \_\_\_\_\_
  - 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.

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

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

- a.  **Respondent contends** that the parties never legally married or registered a domestic partnership.
- b.  **Respondent denies** the grounds set forth in item 5 of the petition.
- c.  **Respondent requests**
  - (1)  divorce     legal separation    of the marriage or domestic partnership based on
    - (a)  irreconcilable differences.    (b)  permanent legal incapacity to make decisions.
  - (2)  nullity of void marriage or domestic partnership based on
    - (a)  incest.    (b)  bigamy.
  - (3)  nullity of voidable marriage or domestic partnership based on
    - (a)  respondent's age at time of registration of domestic partnership or marriage.    (d)  fraud.
    - (b)  prior existing marriage or domestic partnership.    (e)  force.
    - (c)  unsound mind.    (f)  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 <a href="#">FL-311</a> <input type="checkbox"/> form <a href="#">FL-312</a> <input type="checkbox"/> form <a href="#">FL-341(C)</a> |                          |                          |                          |                          |
| <input type="checkbox"/> form <a href="#">FL-341(D)</a> <input type="checkbox"/> form <a href="#">FL-341(E)</a> <input type="checkbox"/> <a href="#">Attachment 6c(1)</a>          |                          |                          |                          |                          |
| 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

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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.  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.**