

Title	Family Law: Disclosure Requirements (revise forms FL-141, FL-310, and FL-320)
Summary	The proposed revisions would assist the court and parties in dissolution cases involving noncompliance with disclosure requirements under Family Code section 2107.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Three forms, *Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration* (form FL-141), *Application for Order and Supporting Declaration* (form FL-310), and *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320), would be revised to reflect Assembly Bill 459’s amendments to Family Code section 2107, which provides remedies to a complying party against a party who has failed to comply with mandatory disclosure requirements in a dissolution action.

Effective January 1, 2010, AB 459 (Stats. 2009, ch. 110) amended Family Code sections 2104, 2106, and 2107 concerning declarations of disclosure in dissolution proceedings. Existing law requires each party to serve on the other a preliminary declaration of disclosure of assets and debts and an income and expense declaration. Service of a declaration of disclosure is mandatory before the court can enter a judgment dissolving a marriage or domestic partnership.

AB 459 amended Family Code section 2107 to provide additional relief if one party fails to comply with disclosure requirements. Under new section 2107(b)(3), a complying party may file a motion showing good cause to grant a voluntary waiver of receipt of the noncomplying party’s declaration of disclosure. In addition, under new section 2107(b)(4), the court may set aside the judgment at the request of the complying party unless the motion is based on actual fraud or perjury.

The *Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration* (form FL-141) is a mandatory form that is used as a proof of service of the declaration of disclosure. This form would be revised to allow a party to indicate that the court granted a voluntary waiver of the other party’s preliminary or final declaration of disclosure. Including this information on the form could promote the timely processing of a judgment by notifying the clerk of the court (and any judicial officer reviewing a party’s judgment packet) that the judgment can be processed despite the absence in the court file of proof that the other party served his or her declaration or disclosure and income and expense declaration.

Application for Order and Supporting Declaration (form FL-310) would be revised to include a new item titled “Noncompliance With Disclosure Requirements.” This item would include check boxes for each of the remedies available to the complying party under Family Code section 2107. Specifically, this section would include a request for any of the following orders: (1) that a party provide a further response to his or her preliminary or final declaration of disclosure, (2) that a party failed to comply with disclosure requirements and is prevented from presenting evidence on issues that should have been covered in the declaration of disclosure, (3) that the court grant the request for voluntary waiver of receipt of the other party’s preliminary or final declaration of disclosure, or (4) that the court set aside the judgment of dissolution.

Other revisions to this form would be to change the order in which items 8.–11. appear to reflect the order of the items on *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320), update the titles of the domestic violence forms that appear at the bottom of the first page, include a new reference to Family Code section 2107, and delete the lines in item 2.c.(1)–(4) to conform with the format of the other items on the first page.

Responsive Declaration to Order to Show Cause or Notice of Motion (form FL-320) would be revised to include a new item corresponding to the section on FL-310 regarding noncompliance with disclosure requirements. The proposed new item 8. would allow a party to indicate whether he or she consents to the order requested regarding noncompliance with disclosure requirements. Item 8. would also include space for a party to specify the order to which he or she would consent. Also, the heading of item 4. would be revised to include partner support and spousal support.

Finally, form FL-320 would be revised to include a label in the caption for “Other Parent” consistent with other family law and governmental forms. California Rules of Court, rule 5.310 states that when an existing family law form is required or appropriate for use in a title IV-D support action, the person filing the form must add the words “Other parent:” and the name of the other parent to the form’s caption.

Form FL-320 is used extensively by local child support agencies when responding to a notice of motion or order to show cause initiated by one of the parties to an action in which a local child support agency is providing services. In the absence of the “Other Parent:” label, the local child support attorney or caseworker must handwrite this information on the form after it is produced from the statewide automated system. The revision to the form would result in greater efficiency and a significant cost savings for the local child support agencies throughout the state because the California statewide Automated Child Support Enforcement System could be programmed to insert the name of the “other parent” automatically and the manual workaround would no longer be required.

The Family and Juvenile Law Advisory Committee recommends that this proposal be effective on July 1, 2011, to allow courts additional time to implement the forms. This delay should not be problematic as the change, while necessary, is not time sensitive.

The proposed revised forms are attached at pages 4–8.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft 6 4/14/10 gds Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
DECLARATION REGARDING SERVICE OF DECLARATION OF DISCLOSURE AND INCOME AND EXPENSE DECLARATION <input type="checkbox"/> Petitioner's <input type="checkbox"/> Preliminary <input type="checkbox"/> Respondent's <input type="checkbox"/> Final	CASE NUMBER:

1. I am the Attorney for Petitioner Respondent in this matter.

2. Petitioner's Respondent's *Preliminary Declaration of Disclosure and Income and Expense Declaration* was served on:
 Attorney for Petitioner Respondent by: personal service mail other (specify):

 on (date):

3. Petitioner's Respondent's *Final Declaration of Disclosure and Income and Expense Declaration* was served on:
 Attorney for Petitioner Respondent by: personal service mail other (specify):

 on (date):

4. Service of the parties' *Final Declaration of Disclosure* was waived under Family Code section 2105, subdivision (d).

5. The court granted Petitioner's Respondent's request for voluntary waiver of receipt of
 Petitioner's Respondent's (check all that apply):
 a. Preliminary Final Declaration of Disclosure
 b. Preliminary Final Income and Expense Declaration

 on (date):

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)

Note:
File this document with the court.
Do not file a copy of either the *Preliminary or Final Declaration of Disclosure* with this document.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

APPLICATION FOR ORDER AND SUPPORTING DECLARATION
—THIS IS NOT AN ORDER—

Petitioner Respondent Claimant requests the following orders:

1. CHILD CUSTODY To be ordered pending the hearing
- a. Child (name, age)
- b. Legal custody to
(person who makes decisions
about health, education, etc.) (name)
- c. Physical custody to
(person with whom child lives.)
(name)

Modify existing order
(1) filed on (date):
(2) ordering (specify):

As requested in form FL-311 FL-312 FL-341(C) FL-341(D) FL-341(E)

2. CHILD VISITATION To be ordered pending the hearing
- a. As requested in: (1) Attachment 2a (2) Form FL-311 (3) Other (specify):
- b. Modify existing order
(1) filed on (date):
(2) ordering (specify):
- c. One or more domestic violence restraining/protective orders are now in effect. (Attach a copy of the orders if you have one.) The orders are from the following court or courts (specify county and state):
- (1) Criminal: County/state:
Case No. (if known):
- (2) Family: County/state:
Case No. (if known):
- (3) Juvenile: County/state:
Case No. (if known):
- (4) Other: County/state:
Case No. (if known):

3. CHILD SUPPORT (An earnings assignment order may be issued.)
- a. Child (name, age)
- b. Monthly amount (if not by guideline)
\$

c. Modify existing order
(1) filed on (date):
(2) ordering (specify):

4. SPOUSAL OR PARTNER SUPPORT (An earnings assignment order may be issued.)
- a. Amount requested (monthly): \$
- b. Terminate existing order
(1) filed on (date):
(2) ordering (specify):
- c. Modify existing order
(1) filed on (date):
(2) ordering (specify):

5. ATTORNEY FEES AND COSTS a. Fees: \$ b. Costs: \$

NOTE: To obtain domestic violence restraining orders, you must use the forms *Request for Order (Domestic Violence Prevention)* (form DV-100) and *Temporary Restraining Order (Domestic Violence Prevention)* (form DV-110) and *Notice of Court Hearing (Domestic Violence Prevention)* (form DV-109).

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

6. PROPERTY RESTRAINT **To be ordered pending the hearing**
- a. The petitioner respondent claimant is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- The applicant will be notified at least five business days before any proposed extraordinary expenditures, and an accounting of such will be made to the court.
- b. Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor children.
- c. Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.

7. PROPERTY CONTROL **To be ordered pending the hearing**
- a. The petitioner respondent is given the exclusive temporary use, possession, and control of the following property that we own or are buying (*specify*):
- b. The petitioner respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:
- | <u>Debt</u> | <u>Amount of payment</u> | <u>Pay to</u> |
|-------------|--------------------------|---------------|
| | | |

8. NONCOMPLIANCE WITH DISCLOSURE REQUIREMENTS
- Petitioner Respondent has complied with mandatory disclosure requirements (you must attach a copy your filed *Declaration Regarding Service of Declaration of Disclosure* (form FL-141)), and requests an order that
- petitioner: respondent:
- a. provide a further response to his or her preliminary final declaration of disclosure under Family Code section 2107(b)(1).
- b. has failed to comply with disclosure requirements and is prevented from presenting evidence on the issues that should have been covered in the declaration of disclosure under Family Code section 2107(b)(2).
- c. be granted for good cause his or her request for voluntary waiver of receipt of preliminary final declaration of disclosure under Family Code section 2107(c).
- d. be granted his or her request to set aside the judgment under Family Code section 2107(d).

9. OTHER RELIEF (*specify*):

10. I request that time for service of the *Order to Show Cause* and accompanying papers be shortened so that these documents may be served no less than (*specify number*): _____ before the time set for the hearing. I need to have the order shortening time because of the facts specified in the attached declaration.

11. FACTS IN SUPPORT of relief requested and change of circumstances for any modification are (*specify*):
 Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

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 APPLICANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY DRAFT 6: 02/16/10 GDS NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
RESPONSIVE DECLARATION TO ORDER TO SHOW CAUSE OR NOTICE OF MOTION	CASE NUMBER:
HEARING DATE: _____ TIME: _____ DEPARTMENT OR ROOM: _____	

1. CHILD CUSTODY
- a. I consent to the order requested.
- b. I do not consent to the order requested but I consent to the following order:

2. CHILD VISITATION
- a. I consent to the order requested.
- b. I do not consent to the order requested but I consent to the following order:

3. CHILD SUPPORT
- a. I consent to the order requested.
- b. I consent to guideline support.
- c. I do not consent to the order requested, but I consent to the following order:
- (1) Guideline
- (2) Other *(specify):*

4. SPOUSAL OR PARTNER SUPPORT
- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

5. ATTORNEY FEES AND COSTS
- a. I consent to the order requested.
- b. I do not consent to the order requested.
- c. I consent to the following order:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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6. PROPERTY RESTRAINT
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

7. PROPERTY CONTROL
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

8. NONCOMPLIANCE WITH DISCLOSURE REQUIREMENTS
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:
-

9. OTHER RELIEF
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

10. SUPPORTING INFORMATION
- contained in the attached declaration.

NOTE: To respond to a request for domestic violence restraining orders requested in the *Request for Order (Domestic Violence Prevention)* (form DV-100) you must use the *Answer to Temporary Restraining Order (Domestic Violence Prevention)* (form DV-120).

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 DECLARANT)

BILL NUMBER: AB 459 CHAPTERED
BILL TEXT

CHAPTER 110
FILED WITH SECRETARY OF STATE AUGUST 6, 2009
APPROVED BY GOVERNOR AUGUST 5, 2009
PASSED THE SENATE JUNE 22, 2009
PASSED THE ASSEMBLY JUNE 25, 2009
AMENDED IN SENATE JUNE 15, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

INTRODUCED BY Assembly Member Bonnie Lowenthal

FEBRUARY 24, 2009

An act to amend Sections 2104, 2106, and 2107 of the Family Code, relating to dissolution.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, Bonnie Lowenthal. Dissolution: disclosure.

Existing law requires each party to a proceeding for dissolution of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, and a final declaration of disclosure, as specified, unless service of the final disclosure is waived. Existing law requires each party to serve a preliminary declaration of disclosure after or concurrently with service of the petition for dissolution or nullity of marriage, or legal separation of the parties. If a party fails to serve a preliminary or final declaration of disclosure, as specified, or fails to provide information required in those declarations with sufficient particularity, if the other party has served the respective declaration of disclosure, and if the noncomplying party also fails to comply with a request for the preparation of the appropriate declaration of disclosure or further particularity, existing law authorizes the complying party to file a motion to compel a further response or for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

Existing law generally prohibits entry of judgment with respect to the parties' property rights unless each party, or the attorney for that party, has executed and served a copy of the final declaration of disclosure and current income and expense declaration. Existing law requires a court to set aside a judgment when the parties have failed to comply with all disclosure requirements, as specified.

This bill would add, as an additional option that a complying party may pursue if the noncomplying party fails to comply with the request described above, the option to file a motion showing good cause to grant the complying party's voluntary waiver of receipt of the noncomplying party's disclosure, as specified. If that motion is granted, the bill would require the court to set aside a judgment only at the request of the complying party, unless the motion is based on actual fraud or perjury, as specified. The bill would make related and conforming changes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2104 of the Family Code is amended to read:

2104. (a) Except by court order for good cause, as provided in Section 2107, after or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order. However, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

SEC. 2. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (d) of Section 2105, Section 2110, or absent good cause as provided in Section 2107, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party, or his or her attorney, shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110.

SEC. 3. Section 2107 of the Family Code is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do one or more of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) File a motion showing good cause for the court to grant the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to Section 2104 or final declaration of disclosure pursuant to Section 2105. The voluntary waiver does not affect the rights enumerated in subdivision (d).

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) Except as otherwise provided in this subdivision, if a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error. If the court granted the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to paragraph (3) of subdivision (b), the court shall set aside the judgment only at the request of the complying party, unless the motion to set aside the judgment is based on one of the following:

(1) Actual fraud if the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding.

(2) Perjury, as defined in Section 118 of the Penal Code, in the preliminary or final declaration of disclosure, in the waiver of the final declaration of disclosure, or in the current income and expense statement.

(e) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them. Absent a court order to the contrary, the disclosure declarations shall not be filed with the court and shall be returned to the parties.

Item SPR10-30 Response Form

Title: Family Law: Disclosure Requirements (revise forms FL-141, FL-310, and FL-320)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.