

Title	Family Law: Appearance, Stipulations, and Waivers (revise form FL-130, and approve form FL-131)
Summary	The proposed revision would promote compliance with the mandates of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. Appen. § 501 et seq.) regarding the waiver of rights and protections provided by the act in uncontested dissolution, legal separation, or nullity proceedings or actions to establish parentage.
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

The U.S. Department of Justice has raised concerns regarding the Judicial Council’s compliance with the Servicemembers Civil Relief Act of 2003 (SCRA) (50 U.S.C. Appen. § 501 et seq.).<sup>1</sup> The concern focused specifically on forms that include a waiver of rights under the SCRA and whether the waiver provisions on the forms meet the requirements of 50 U.S.C. Appen. § 517. A review of all Judicial Council forms concluded that *Appearance, Stipulations, and Waivers* (form FL-130) is the only one that includes a waiver under the SCRA and that this form should be revised to more accurately reflect all SCRA waiver requirements.

Form FL-130 is used in uncontested dissolution, legal separation, or nullity proceedings or actions to establish parentage. It is generally completed when the parties have a written settlement agreement or a stipulation for judgment that will be submitted to the court.

Under the SCRA, a default judgment cannot be entered against a respondent on active military duty and is subject to set-aside unless counsel is appointed to represent the respondent or the respondent waives all rights under the SCRA. The waiver in the current version of form FL-130 at item 1.c. is intended to serve as the waiver of rights under the SCRA and reads as follows: “The respondent is a member of the military services of the United States of America and waives all rights under the Servicemembers Civil Relief Act (50 U.S.C. Appen. § 501 et seq.). No appearance fee is required.”<sup>2</sup>

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<sup>1</sup> The Servicemembers Civil Relief Act of 2003 (SCRA) (50 U.S.C. Appen. § 501 et seq.), formerly known as the Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA), is a federal law that provides protections for military members as they enter active duty. It covers issues such as default judgments, rental agreements, security deposits, prepaid rent, credit card interest rates, mortgage foreclosures, insurance, and tax payments.

<sup>2</sup> The second sentence in the waiver is intended to inform the servicemember and the court clerk that under California law, servicemembers are not charged a fee to file this form. (Gov. Code, § 70673.)

To be effective under the SCRA, the waiver of rights must: (1) be in writing and displayed prominently in 12-point type; (2) be executed as an instrument separate from the obligation or liability to which it applies; (3) be made under a written agreement of the parties that is executed during or after the servicemember's period of military service; (4) specify the legal instrument to which the waiver applies; and (5) specify the servicemember concerned if the servicemember is not a party to the instrument. (50 U.S.C. Appen. § 517(a)–(c).)

To promote compliance with the above SCRA waiver requirements, a proposed new form, *Declaration and Waiver of Rights and Protections Under the Servicemembers Civil Relief Act of 2003* (form FL-131), would be created and *Appearance, Stipulations, and Waivers* (form FL-130) would be revised as follows:

- The proposed new form FL-131 would contain the SCRA waiver language, provide information to the servicemember about the SCRA and how to obtain a copy of the act, and include a notice to the clerk of the court to indicate that courts must not charge the servicemember a fee to file *Appearance, Stipulations, and Waivers* (form FL-130) under Government Code section 70673; and
- Item 1.c. of form FL-130 would be revised to delete the current waiver language. Instead, it would instruct the servicemember to attach form FL-131. Also, item 2.d. would be revised to clarify that the parties must attach their agreement or stipulation for judgment to *Judgment (Family Law)* (form FL-180).

The Family and Juvenile Law Advisory Committee recommends that this proposal be effective on January 1, 2011, so that parties have timely access to forms that are compliant with the requirements for waivers under the SCRA.

The proposed new and revised forms are attached at pages 3–4.

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> _____	<b>FOR COURT USE ONLY</b>   <div style="border: 1px solid gray; background-color: #e0e0e0; padding: 10px; width: fit-content; margin: auto;"> <p style="margin: 0;">Draft 4 2/04/10 gds Not approved by the Judicial Council</p> </div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER:  RESPONDENT:	
<b>APPEARANCE, STIPULATIONS, AND WAIVERS</b>	CASE NUMBER:

1. **Appearance by respondent** *(you must choose one):*

- a.  By filing this form, I make a general appearance, or
- b.  I have previously made a general appearance.
- c.  I am a member of the military services of the United States of America. I have completed and attached to this form *Declaration and Waiver of Rights and Protections Under the Servicemembers Civil Relief Act of 2003* (form FL-131).

2. **Agreements, stipulations, and waivers** *(choose all that apply):*

- a.  The parties agree that this cause may be decided as an uncontested matter.
- b.  The parties waive their rights to notice of trial, a statement of decision, a motion for new trial, and the right to appeal.
- c.  This matter may be decided by a commissioner sitting as a temporary judge.
- d.  The parties have a written agreement that will be submitted to the court, or a stipulation for judgment will be submitted to the court and attached to *Judgment (Family Law)* (form FL-180).
- e.  None of these agreements or waivers will apply unless the court approves the stipulation for judgment or incorporates the written settlement agreement into the judgment.
- f.  This is a parentage case, and both parties have signed an *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235) or its equivalent.

3. **Other** *(specify):*

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

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**DECLARATION AND WAIVER OF RIGHTS AND PROTECTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003**

**Notice to Servicemember**

The Servicemembers Civil Relief Act of 2003 (SCRA) (50 U.S.C. Appen. § 501 et seq.), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), is a federal law that provides protections for military members as they enter active duty. You may obtain a copy of the SCRA from the public law library or online at [www.usdoj.gov/crt/military/scratext.htm](http://www.usdoj.gov/crt/military/scratext.htm).)

By signing this waiver and attaching it to *Appearance, Stipulations, and Waivers* (form FL-130), I declare that I am entitled to the benefits of the SCRA, and:

1. I make a knowing, intelligent, and voluntary waiver of the rights and protections provided by the SCRA to permit the court to decide this cause as an uncontested matter and enter the written agreement made between me and the petitioner.
2. This waiver applies to the written agreement to which I am a party that is titled (*specify*):
3. The above-named document was executed during or after a period of military service.

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)

**Attention: Clerk of the Court**

By law, a servicemember must not be charged a fee to file *Appearance, Stipulations, and Waivers* (form FL-130).

**SERVICEMEMBERS CIVIL RELIEF ACT**  
**Public Law 108-189**  
**50 U.S.C. App. §§501–596 (19 Dec 2003)**  
**as amended by Public Law 108-454 (10 Dec 2004)**

**§ 517. Waiver of rights pursuant to written agreement [Sec. 107]**

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. **[Preceding sentence added by P.L. 108-454, 10 Dec 2004.]** In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

**(1)** The modification, termination, or cancellation of--

**(A)** a contract, lease, or bailment; or

**(B)** an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

**(2)** The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--

**(A)** is security for any obligation; or

**(B)** was purchased or received under a contract, lease, or bailment.

(c) Prominent Display of Certain Contract Rights Waivers – Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type. **[Added by P.L. 108-454, 10 Dec 2004.]**

(d) Coverage of periods after orders received

For the purposes of this section—

**(1)** a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

**(2)** the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.

## Item SPR10-31 Response Form

**Title:** Family Law: Appearance, Stipulations, and Waivers (revise form FL-130, and approve form FL-131)

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

Comments: \_\_\_\_\_

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\_\_\_\_\_

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](mailto: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

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010</b>
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*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.*