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CHAPTER 8 DISSOLUTION I

8.00 Introduction: Informed Choices and Anticipating Problems

There are several ways to end a marriage: legal separation, dissolution, summary dissolution, and nullity. The Buhai Center only assists Litigants with legal separations and dissolution actions so the other options will not be discussed in detail. Parents may also file a Petition for Custody and Support to obtain custody, visitation, and child support orders without ending the marriage. Keep in mind that these different methods should be explained fully to the Litigant early on, so she can make an informed choice.

Litigants often need reassurance that they **do not** need to get the consent of their spouse and their spouse cannot stop the process. The often heard threat, “I won’t let you get a divorce,” is an empty gesture. However, the process can take a long time, at least 6 months under California law and often a year or longer. Make sure that Litigants have reasonable expectations about this time frame and that they understand that dissolution is a several-step process.

The following will be accomplished when the process is complete:

- The legal relationship will be over;
- Property will be divided;
- Custody and visitation of the children will be determined;
- Child support will be assessed, if possible;
- Spousal support will be determined, if necessary; and
- The parties will get their former names reinstated, if desired.

Important Note: It is **critical** to advise all Litigants commencing a dissolution that they **may not remarry until they receive the final court papers signed by the judge**. They must be clearly advised that they are not divorced until they receive a Notice of Entry of Judgment from the Court. This form will contain the date in which the parties are legally divorced.

A. Dissolution of Marriage

In California, divorce is referred to as dissolution of marriage.

1. Family Court vs. Civil Court

Dissolution actions are filed in family court. Unlike actions filed in civil court, the party who files first is the “Petitioner” (instead of plaintiff), the party who responds is the “Respondent” (not defendant), and the initiating document is called the “Petition,” not the complaint.

2. Venue: 3 Months

The proper venue to bring an action for dissolution is the county in which **either** the Petitioner or the Respondent resided for at least three months immediately preceding **commencement** of the proceeding. Cal. Code of Civ. Proc. § 395.

3. Residency Requirements: 6 Months

Petitioner or Respondent must have been a resident of California for six months before the petition for dissolution is filed. Fam. Code § 2320.

Note: Non-resident same sex couples can obtain a dissolution in California if they were married in California and neither spouse lives in a jurisdiction that will dissolve the marriage. Domestic partners whose domestic partnership was established in California can also obtain a dissolution of their domestic partnership regardless of residency.

B. Legal Separation

A legal separation is a way to settle each spouse's responsibilities towards their children and each other **without** terminating the marital relationship. This action can be maintained on the same grounds as dissolution and is governed under the same Family Code sections, commencing with section 2300.

1. Reasons to Select Legal Separation Over Dissolution

- a. Residency Requirements: There is no residency requirement for legal separation, thus if a Litigant has not met the six-month residency requirement for filing a dissolution but needs orders immediately, she can file for legal separation.
- b. Religious Beliefs.

2. Venue

- a. The proper venue to bring an action for legal separation is the county in which **either** the Petitioner or the Respondent resides at the **commencement** of the proceeding. Cal. Code of Civ. Proc. § 395.

C. Interaction Between Legal Separation and Dissolution

1. Relief for legal separation or dissolution cannot be requested in the alternative.
2. Respondent may always request a dissolution in his response, even if Petitioner requested only a separation.
3. After the Litigant complies with the residency requirement for dissolution, she can **amend** her petition to request that judgment of dissolution be entered. Fam. Code § 2321.

D. Summary Dissolution

If the marriage has lasted no more than five years, there are no minor children from the relationship, and community property is less than \$25,000, a Litigant may qualify for a summary dissolution. Fam. Code §§ 2400 et seq. The Center does **not** help Litigants with summary dissolutions and they are not discussed in this manual.

E. Nullity

1. Nullity of a Void Marriage

- a. This alternative is available when the marriage was incestuous (**all** blood-relative marriages are illegal under section 2200 of the Family Code) or bigamous (where a living spouse exists and there is no basis for believing the spouse to be dead). Fam. Code § 2201. If nullity is granted, the marriage is declared never to have existed.

2. Nullity of a Voidable Marriage

- a. This alternative is available if at the time the marriage was entered into any of the following existed:
 - i. Petitioner was under the age of 18, or
 - ii. There was a prior existing marriage, but the prior spouse had been absent for at least five years and was not known to be alive, or was generally reputed or believed to be dead, or
 - iii. Either party was of unsound mind, or
 - iv. Consent of either party was obtained by fraud or force, or
 - v. Either party was physically incapable of entering into the marriage, and the incapacity continues and appears to be incurable.
- b. If nullity is granted, the marriage is declared no longer to exist. Fam. Code §§ 2210, 2212. See also §§ 2250 et seq.

3. Drawback to Nullity

- a. A court hearing is necessary even if the case goes by default and the Litigant must offer proof of the particular grounds. The Center **strongly recommends** against this alternative for self-represented Litigants because they will have to put on evidence and conduct a trial.

4. Pleading Both Nullity and Dissolution in the Alternative

A Litigant can plead nullity or dissolution in the alternative. However, because of the **extreme** difficulty in prosecuting a case for nullity, except in very rare instances, self-represented Litigants should be dissuaded from proceeding on the grounds of nullity.

F. Petition for Custody, Visitation and Child Support

Spouses may bring an action for exclusive custody of children of the marriage without filing an action for dissolution or legal separation. Fam. Code § 3120. The Court may also issue visitation and child support orders during the pendency of the action. For additional information **see Chapter 25**.

Note that unmarried parents who have signed a Voluntary Declaration of Paternity may also prosecute an action for child custody and support.

8.01 **Issue Spotting: Importance of Identifying Other Issues Early**

Attorneys need to evaluate issues early in the process to identify 1) the need for temporary orders and 2) other causes of action.

HBCFL Practice: It is important that Litigants quickly begin the process to file for immediate relief or receive referral information for issues not handled by the Center.

A. Requests For Order and Need for Immediate Relief

Parties can obtain temporary, or pendente lite, orders at any time after the Petition is filed through a Request For Order (“RFO”) for custody, visitation, child support, spousal support, and/or restraining orders. **See Chapters 18 and 20** for more information. Such orders will last until the final judgment is obtained, which could take up to a year or longer. Some reasons a Litigant might need an RFO include:

1. To prevent removal or compel return of a child who is being held by the other parent or a third party;
2. To obtain access to the child where access is being denied by the other parent;
3. To obtain support when the spouse/non-custodial parent is working and is not providing sufficient support;
4. To protect a Litigant who is under threat of violence or harm; and/or
5. To modify custody and visitation orders issued in a pre-existing Domestic Violence Prevention Act or dependency court case.

HBCFL Practice: Use the “RFO Checklist” (**Sample Form 9R**) to identify the need for an RFO.

B. Immigration

1. Violence Against Women Act of 1994 (“VAWA”) Eligibility to File a Petition for Legal Status

The VAWA self-petitioning procedure enables abused immigrant spouses to gain legal status without the assistance of their batterers.

- a. Requirements: 1) Non-citizen Litigant with no legal status, 2) married to a U.S. citizen or a legal permanent resident, and 3) domestic violence occurred during the marital relationship.
- b. Timing: If this issue is not identified and the Litigant is divorced for more than two years, she may have lost her chance to apply for legal status under VAWA.

C. Bankruptcy

The family law court will not be able to **make any** orders regarding a division of community or separate property until the bankruptcy case is finished.

Note: A Notice of Related Case needs to be filed. **See Chapter 4.**

HBCFL Practice: Litigants should be asked if they or their spouse ever filed for bankruptcy. If a bankruptcy case is pending or was filed recently:

1. **Obtain File Copies:** Instruct the Litigant to go to the bankruptcy court, assuming it is in Los Angeles, and make copies of the pleadings. If the case is not in Los Angeles, the Litigant will need to obtain copies by mail.
2. **List all Property in the Petition:** Take particular care to distinguish between separate property and community property, and to list all debts.
3. **No Property Orders:** Advise the Litigant that with the exception of pensions and other exempted property, the family law court will not be able to make any orders regarding a division of community or separate property until the bankruptcy case is finished.
4. **Disso II Stage:** Indicate in the Property Declaration that the court has no jurisdiction to enter property orders and file a Notice of Related Case.
5. **Disso III Stage:** Describe the Litigant’s bankruptcy case, with case number, in the Declaration or Trial Brief.

D. Bigamous Marriages

Litigants should be asked about any and all other marriages they may have entered. It is not unheard of for Litigants to be unaware that they are in bigamous marriages.

E. Attorney's Fees and Costs

In a dissolution, nullity, legal separation, action for exclusive custody, or enforcement of a child support order the court may, when appropriate, order one party to pay the attorney's fees and costs of the other party. Cal. Fam. Code §§ 2030, et seq.; 3121; 3557. Litigants can request early in the proceedings that a determination be made about attorney's fees before the proceedings go forward. Cal. Fam. Code § 2030.

To determine the appropriateness of a request for attorney's fees and costs, the court will review: 1) whether there is a disparity in access to funds to retain counsel, and 2) whether one party is able to pay for legal representation of both parties. Cal. Fam. Code § 2030(a)(2). If the court's findings demonstrate "disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs." The Judicial Council has adopted California Rule of Court 5.427 and an optional form to implement these new requirements. Based on these recent amendments, the financial situation of both parties should be assessed early in the case to determine if a request for attorney's fees and costs is appropriate.

8.02 HBCFL Three-Stage Dissolution Process

HBCFL Practice: This entire section pertains to the Center's practices, but provides useful guidance on how to manage a dissolution case.

The Center breaks down the dissolution process into three stages as described below. Within the stages there are different tracks depending on how the case is proceeding (i.e. default or contested). To help volunteers and Litigants understand these stages, the Center has created a flow chart of the stages. **See Sample Form 9A.** The Judicial Council has also published a form explaining the legal steps for divorce or legal separation. **See Sample Form 9B.**

- **Dissolution I (Initiate Case)**

1. **Form Completion:** The Litigant prepares the Summons, Petition and other papers to begin the action.
2. **File and Serve:** The Litigant is given copies for herself and the Respondent, and is instructed to file at the court and then have someone personally serve the Respondent and complete a Proof of Service to that effect.
3. **Check File:** The Respondent has a minimum of 30 days from the date of service of the original petition and summons to file a Response and serve a copy on the Petitioner. Fam. Code § 2020. Instruct the Litigant to check the court file 30 days after service to see if a Response has been filed.

- **Dissolution II (Financial Disclosures)**
 1. **Dissolution II—Default Case (No Response Filed By Respondent):** Litigant prepares and files her Request to Enter Default, Preliminary Declaration of Disclosure, Property Declarations, Income and Expense Declaration or Financial Statement (Simplified), and completed Proof of Service. Advance to *Dissolution III—Default Case*.
 2. **Dissolution II—Contested Case (Response Filed):** Litigant prepares the Preliminary and Final Declarations of Disclosure, Income and Expense Declaration or Financial Statement (Simplified) at this time. Depending on the complexity of the case, the Preliminary and Final Declarations of Disclosure can either be prepared at the same time, or at different times. Litigant then completes a Trial Prep appointment to prepare for Trial. Advance to *Trial Prep*.
- **Trial Preparation (Contested Cases Only):** Litigant completes a Request for Trial Setting and prepares a Trial Brief, as well as an Exhibit List and Witness List as needed. Unless the case settles, the Litigant will have to go to a Trial.
- **Dissolution III (Judgment Preparation)**
 1. **Dissolution III—Default Case (No Response Filed By Respondent):**
 - a. Litigant prepares and files documents to obtain a Judgment of Dissolution, including a Declaration for Default, proposed Judgment, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.
 - b. *No New Issues:* At this stage, the Litigant will be granted the relief requested in the Petition, but will not be able to raise new issues without amending the Petition and starting the process again.
 - c. **Note:** Some Litigants will need to attend a default hearing.
 2. **Dissolution III—Default Case with Agreement (No Response Filed By Respondent but the Parties Have a Written Agreement)**
 - a. Litigant prepares a Judgment that both she and the Respondent sign. The Respondent's signature **must** be notarized. Additionally, the Litigant will complete and file a Declaration for Default, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

3. Dissolution III—Contested Case (Response Filed):

- a. Litigant prepares and files a Judgment of Dissolution based on the orders the judge made at Trial. The Litigant also prepares and files a Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

4. Dissolution III—Uncontested Case (Respondent Filed a Response and the Parties Have a Written Agreement)

- a. Litigant prepares a Judgment for both parties to sign. Respondent's signature does **not** need to be notarized because he has appeared in the case. Litigant will also prepare and file a Declaration for Default or Uncontested Judgment, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

8.03 **Dismissal of Cases Due to Timing Issues**

The Court will dismiss cases that are not served within three years of filing and cases that are not brought to trial within five years of filing. Cal. Code of Civ. Proc. §§ 583.210, 583.250, 583.310. If this happens, the Litigant will have to start over. However, there is an exception for cases with existing child and/or spousal support orders, and these cases will not be dismissed for failure to serve or bring the case to trial within the above timeframes. Cal. Code of Civ. Proc. § 583.161.

8.04 **Issues Common to All Forms**

The rest of this chapter will describe each form used in Dissolution I, the issues raised in connection with these forms, and how to complete them. **Always emphasize to Litigants the importance of completing these papers fully and accurately because they are signing under penalty of perjury.**

A. Document Footer

Each paper filed with the Court must bear a footer with the title of the paper (i.e., "Petition") in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. Cal. Rules of Court, rule 2.110. The pre-printed Judicial Council forms already contain the title and necessary line.

HBCFL Practice: The Center also stamps all forms with "HBCFL" on the front to alert court personnel that the Center assisted the Litigant with form completion.

B. Address Confidentiality

1. Advise Litigants that Addresses Are Not Confidential

The Litigant's address and telephone number will appear on all court papers and the opposing side will receive copies of these papers. In the Center's experience, some Litigants do not want the other party to know their current address.

2. Use of a Third Party Address

If the Litigant is frightened of the other party who is unaware of her location, she may use a third party's address.

- a. Reliability: This must be a reliable address where the Litigant can continue to receive mail throughout the pendency of the action.
- b. Confidential Address Program for Victims of Domestic Violence: If the Litigant has no reliable safe address to receive mail, she may be eligible to apply to this program to receive a post office box. For information on applying, see <http://www.sos.ca.gov/administration/regulations/current-regulations/registries/safe-home-confidential-address-program/>.

C. Change of Address

1. Litigants are encouraged to use a consistent address throughout the proceeding and changes are **not** recommended if the Litigant can continue to receive mail at the original address.
2. If necessary, the Litigant may change her mailing address by filing and serving a Notice of Change of Address form (MC-040), **see Sample Form 4B**.
3. The Notice of Change of Address must be served by mail on all interested parties.

D. Handwritten Forms

Use only black ink for all pleadings prepared in family law cases.

E. Name Consistency

Whatever name is selected must be used throughout the case.

- If the wife never used her husband's name, she does not have to use it now to get a divorce.
- In some cultures, the maiden name of the Litigant's or other party's mother is thought necessary to be added to all legal documents, but that is not the case in California.

**** Before Starting, See Chapter 3 on Fee Waivers ****

8.05 Family Law Case Cover Sheet (LA-20/FAM 020) (Sample Form 9C)

The Los Angeles Superior Court (L.A.S.C.) requires a Family Law Case Cover Sheet in all cases. For instructions on how to complete the form, **see Chapter 4**. For areas outside of Los Angeles County, check your local practice to see if a similar form is required.

HBCFL Practice: The Center recommends that all its Litigants file their cases at the Central courthouse because of our familiarity with their procedures and practices. Litigants residing in Los Angeles County may file in either the Central Courthouse or at the branch court nearest their home.

8.06 Summons (FL-110) (Sample Form 9D)

• **Caption**

Make sure the names of the Petitioner and Respondent are exactly the same on all documents. **If there are any variations between the names on the Summons and the Petition and/or between the Summons and other pleadings, one or more of the documents will have to be amended and a new set will have to be served on the other spouse.** Include any aliases that the parties may have.

1. *Name:* The names used on the Summons must be used for all other pleadings.

• **Items 1-2**

Complete with the appropriate information. If Petitioner's address is confidential for safety reasons, use her designated third-party address.

• **Standard Restraining Orders**

1. *Location:* Advise Litigants that they appear on the reverse side of the Family Law Summons.
2. *Effective Date:* They are effective against the Petitioner at the time of filing and against the Respondent at the time of service. They expire at the time of Judgment.
3. *Effect:* They prohibit: 1) removal of the minor children from the state, 2) taking various actions with respect to insurance policies, and 3) taking various actions with respect to property.
 - a. *Property Restraint:* Once they have attached upon the filing of the case, the Petitioner and Respondent, if served, can take **no** further action to convey, transfer, change or assign any property interest.

- b. *Death of a Party Prior to Property Division:* Point out the “**WARNING**” regarding which laws are controlling.
 - i. Review Legal Documents: Advise Litigants to review their wills, deeds, and other documents. To the extent they wish to and can reduce or terminate the interest of the other spouse, Litigants must take appropriate actions **before filing the case**. Emphasize that if the Litigant does not alter the title to property or change her will **and** either party dies before final judgment of dissolution, each will assume all of the rights of inheritance as if they were happily married and living together.

8.07 Proof of Service of Summons (FL-115) (Sample Forms 6A and 9E)

HBCFL Practice: Complete the Proof of Service form as much as possible before the Litigant leaves the appointment and place colored dots on the form so that the Litigant understands that the server must complete each of these items. **See Chapter 5** for instructions on completing this form.

8.08 Petition (FL-100) (Sample Form 9F)

Note: This is the critical Dissolution I document. Complete it with great care!

The relief granted in a default judgment cannot exceed that requested in the Petition. Cal. Code of Civ. Proc. § 580. Explain that incomplete, unclear or contradictory information will delay the entire process.

- **Caption**

Names must be identical to those listed in the Summons.

HBCFL Practice: The Center’s Litigants generally do not fill in the optional e-mail address.

- **Item 1 – Legal Relationship**

Form FL-100 may be used to dissolve either a marriage or a domestic partnership. Check the applicable legal relationship of the parties.

- **Item 2—Residence**

1. **Jurisdiction:** Except for special circumstances in the case of certain same-sex spouses or domestic partners, to obtain a divorce, at least one of the parties must have been living in **California** for **at least six months** and in the **county** where the action is to be filed for **at least three months immediately preceding filing**.
 - a. If neither party qualifies as a “resident” for dissolution purposes, a proceeding for legal separation can be commenced because there are no statutory residence requirements for nullity or legal separation proceedings.

Note:

- i. When one party complies with the residence requirements, amend the Petition to change to a dissolution action and give notice to the other party.
- ii. The amended pleadings and new Summons must be served on the other party in order to obtain jurisdiction.
- iii. The six-month waiting period for a final judgment of dissolution may relate back to the date of the service of the original Petition for Legal Separation. This request should be made by motion.

2. *Item 2.a.*

If the Petitioner qualifies under the jurisdiction rules above, check the first box only. If only the Respondent qualifies, check the second box. If both parties qualify, check both boxes.

3. *Item 2.b.*

Check this box if the parties formed a domestic partnership in California. Neither party is required to be a resident of California.

4. *Item 2.c.*

Check this box if the parties are in a same sex marriage established in California, and neither party lives in a state or nation that will dissolve the marriage. (This box will never be checked for the Center’s clients as the Center only provides services to individuals residing in Los Angeles County).

- **Item 3—Statistical Facts**

1. *Item 3.a.(1): Date of Marriage*

- a. Provide a complete date, including **day, month** and **year**.
- b. The date of marriage, as with all other information required in Item 2, is **essential** and must be completed.
- c. If the Litigant does not remember, she should be encouraged to make phone calls to get this information or obtain a copy of her marriage certificate.

2. *Item 3.a.(2): Date of Separation*

- a. Provide a complete date, including **day, month** and **year**.
- b. Use the date on which one or both of the parties decided that the marriage was over and the parties established separate residences.
 - i. Under current case law, if the parties are still living together, they might not be considered legally separated even if they have communicated their intent to divorce and are not acting as a married couple. However, there is pending legislation that would further change what factors a court would look at to determine date of separation.
- c. If the relationship was rocky and punctuated by a series of separations, select the **date of the last separation**.
- d. **Carefully Consider this Date:** Classification of property acquired during the marriage as community or separate as well as spousal support rights can depend on the date of separation.

3. *Item 3.a.(3): Time from Date of Marriage to Date of Separation*

- a. Calculate and fill in the time between the marriage date and the date of separation (in other words, the length of the marriage).

4. *Item 3.b. (1-3): Domestic Partnerships*

- a. Provide a complete date, including day, month and year and follow the above instructions to determine the date of separation.

- **Item 4—Declaration Regarding Minor Children**

1. *Item 4a—No Minor Children:* If there are no minor children of the marriage then check Box 4a and skip to Item 5.
2. *Item 4b—Minor Children*

- a. *List All Minor Children of the Relationship (Born Before or During the Marriage, or After the Separation Date, or Adopted During the Marriage):* Include their age, sex and date of birth.

- i. **Review the Date(s) Carefully:** Use of the wrong date of birth may necessitate the filing of an Amended Petition and re-serving the Respondent!
- ii. Children’s names and birth dates must be the same in all pleadings.

- b. *Issue Spotting:*

Issues regarding paternity may arise in a divorce case. The most common scenarios arising for the Center’s clients are as follows:

- i. *Biological Child of the Parties Born Prior to the Marriage:* The husband’s paternity can be established in the divorce case. All children born prior to the marriage should be listed as children “of the marriage” in accordance with 4c. The Litigant does not need to request of finding of parentage; provided the child is listed in 4b, the court has the authority to determine the child is a child of the marriage.
- ii. *Uncertain Biological Parentage of a Child Born During the Marriage:* Unless the husband contests, listing the child as “of the marriage” will legally establish the husband as the child’s father. Litigants should be candidly asked about the possible biological father’s knowledge of the child. Advise the Litigant that the husband may request blood tests if the child is less than 2 years old. Also consider the best interests of all the children. If the Litigant does not want the husband to be determined to be the father of the child, the child should **not** be listed as a child of the marriage. Instead, under section 11c, “Other Requests,” the Litigant should request that the court make a finding that the child is not a child of the marriage.
- iii. *Husband is Not the Biological Father of a Child Born Prior to the Marriage, but is a Presumed Father Under Family Code 7611(d):* If the Litigant began her relationship with the husband when she was already pregnant with or already had a child from another relationship, and the child has no other legally established father,

the husband may be legally established as the father if he received the child into his home and openly held the child out as his own. In this case, if the Litigant wants to establish the husband as the father, the Litigant should file a separate Paternity action against the husband and relate the case to the Dissolution action. The biological father must receive notice of the action if his identity and whereabouts can be ascertained, and may need to be joined to the action. Consult a Staff Attorney if this issue arises.

iv. *More than Two Parents:* California law was changed in 2014 to provide that where there are more than two people with existing claims to parentage under the Family Code, the court may find that a child has more than two legal parents in the rare case that recognizing only two parents would be detrimental to the child. See Family Code 7612(d). In cases where a child is determined to have more than two parents, the court may allocate custody and visitation between all parents, or may order that not all parents share legal or physical custody, based on the best interests of the child. See Family Code 3040(d). Note that the court is not required to recognize more than two legal parents even if more than two people with legitimate claims to parentage exist. If the Litigant wants to establish more than two legal parents, consult a Staff Attorney before proceeding. A separate paternity action may need to be filed.

c. *Litigant Is Pregnant:* Check item 4.b.(2). Identify the baby as an “unborn child” of the marriage with expected birth date and sex, if known.

Note: Sometimes a Litigant is embarrassed to disclose that she is pregnant. If there is any question as to this, the Litigant should be *discreetly* questioned.

d. *Jurisdiction of Children:* If at the time of commencement of the action, children who are the subject of the action reside outside California, subject matter jurisdiction may not exist. While all children of the marriage and/or relationship should be listed, depending on the facts and circumstances of the particular case, the court may not be able to issue orders of custody and visitation until they return to California. **(See also Chapter 7 for a discussion of subject matter jurisdiction in child custody matters).**

3. *Item 4d:* A completed **Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** is required for all Petitions for Dissolution with minor children. **See Chapter 7** for instructions on completing the form.

4. *Item 4e—Voluntary Declaration of Paternity*: If a child was born before marriage, and the husband signed a Voluntary Declaration of Paternity (“VDP”) at the hospital at the time of birth of the minor child, check the box and attach a copy of the form if the Litigant has it.
 - a. Advise the Litigant to obtain a copy if she does not have one. She can file it later in the case.
 - b. Also advise her to obtain a copy of the child’s birth certificate if the husband’s name is on it.
- **Item 5— Legal Grounds**
 1. *Boxes 5a and 5a(1)*: Check each box unless the rare case of Legal Separation or Nullity is requested.
 2. California is a no fault state and the only two grounds for dissolution are irreconcilable differences and permanent legal incapacity to make decisions.
 - a. *Irreconcilable Differences—No Fault*: Who did what to whom does not matter even if the spouse is a rotten individual. All that matters is that the parties do not get along and there is no possibility of reconciliation.
 - b. *Permanent Legal Incapacity to Make Decisions*: This ground should rarely, if ever, be used. It requires proof, including competent evidence by a medical or psychiatric professional, that the opposing party is permanently incapacitated from making decisions. Even in the case where the opposing party meets this criteria, claiming irreconcilable differences requires no proof and is thus more expedient.
 - **Item 6—Child Custody and Visitation (Parenting Time)**

Explain to the Litigant that “custody” deals with two questions: a) with whom shall the children live, and b) who will make decisions concerning their interests? Custody can be shared (“joint”) or it can be given exclusively to one parent (“sole”). The Center has a handout on custody and visitation that can help Litigants understand these concepts. **See Sample Form 9V.**

Important Note: The custody and visitation concepts must be clearly discussed and explained during this first session. If they are not, and the Litigant wishes to change her requests after the Petition is filed with the court, the Litigant will have to file an amended Petition and re-serve her spouse. Stress the point that the court is concerned about the “**best interests of the child**” not the parents.”

1. *Legal Custody*: Indicates the authority to make the necessary decisions concerning the minor child's education, health care, religion and other important matters.
 - a. *Sole Legal Custody*: If the Litigant wants one parent alone to make the legal decisions relating to the children, she should check the box under either Petitioner or Respondent at Item 6a, whichever is to have sole legal custody.
 - b. *Joint Legal Custody*: If the Litigant wants both parents to share the authority to make legal decisions concerning the children then check the box under "Joint" at Item 6a. Joint legal custody is not recommended in cases that involve domestic violence. See Section 1(a) below under Item 6b for a further discussion of domestic violence and child custody.
 - i. Once the Litigant decides to request joint legal custody, a further determination must be made. The Litigant must decide whether each parent will have the authority to act alone in making decisions or whether the parties must reach an agreement before a decision is made.
 - (1) To specifically define the terms of the joint legal arrangement, the Litigant should complete the **Joint Legal Custody Attachment (FL-341(E)), Sample Form 9H-1**.
 - (2) On the Petition, check Box 6c to indicate that this form is being attached (FL-341(E)).
 - ii. In choosing joint legal custody, it is important to note that, unless specified otherwise, each parent may **act alone** in making decisions, so long as the decision does not conflict with any orders concerning the child's physical custody. Non-custodial parents may choose to request this form of joint legal custody because it allows them more freedom to act in the best interest of the minor children.
 - iii. If the Litigant wants to request a more restrictive joint legal custody order, she must specify the issues that the parties must come to an agreement about.
 - (1) The Center generally does not recommend this kind of joint legal custody unless the parties have a significant history of getting along extremely well.

- **Item 6b—Physical Custody**

With whom will the child live? Parents can have sole or joint physical custody of the children.

1. *Sole Physical Custody*: If the children primarily reside with one parent, that parent is said to have sole physical custody. Most of the time, this is subject to the rights of the other parent to visit the children. Check either “Petitioner” or “Respondent,” whomever is to have sole physical custody.
 - a. *Presumption Against Custody to Perpetrators of Domestic Violence*: Section 3044 of the Family Code instituted a rebuttable presumption that awarding custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. This includes sole or joint physical or legal custody.
 - i. The presumption applies to a person who is found by the court to have committed domestic violence against the other parent or the children in the last five years.
 - ii. In determining whether the presumption has been rebutted, the court will consider, among other factors, whether the offender has successfully completed a batterer’s treatment program, a program of alcohol or drug abuse counseling, and parenting classes.
 - b. *Move-Away*: Due to recent developments in California case law, custodial parents must proceed with caution when planning to move to another city, county, or state. A parent with a sole physical custody order, who seeks to move with the minor children to another city or state, may still need to ask the court for permission to move. Courts may look unfavorably on a custodial parent’s unilateral move interfering with the non-custodial parent’s relationship with the children. In some instances, courts may order a switch in custody where they find that the change is in the best interests of the children.
 - i. Factors that the court will consider include the custodial parent’s ability or willingness to foster a relationship with the non-custodial parent; the custodial parent’s history of interference with the non-custodial parent’s relationship with the children; ability of each parent to travel to the child’s new residence; the child’s base in the present community; and how involved each parent is in the child’s life.

2. *Joint Physical Custody*: If the Litigant wants the children to spend a “significant” amount of time with each parent then joint physical custody should be requested. Joint physical custody is not an unusual request, but unless the parents live close to each other, it can be quite burdensome to the child to keep switching homes. To select this form of custody, check the box under Joint.
3. *Third Parties*: In rare instances, the Litigant wishes to have a **third party appointed as custodian of the child**. Sections 3040 and 3041 of the Family Code authorize a custody award to a third party in a dissolution action. In this case the Litigant would check the “Other” box and include an attachment specifying the desired custodial arrangements.
 - a. *Requirements*: (a) both parents consent, or (b) the court makes a finding that parental custody would be **detrimental** to the interests of the child and an award to a non-parent is required to serve the best interests of the child.

HBCFL Practice: Despite statutory authority for such arrangements, advise Litigants who want a third party to have custody to seek custody for themselves, and then make informal arrangements with the third party. The Center follows this policy because of the problem of securing consent from both parties, and the difficulty a self-represented Litigant would have in proving detriment to the child at a hearing.

- b. *Procedure*: If the Litigant persists in her desire to request custody to a third party, there are two possible ways to satisfy sections 3040 and 3041:
 - i. If both parents consent, two declarations reflecting this consent should be added as Exhibits to the Declaration for Default, completed at the Dissolution III appointment.
 - ii. If the other party is not available to consent, or refuses to consent, there will need to be a hearing on the issue of detriment. The Litigant will have to be fully prepared for the hearing, where the standard of proof will be clear and convincing evidence.

4. *More than two parents*: In the rare case that the Litigant is seeking to establish more than two parents, check the “Other” box and include an attachment specifying the desired custodial arrangements.

• **Item 6c—Child Visitation**

The section on child visitation is an extremely important part of the form, and it should be completed with great care. Great attention must be paid to the issue of visitation in order to come up with a specific visitation request that suits the Litigant’s concerns, wishes and the best interests of the children.

HBCFL Practice: The Center has created a brief visitation interview to help Litigants come up with an appropriate visitation schedule. **See page 2 of Sample Form 9Q.**

The totality of the circumstances must be taken into account when deciding the type of visitation to request; common sense and reason should prevail. For example: If the Respondent has a history of alcohol abuse and would often drink and drive with the kids in the car, it would not be appropriate to order him to pick up and drop off the children for visits or allow him to drive the children around. The Litigant must be urged to consider carefully what she wants and what makes sense in light of her past relationship with the other parent.

1. *Form Completion*: Visitation is generally granted to the person without physical custody. Unless it would be harmful to the children, the non-custodial parent must be awarded rights of visitation with the children. If visitation is being requested, then check the box under the party who is the non-custodial parent.
2. *Custody and Visitation Attachments*: The Judicial Council has developed forms for optional use that help to define the kind of orders the Litigant wants. These forms are listed at Item 6c. Litigants should be encouraged to be specific in their visitation requests in order to avoid conflict between the parties over establishing a visitation schedule.
 - a. *Child Custody and Visitation Application Attachment (FL-311)*: The Center encourages all Litigants to complete the Child Custody and Visitation Application Attachment in order to outline a specific visitation plan. **See Sample Form 9G-1 and instructions below.**
 - b. *Additional Attachment Forms*: The other forms that the Litigant may choose from are the following: (a) Request for Child Abduction Prevention Orders (FL-312) (**Sample Form 9H-3**), (b) Children’s Holiday Schedule Attachment (FL-341(c)) (**Sample Form 9H-2**), (c) Joint Legal Custody Attachment (FL-341(e)) (**Sample Form 9H-1**), and Additional

Provisions—Physical Custody Attachment (FL-341(d)) (**Sample Form 9G-2**). The Petition refers to each of these forms only by the form number designated by the Judicial Council. Instructions on how to complete each of these forms is contained later in this Chapter.

If the Litigant wants to request additional orders regarding custody and visitation that do not easily fit onto one of the forms, an attachment can be specially prepared. In this case, the attachment should be labeled “Attachment 6c(1)” and the corresponding box should be checked In Item 6c of the petition.

3. *Stepparent and Grandparent Visitation*: In the unusual case, the Litigant may inquire as to whether stepparents or other interested parties may be afforded visitation rights. Stepparents and grandparents seeking visitation rights may do so subject to certain constitutional and statutory limitations. See *Troxel v. Granville* (2000) 530 U.S. 57.
 - a. *Grandparents*: Rights of grandparents to visitation are found in sections 3103-3104 of the Family Code. Review these code sections carefully to determine whether filing a request for grandparent visitation is permitted and appropriate.
 - b. *Stepparents*: If the Litigant is a stepparent and wishes to have visitation rights with a stepchild as permitted under Family Code section 3101, the child should be listed in the Petition under Item 4 and properly identified as the Litigant’s stepchild. The notation “visitation only” should be made at the end of the line. Visitation with this child should be requested in Item 6.

*****Note: After completing the custody and visitation attachments with the Litigant, you will need to mark the appropriate boxes here indicating which attachments were used after the words “As requested in form.”*****

- **Item 7—Child Support**

1. *Child Support Cannot Be Waived*: Child support is automatically included within the Petition if applicable. No box needs to be checked. See *Everett v. Everett* (1976) 57 Cal. App. 3rd 65; *Hunter v. Hunter* (1959) 170 Cal. App. 2d 576.
2. *Retroactive Child Support Order*: Family Code section 4009 provides that when the Petition is served within 90 days of filing the Petition, an initial child support order can be made retroactive to the date of filing of the Petition. If the Petition was served after 90 days and the other party was not intentionally evading service, the child support order can be made effective on the date of service. For Litigants who have not received any child support from the other parent since the filing of a Petition, a

retroactive child support order should be requested either in the initial Petition and or in a Request For Order (RFO) for Support (**see Chapter 18** for more information on RFOs). A request that the child support order be made retroactive may be under Item 7d (**See Sample Form 9F**).

3. *Reserving in the Judgment for Low-Income Litigants:* Litigants who are non-custodial parents must be advised that unless they request primary custody, have no income or depend on a need-based government assistance program, it is likely that the court will order them to pay child support according to the California Child Support Guideline. In circumstances in which the non-custodial parent is on General Relief, SSI, is unemployed, or reports no income, the Litigant can request that jurisdiction over child support be reserved in the final judgment and will need to explain this in a declaration at Disso III or a trial brief.
4. *Other Special Circumstances:*
 - a. *Unborn Children:* Parents owe a duty to support a child not yet born. Thus, child support payments may be assessed while the mother is still pregnant.
 - b. *Age of Child:* The child support ends when the child reaches the age of 18 years.
 - i. Exceptions:
 - (1) The parents agree to further extend child support (i.e., in a marital settlement agreement);
 - (2) The child marries or becomes emancipated before the age of 18;
 - (3) An adult child is in great need and unable to work due to a severe disability; or
 - (4) Where an unmarried child is still in high school at age 18 and is not self-supporting, and still resides with a parent, child support continues until the child completes high school or turns 19, whichever occurs first.

5. *Knowledge of Other Party's Income*: If the Litigant is requesting child, or spousal support, she will need to have information regarding the other party's income in order to calculate the support order. If she **does not** know the other party's income, inform the Litigant that she will need to obtain this information before she can obtain an order.
 - a. *Deposition Subpoena ("depo sub")*: If she knows where the other party works, then she can prepare a depo sub ordering the other party's employer to provide the Litigant with the other party's income information. **See Chapter 25—Deposition Subpoena of Business Records** for a further discussion on preparation of these forms.
- **Item 8—Spousal Support**
 1. *Factors*: Whether and how much spousal support will be ordered depends on the parties' circumstances and their respective needs and ability to pay. Per section 4320 of the Family Code, the court considers the following factors, among others, in ordering spousal support **at the time of judgment**:
 - a. Each spouse's earning capacity, taking into account the job skills of the supported spouse and the extent to which the supported spouse helped in the training or education of the other partner;
 - b. The couple's standard of living during the marriage;
 - c. The couple's property and debts;
 - d. The length of the marriage;
 - e. Whether working would interfere with the needs of the parties' children;
 - f. The age and health of the parties; and
 - g. Evidence of domestic violence.
 2. *Temporary Spousal Support Orders*: Litigants may **request temporary spousal support through an RFO (See Chapter 18)**, in order to maintain the parties' standard of living during the pendency of the dissolution action. Section 3600 of the Family Code provides that the court may order either spouse to pay any amount necessary for the support of the wife or husband during the pendency of the case.
 - a. *Factors*: The factors governing temporary spousal support are simply one party's need for support, the other party's ability to pay support, and the marital standard of living. When requesting temporary spousal support, the court need not consider the factors outlined in section 4320 of the Family Code, and the court may review the spousal support number calculated by the DissoMaster program.

- b. *Retroactive Spousal Support Order*: Family Code section 4333 provides that a spousal support order can be made retroactive to the date of filing an RFO for Support (see Chapter 18 for more information on RFOs).

HBCFL Practice: The Center recommends that Litigants with long-term marriages (10 years or more) request spousal support. For marriages less than 10 years, spousal support should be considered on an individual basis. If it is not requested in the petition, it is deemed waived forever. If the Litigant “waives” her right to spousal support, the Center asks her to sign an internal waiver form showing that she has made an informed waiver of this right.

- **Item 8b—Termination of Respondent’s Right to Collect Spousal Support**

This Item should **always** be checked unless the Litigant wants to pay spousal support to the other party.

- **Item 8c—Reservation of Jurisdiction over the issue of Spousal Support**

This box may be checked if the Litigant does not want to request a spousal support order at this time but does not want to waive the right to request support later. Typically, the Center recommends that Litigants request spousal support for themselves and request to terminate jurisdiction to award support to the other party.

- **Items 9 and 10—Property in General**

1. *Distinguish Between Separate and Community Property*: In general, all property acquired from the date of marriage to the date of separation is community property, unless acquired by gift or inheritance. All property acquired before the date of marriage and after the date of separation is separate. There are some exceptions to this general rule discussed below. Understanding the difference is necessary before completing Items 9 and 10. To help in this discussion, the Center has created a diagram to be used as a visual aid. **See Sample Form 9W.**

- a. Explain that property in this context includes real estate, furniture, household items, cars, bank accounts, pension/retirement benefits, and any debts/obligations.
- b. For divorce purposes, all property is classified as either separate or community.

- c. Whether it is one or the other **is not necessarily based upon whose name appears on the property or debt or who paid for it from his or her own paycheck.** This is an area of frequent confusion and difficulty as Litigants tend to associate legal ownership with the name of the party on the title or registration. It may take time to convince Litigants that an item is community property even if only one name is on it.
2. *Disclose All Relevant Assets or Debts:* If the Litigant forgets to list a piece of property, she will not get orders relating to the property through default unless she amends her Petition, which means **starting over.**
3. *Miscellaneous Personal Property:* Litigants should confine personal property listed to only items of significant value or items or categories which are likely to be contested. (For example, the Litigant does not need to list every item of household furniture individually.)

HBCFL Practice: Complete the Schedule of Assets and Debts (see below) prior to completing Items 9 and 10 on the Petition. This helps Litigants to identify all separate and community property that should be listed at these Items.

- **Item 9—Separate Property**

1. *General Guide for Classification as Separate Property:* “Confirm” to either “Petitioner” or “Respondent” as appropriate:
 - a. Property acquired and debts incurred before marriage and after separation.
 - i. Exception: If a debt was incurred post-separation for the common necessities of life of either spouse or of the children of the marriage **for whom support may be ordered**, such debt may be **confirmed to either spouse** according to each party’s respective **need and ability to pay at the time the debt was incurred.** Fam. Code § 2623. List this debt under Community Property, not Separate Property. Explain in the Declaration at Disso III or in the Trial Brief at Trial Preparation, why you have characterized the debt this way.
 - b. Property acquired by gift or inheritance no matter when it was acquired.

- **Item 10—Community and Quasi-Community Assets and Obligations**

1. *Community Property*: Each party has a one-half interest in every dollar earned by either party between the date of marriage and the date of separation. Anything purchased with these earnings is owned by both parties, even though the parties may have kept their earnings separately and may call a particular thing “hers” or “his.” See Fam. Code § 760 (“...all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.”)

Note: A house should be listed as community property when there is any colorable community property interest (e.g. the community paid down the mortgage, lived in the home, helped with the upkeep and repairs, etc.).

2. *Quasi-Community Property*: Real and personal property which would have been community property if the spouse had been living in California at the time of acquisition.
 - a. *Division*: Divide exactly as if it were true community property. See Fam. Code §§ 63, 125.
 - i. Example: If Respondent bought a house in Nevada while the parties were married and living in Nevada, and they later move to California and file a dissolution action, the Nevada house is quasi-community property and will be treated as community property for purposes of the dissolution property division.
3. Anytime property is listed in the Petition, include the following language, “other assets and debts acquired during marriage.” This can help to protect the Litigant’s right to other property that is not specifically listed.

- **Completing the Schedule of Assets and Debts (FL-142) (Sample Form 9N)**

1. This Schedule is a very good tool to help Litigants identify all of their assets and debts because it identifies a variety of types of property and asks the date they were acquired. It will not be submitted with the Petition, but will be held in the Litigant’s file until their next session.

2. List each item as clearly as possible so that it is identifiable by the other party. For example, “white gold necklace with diamond pendant” as opposed to “necklace.”
 - a. Real property should be identified by its address, automobiles by year and make, and bank accounts and pensions in general terms. When listing a house it is very important that the full address be listed to properly protect the Litigant’s interest in the house.
 - i. Later, it will be necessary to have legal descriptions of real property, license numbers of automobiles, and more specific information about bank accounts and pension plans.
 - b. **It is not necessary to separately list each item of furniture and household effects.** They can be described generally as “furniture, appliances and household effects,” unless there is reason to be specific, such as requesting that a specific item be separately awarded to one of the parties.
3. If the property is separate, indicate to whom the property belongs by putting a “P” for Petitioner or “R” for Respondent in the “Sep. Prop.” Column. **See Sample Form 9N.**
 - a. The characterization of property as “separate” or “community” should be done after careful questioning of the Litigant, before the Petition is completed.
 - b. Keep the Date of Marriage and Date of Separation in mind when completing this form so that property is characterized correctly.
4. Values of the assets and debts should be filled out to the best of the Litigant’s ability. The items should be valued at the price at which they would currently be sold, not the purchase price.
5. After completion of the Schedule, transfer all items listed to Items 9 and 10 of the Petition as appropriate. The items listed on the Schedule of Assets and Debts should be consistent with the Petition. Values should not be listed on the Petition.

Note: Because the Schedule of Assets and Debts will not be submitted until a later session, it **should not be dated** at the Dissolution I appointment. It will be placed in the Litigant’s file to be used later.

- **Additional Property Issues**

1. *Pension/Retirement Benefits*

- a. *List All Possible Pensions/Retirement Plans:* Not all Litigants are aware of whether their spouse has earned a retirement or pension plan during marriage, so all possible pensions should be listed.
 - i. Use general terms such as “Any and all pension, retirement plans, 401ks or other employee benefits earned during marriage by Respondent.”
 - ii. Clues for the existence of such benefits are long-term employment with a large company, membership in a union, and government employment. **When in doubt, list!**

HBCFL Practice: Those whose spouses have pension/retirement plan rights should be given the Center’s form letter on this issue (**Sample Form 9O**), and should be told to complete and return it as soon as possible.

- b. *Include Litigant’s Pension/Retirement Plan(s)*
 - c. *Pension/Retirement Plan Checklist:* The Center has created a checklist to help with the discovery process for pension and/or retirement records. **See Sample Form 9T.**
 - i. *Pension/Retirement Plan Name Unknown:* If the Litigant does not know the name of the pension/retirement plan but knows where her spouse worked, go to <http://freeerisa.benefitspro.com> to search for the name of the pension plan based on the employer’s name. Additionally, the Center has created a form letter that can be sent to the other party’s employer seeking information about the pension/retirement plan (**see Sample Form 9U**). When appropriate, this letter can be sent to the employer at the Disso I stage.
 - ii. Once the possibility of a pension or retirement plan is identified, the pension joinder and discovery process described in **Chapter 25** must be followed.
2. *Other Employee Benefits:* Other employee benefits that a Litigant may have some rights to include, but are not limited to, vacation pay, sick pay, stocks, and stock options earned during the marriage. Each Litigant’s situation should be carefully assessed to determine if the other party may have earned these benefits during marriage, and if so, the relevant benefits should also be listed on the petition.

3. *Marital Residence or Other Real Property*

- a. *Complete the House Checklist (See Sample Form 9S)*: In some instances, discovery may be needed to obtain information about the house from a bank, mortgage company or the other party.
 - i. If the Litigant does not have all the information needed to complete the checklist, she must be advised to obtain the information as soon as possible.
 - ii. If a Litigant needs to obtain real estate records, she can go to the Los Angeles County Register Recorder's Office.

b. *Severance of Joint Tenancy*

- i. If the Litigant and her spouse own a home together in joint tenancy, a new deed can be prepared and recorded in the County Recorder's Office **prior to filing the Summons and Petition**. Otherwise, if the Litigant dies before the divorce becomes final, her spouse will automatically gain full ownership of the house. The Litigant would be unable to give her share of the house away to anyone, including children or relatives, even if it is included in her will.
- ii. Litigants may contact the Los Angeles County Bar Association to obtain a referral to an attorney that can help them prepare a new deed.

Note: Any action to sever a joint tenancy should be done before the commencement of a dissolution because the Standard Family Law Restraining Orders on the Summons limit this type of activity during the pendency of the case.

- iii. Changing the deed will not affect the Litigant's basic rights as a home owner. The Litigant and spouse will continue to own the property together with the new ownership labeled as "tenants in common." The main difference is that with a tenancy in common the Litigant may leave her share of the house to someone other than the spouse.

c. *Deferred Sale of Home*

- i. Under particular circumstances enumerated in sections 3800 through 3803 of the Family Code, the Court may delay the division of a community property residence in which minor children reside.
- ii. The decision to "defer the sale" may be made only after the Court has determined that retention of the home is "economically feasible" **and** "necessary in order to minimize the adverse impact of the dissolution or legal separation on the child."

- iii. This form of relief is rarely granted by trial courts, but should be considered and is a possibility for settlement.
 - d. *Reimbursement Issues*: There are two basic reimbursement issues that frequently arise in cases involving real property. These issues should be identified early on in the case where possible as they will require additional discovery.
 - i. *Community Property Funds Were Contributed to a Separate Property Home*: The community is entitled to a **pro tanto** interest in the appreciation of the property based on relative capital contributions. These situations are subject to the Moore Marsden Rule, laid out in two seminal family law cases. *In re Marriage of Moore* (1980) 28 Cal. 3d 366, 371-72; *In re Marriage of Marsden* (1982) 130 Cal. App. 3d 426, 436-440.
 - ii. *Separate Property Funds Were Used to Purchase or Improve a Community Property Home*: The party contributing these funds is entitled to a reimbursement for those funds. See Fam. Code § 2640.
4. *Student Loans Incurred During Marriage*
- a. *Characterization*: On the Petition, characterize student loans as community property. At Dissolution II, the loan should be assigned to the party who gained the education, and should not be included among the division of community property.
 - b. *Reimbursement*: Depending on the length of the marriage, Litigants can seek reimbursement for any community contributions made to repay a student loan.
 - i. *Ten-Year Rule*: There is a rebuttable presumption that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the case began. In this event, the community can request reimbursement. For contributions made more than 10 years before the case began, however, the rebuttable presumption is that the community benefited and therefore cannot seek reimbursement. See Fam. Code § 2641.

5. *Personal Injury Awards*: Proceeds of anticipated (or already received) awards or judgments should be listed.
 - a. *Characterization*: If the cause of action accrued during the marriage, the proceeds should be listed as community property. In general, the award will be assigned to the person who suffered the injuries. See Fam. Code § 2603. However, the court may, after taking into account the economic condition and needs of each party, assign damages to both parties in just proportions, except that at least one-half will be assigned to the party who suffered the injuries.
6. *Workers Compensation Actions and/or Awards*: Workers compensation awards should be discussed and possibly listed. The Litigant should be advised that she may not have any interest in the proceeds. It is only being listed to protect **any possible interest she may have**. Often the Litigant doesn't know what types of benefits are involved but use the following guidelines when listing them on the Petition.
 - a. *Characterization*
 - i. "Temporary" Worker's Compensation Benefits:
 - (1) Separate Property when received **after** separation.
 - (2) Community Property when received by the injured spouse **during marriage** because they replaced the injured spouse's lost wages.
 - ii. "Permanent" Worker's Compensation Benefits
 - (1) Separate Property when received **after** separation.
 - (2) A portion of Permanent Benefits received during the marriage may still be characterized as Separate Property. This is because a permanent award is compensation for **future** losses.
 - b. *Reimbursement*: Even if the worker's compensation proceeds are technically the separate property of the injured spouse, if during the marriage the community paid for expenses associated with the injury, the community may be entitled to **reimbursement** for those costs from the spouse's separate property award.
7. *Joinder of Third Parties with Interest in Marital Property*: If a third party owns an interest in property that is at issue in the dissolution proceeding, in order to fully adjudicate the issue, it may be necessary to join that person into the action pursuant to section 2021 of the Family Code and Rule 5.24 of the Rules of Court.

- **Item 11a—Attorney Fees and Costs**

Although Litigants may not be represented by an attorney at the time the Petition is being prepared, instruct her to request that the Respondent be responsible to pay for attorney fees as well as any other costs.

- **Item 11b—Restoration of Former Name**

Specify the complete name change, not just the surname. This item can only be requested by the party wishing to restore her own name. The opposing party cannot force a Litigant to change her name.

- **Item 11c—Other**

For this Item, Litigants should list any other relief they may be seeking that is not indicated elsewhere on the Petition. **This section is very important, because as discussed above, when the case goes by default, the relief available to the Litigant in the final Judgment is limited to that requested in the Petition.**

The following are some examples of relief that may be requested in this Item, if applicable:

1. *Consolidation of Domestic Violence Prevention Act (DVPA) Restraining Order:* Special attention must be given to those Litigants who come to the Center with **pre-existing restraining orders**. Consolidation is necessary to avoid conflicting orders, especially custody and visitation orders. The family law court can modify or even extinguish orders from the DVPA case once it is consolidated. Note that DVPA orders can be consolidated **but Criminal Protective Orders cannot**, though they must be listed on the UCCJEA if the parties have minor children.
 - a. *Order Expiration:* If the pre-existing restraining orders will expire within one year, or before the Litigant can reasonably be expected to obtain her final Judgment, the Litigant must be so advised, and may need to request a renewal of the restraining order before the expiration date. A renewal can be requested 3 months prior to the expiration date. **It is critical that the Litigant be counseled about the risk of her pre-existing restraining order expiring before the completion of her family law case.**
 - b. *Procedure:* The DVPA case must be consolidated into the family law case, with the dissolution action as the lead case. The Litigant should be instructed to write in at Item 11c “Consolidation of DVPA case” and mark the box stating “Continued on attachment 11c.”
 - i. *Consolidation Attachment:* The Center has created a consolidation attachment to the Petition. **See Sample Form 9I-2.**

- ii. *Notice of Related Case*: Litigants should prepare a Notice of Related Case and complete the attached Proof of Service (**see Sample Form 11N-1**) at Disso II. **See Chapter 4** for further discussion of consolidation of cases.
 - c. *Pre-Existing DVPA Case with Custody and Visitation Orders*: Litigants who come to the Center with a pre-existing DVPA restraining order that **includes** custody and visitation orders require special attention. If the Litigant **is satisfied** with the custody and visitation order in the DVPA case, the request for custody and visitation on the dissolution Petition should duplicate the DVPA order. If the Litigant **is not satisfied** with the DVPA order, the dissolution Petition should request the desired custody and visitation arrangement, **and** that the custody and visitation portion of the DVPA order be modified. The Center’s consolidation attachment, noted above, can be used for this purpose. **See Sample Form 9I-2**.
2. *Health Insurance for Minor Children*: Although providing health insurance, if available at a reasonable cost, is mandatory under section 3751 of the Family Code, obtaining an order to maintain health insurance is not automatic. Therefore, a Litigant should make a specific request for the other party to maintain health care coverage and pay all reasonable and necessary health care costs whenever there is any possibility that the other party will be able to do so. The Litigant can request that the other party maintain health insurance for the minor children, and additionally pay a percentage, or all, of the reasonable uninsured health care costs for the children.

HBCFL Practice: The Center’s practice is to request that the other party maintain health insurance coverage for the minor children when there is **any** possibility that the other party might be able to do so, for example the other party is employed fulltime and has had health insurance available through his/her employment in the past.

- a. *Procedure for Requesting Coverage*: A request that the other party maintain health insurance for the minor children should be made under Item 11c-Other. The Center has created a children’s health care attachment that can be used for this purpose (**see Sample Form 9I-3**). When requesting health care coverage for minor children, check Item 11c, write in “Health Care for Minor Children,” and check the box “continued on Attachment 11c.” Attach the Center’s form, filing in the information as appropriate.

3. *Health Insurance for Spouse*: The Litigant may request that the Respondent provide health insurance coverage for her through his employment, or otherwise pay for her health insurance.
 - a. *Mandatory Coverage for Children*: Providing health insurance for children, if available at a reasonable cost, is mandatory under section 3751 of the Family Code, while providing health insurance for spouses lies within the discretion of the Court.

HBCFL Practice: The Center's practice is to request health insurance for the spouse in a long-term marriage (10 years or more) or where the Litigant suffers from some disability or serious health condition, and the Litigant has no other reasonable means to obtain health insurance coverage.

- b. *Compliance*: If the Litigant needs health insurance coverage as a type of spousal support, there are three ways the other party can be asked to comply.
 - i. By direct payment out of the other party's wages to the Litigant, so that she may pay for a chosen health insurance plan;
 - ii. By payment to the other party's employer for COBRA coverage (COBRA permits a divorced spouse to maintain the same health insurance policy at about the same cost for a period of three years following the dissolution, but at the spouse's own expense, or, if ordered, at the other party's expense);
 - iii. By payment to a designated health insurance company for a plan to cover the Litigant.
- c. *Procedure for Requesting Coverage*: The Center's health insurance attachment (**see Sample Form 9I-1**), which should be included with the Petition, lays out all three compliance options.
 - i. This attachment should be referenced on the Petition at Item 11c. Litigants should check all of the possible options.
 - ii. Meanwhile, the Litigant should gather as much information as possible about her health insurance needs and the insurance coverage she will be requesting, whether it is through her spouse's employer or not. For example, she should gather information on the name of the health insurance plan and provider, cost of current insurance per month and major benefits provided, prognosis for illness, current health care status, significant medications taken, and effect of health care problems on ability to work. Litigants must gather this information before the case reaches judgment.

Note: If it is unlikely the Litigant can gather sufficient information for a specific order, she does not need to use this Attachment. Instead, she can make a more general request, by writing in “Health Insurance to be provided by the Respondent for the Petitioner, and an assignment thereon,” at Item 11c on the Petition.

4. *Support for Adult Disabled Child:* Section 3910 of the Family Code states that it is the parents’ responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and is without sufficient means. A request for an order for support of an adult child would be requested on the Petition under Item 11c Other.

8.09 Child Custody and Visitation Application Attachment (FL-311) (Sample Form 9G-1)

The Center recommends using the Child Custody and Visitation Application Attachment (FL-311) to help the Litigant define the type of custody and visitation she wants and whether visitation is to be restricted or supervised. The Center has created a brief interview form to help Litigants define their visitation schedule. **See the reverse side of Sample Form 9Q.**

A. History of Violence

Pay special attention to the custody and visitation plan to ensure that it accounts for the safety of the Litigant and the children. The Litigant may want to make a visitation plan that limits contact between the parties. For example, the Litigant may request that the exchange of the children take place at the shopping mall or a nearby police station. In Los Angeles County, several sheriff’s stations offer a supervised visitation exchange program; check with your local branch. A neutral public location may also offer the Litigant some security.

Requirements Where Protective Orders Have Been Issued: Sections 3031 and 3100 of the Family Code require a court to specify in the custody and visitation order the **time, day, place, and manner of transfer of the child**, in cases in which domestic violence is alleged and an emergency protective order, protective order or other restraining order has been issued. Section 3031 also requires a court in these cases to consider whether the best interests of the child require that the custody or visitation arrangement be limited to supervision by a third person, suspended, or denied. Additionally, the court is encouraged to make reasonable efforts to ascertain whether an emergency protective order, protective order, or other restraining order is in effect that concerns the parties or minor children and the court is encouraged to not make custody or visitation orders that are inconsistent with the protective order unless the court finds that such orders cannot be made consistent with the protective order and the custody or visitation order is in the best interest of the minor children. Fam. Code § 3031(a).

B. Form Completion

- **Caption**

The Litigant should write the parties' names as they appear on the Summons and Petition. Check the appropriate box indicating that it is an attachment to the Petition.

- **Item 1 – Custody**

The legal and physical custody request stated on the Petition at Items 6a and 6b should be repeated here. Check the box at Item 1 and list the names of the minor children as they appear on the Petition along with their dates of birth. The name of the person who is to have sole legal and sole physical custody should also be listed. If joint legal and/or joint physical custody is being requested, list both parents' names.

- **Item 2 – Visitation**

The Litigant will have to decide here whether to request (a) reasonable visitation, (b) no visitation, or, (c) a specific visitation schedule. Check the box at Item 2 and also Box 2a or 2d or 2e. Items 2b and 2c should not be checked at this time.

- **Item 2a – Reasonable Visitation**

“Reasonable,” of course, can mean different things to different people. If the parties have a good relationship, and **can truly work things out without any problems**, then a specific visitation plan may not be necessary. These circumstances are very rare, however. If the Litigant chooses to not define the visitation request, then she should check Box 2a and skip to Item 4. This option is rarely used or recommended by the Center, and it is not an appropriate arrangement in cases involving domestic violence.

- **Item 2d – No Visitation**

The Litigant should be advised that it is very difficult to obtain a no-visitation order, especially if the non-custodial parent is seeking to visit with the minor children. Only in extreme or unusual cases should no visitation be requested. For example, if the non-custodial parent is in prison for the next 7 years for abusing the child, a no-visitation request might be appropriate. When requesting no visitation, the Litigant will be required to attend a hearing in front of a judge before an order is made.

- **Item 2e – Specific Visitation Schedule**

The Center generally recommends that Litigants define a specific visitation request so as to avoid conflict between the parties in the future. A specific

visitation schedule also gives the parties the opportunity to plan ahead for the times that the minor children will be in their care. If the Litigant chooses to define the visitation schedule then check Box 2e and also the box for the non-custodial parent, either Petitioner or Respondent.

- **Item 2e(1)-(4)**

Item 2e(1) should be checked and completed if the Litigant wants to request weekend visitation. For the date that visitation is to start, write in “Immediately after hearing.”

HBCFL Practice: Generally, the Center prefers that Litigants specify 1st, 3rd, etc., weekend of the month rather than “alternate weekends,” as in Item 2e(2), because this schedule is easier to enforce and makes it easier for Litigants to plan their schedules in advance.

Item 2e(3) should be checked if the Litigant wants to request weekday visitation in addition to or instead of weekend visitation. Item 2e(4) should be checked if the Litigant wants to specify any other type of visitation or restrictions on the visitation that are not otherwise covered in this form or the attachments to this form. The Litigant can write in the additional terms directly on the form, or on an attachment.

- **Item 3—Supervised Visitation**

1. *When It Is Appropriate:* Supervised visitation may be appropriate when the non-custodial parent has a history of physical violence, neglect, drug and alcohol use, or where he or she has no relationship with the child.
 - a. Supervised visitation should only be requested when there is reason to believe that the opposing party will place the minor child in harm’s way.
 - b. Litigants will be required to attend a hearing in front of a judge before an order for supervised visitation is made.
 - c. *History of Violence:* Under Family Code section 3100, the court must consider whether supervised visitation is in the best interests of the child if a restraining order has been issued against the other parent. Family Code sections 3031, 3100 and 6323 require family law courts to make custody and visitation orders **which are consistent with any existing protective or restraining orders** involving the parties and children. The Code specifies that family law court orders must protect the safety of the family members affected by domestic violence.

Note: It is very important that when requesting supervised visitation, the requested orders are as specific as possible.

2. Form Completion

- a. If the Litigant is requesting supervised visitation, then check Box 3.
- b. *Item 3b*: Generally, this box should be checked. Family Code 3200.5 sets out requirements for both professional and non-professional supervised visitation providers that must be adhered to unless otherwise agreed by the parties or ordered by the court. For non-professional supervisors, these requirements include: 1) having no record of a conviction for child molestation, child abuse, or other crimes against a person; 2) having proof of automobile insurance if transporting the child; 3) having no current or past court order in which the provider is the person being supervised; and 4) agreeing to adhere to and enforce the court order regarding supervised visitation.
- c. Write the name of the non-custodial parent and then the name of the person who may monitor the visitation. After the name of the visitation monitor, write, “or any other person of Petitioner’s choice.”
 - i. The Litigant should generally **not** list herself as the supervision monitor, especially if there has been violence between the parties.
- d. *Non-Professional Monitor*: If the visitation monitor is a relative or friend then check the box for nonprofessional supervisor and write in the supervisor’s telephone number. Generally, a friend or relative will not charge for their services, therefore, the percentage for payment should be left blank.
- d. *Professional Monitor*: If the Litigant does not have a friend or family member willing to supervise, or non-professional supervision would not be in the best interest of the child, there are a number of professional supervisors available in the community, but their services cost money. If a professional monitor is requested then the Litigant should request that the opposing party pay 100% of the costs for supervision.

Note: When requesting a professional monitor, the visitation period must fit within business hours and be short (generally 1-2 hours).

S.A.F.E. for Kids is a funding source that pays for supervised visitation for parents who have a fee waiver. In order to have visitation supervised by S.A.F.E. for Kids, the court order must specifically state:

- i. Visitation is ordered through the S.A.F.E for Kids program,
- ii. The name of the specific agency (site) to supervise the visitation, and

- iii. The non-custodial parent has a fee waiver and is to pay no costs for visitation (if applicable).

Therefore, this language should be used in all relevant requests and proposed orders and judgments.

***Note:** As of the date this manual was published, the S.A.F.E. Program has lost its funding in Los Angeles County. Check your county's S.A.F.E. program to see if there is still funding available.

- e. *Supervised Visitation Exchange:* If the Litigant wants to only request that the visitation exchanges be supervised then, add the word "exchange" after every "Visitation" or "Visits" wherever it appears in Item 3.

- **Item 4—Transportation for Visitation and Place of Exchange**

Check Item 4 if the Litigant wants to request specific orders about transportation and exchanges of the children.

- **Items 4b and 4c**

It is appropriate to check Boxes 4a and 4b when there are different places of exchange and different people are providing the transportation to and from the visits.

For example, the Litigant may want to request that she transport the children to the other parent's home for the visitation to start and request that he bring the children back to her home at the end of visitation. If this is the case then specify the Litigant's name at Item 4a and Respondent's name at Item 4b.

- **Items 4d and 4e**

It is appropriate to check Boxes 4c and 4d if the Litigant wants the drop off and pick up of children to be at specific locations.

For example, the Litigant may want to request that the Respondent pick up the minor children at daycare and drop off the children at her home. If the Litigant decides to have her residence as the drop-off and pick-up location, she should write in her current address and "or Petitioner's future home."

As noted above, if there has been domestic violence, consider whether a neutral location should be used here.

- **Item 4f**

Box 4f should be checked if the Litigant does not want the Respondent to come near the front door of her home.

- **Item 5—Travel with the Children**

Check Item 5 if the Litigant wants to restrict the other parent from traveling with the minor children by requiring him to have written permission or a court order. The box next to the person to be restricted should be checked. In addition, the Litigant should decide whether to restrict the removal from the State of California or more narrowly from a specified county or counties.

- **Item 6—Child Abduction Prevention Orders**

This Item should only be checked if there is a reasonable risk that the other parent will take the children out of California without the other parent's permission and the Litigant fears that the children will not be returned. If the Litigant is going to request this relief then she must also complete the Request for Child Abduction Prevention Orders (FL-312). **See Sample Form 9H-3.**

- **Item 7—Children's Holiday Schedule**

If the Litigant wishes to have specific arrangements regarding visitation on holidays and vacations, the Litigant should fill out the Children's Holiday Schedule (FL-341(C)). **See Sample Form 9H-2.**

- **Item 8—Additional Custody Provisions**

If the Litigant wishes to make additional custody and visitation provisions, the Litigant should fill out the Additional Provisions — Physical Custody Attachment (FL-341(D)). **See Sample Form 9G-2.**

- **Item 9—Joint Legal Custody Provisions**

If the Litigant is requesting joint legal custody, to specify the terms of the arrangement, or if she wants the parties to have to reach agreement as to major decisions, then complete the Joint Legal Custody Attachment FL-341(E). **See Sample Form 9H-1.** The Litigant should mark Box 9 and the box indicating form FL-341(E).

- **Item 10—Other**

This space may be used to request any additional orders related to custody and visitation.

8.10 Additional Provisions-Physical Custody Attachment (FL-341(D)) (Sample Form 9G-2)

The Center generally recommends using this form for specifications such as canceled parenting time, phone contact with the minor children, and to restrict alcohol or substance abuse.

- **Caption**

The names of the parties should be entered. Also, check the first box that indicates that this is an attachment to the Petition. Indicate which party the provisions are to apply to.

- **Item 1**

Check this box if the Litigant wants one or both of the parties to have to keep the other party aware of their current address and contact information.

HBCFL Practice: For most cases, the Center marks the boxes in Item 1— Notification of Parent’s Current Address such that it only requires the other parent to inform the Litigant of his current address. It is important that the Litigant has current and accurate contact information for the non-custodial parent; however, because so many of the Center’s clients are survivors of domestic violence, it could be unsafe for her to disclose her current address to the other party.

- **Items 2-16**

Check all items that the Litigant would like to be a part of the custody and visitation orders.

- **Item 17**

For Litigants seeking sole legal custody, the Center recommends writing in the following additional language: “In emergency situations, each parent is authorized to take any and all actions necessary to protect the health and welfare of the child/ren, including but not limited to the consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible, within 3 hours, of such emergency and of all procedures or treatment administered to the child/ren.” This will ensure that a non-custodial parent will have the ability to authorize emergency treatment to ensure the safety of the child/ren if the custodial parent cannot be reached.

Additional specifications and restrictions can be listed here.

8.11 Joint Legal Custody Application Attachment (FL-341(E))
(Sample Form 9H-1)

- **Caption**

The names of the parties should be entered. Also, check the first box that indicates that this is an attachment to the Petition.

- **Items 2a-2g**

In completing this form, the Litigant should be instructed that for any boxes checked in Items 2a–2g, the agreement of both parents is needed.

For Items left unchecked or any other matters pertaining to the well-being of the children that are not listed, either parent may operate independently of the other.

- **Item 3**

Please advise the Litigant of the consequences for not obtaining the consent of the other parent to the decisions checked in Item 2: (a) willful disobedience of a lawful court order may be contempt of court (Cal. Code of Civ. Proc. §§ 1209-22) and a misdemeanor (Pen. Code § 166) and (b) such failure may be a lawful reason for the court to change the legal and physical custody of a minor child.

- **Item 4**

If the Litigant wishes to have special decision making power over the children then check Box 4a and write in which party will have power regarding specified decisions, e.g., over child’s speech therapist, doctor, etc. Both parties have the right to access information about their minor children.

- **Item 5—Health Care Notification**

Check Box 5a if the Litigant wants to be notified within a certain number of days of the name and address of the child’s health practitioner.

Check Box 5b to authorize each parent to make emergency decisions regarding the health and welfare of the child and to require immediate notice to other party of treatment received.

Check Box 5c if both parents should be required to administer prescription medications to child.

- **Item 6**

Check this box if both parties are to be listed as emergency contacts at the children’s school.

- **Item 7**

Check this box to prevent a change of last name or use of a different name in child's medical or school records.

- **Item 8**

List any additional terms specific to the joint legal custody order requested.

8.12 Children's Holiday Schedule (FL-341(C)) (Sample Form 9H-2)

Litigants who feel that a specific holiday and vacation schedule is necessary in addition to the visitation schedule may complete a Children's Holiday Schedule Attachment to the Petition. **See Sample Form 9H-2.**

- **Caption**

Fill in the names of the parties exactly as they appear on the Summons and Petition and check the first box because this form will be attached to the Petition.

- **Holiday Matrix**

The matrix has 5 columns. It is not necessary for the Litigant to assign every single holiday. The Litigant may pick just those holidays that she wishes to reserve for herself or the other parent.

1. *Holiday*: The first column lists the major national holidays. At the bottom of the list, additional blank lines are included. The Litigant may add other special days, typically including religious special days or other family members' birthdays.
2. *Time*: In the next column, called "Time," the Litigant can specify the hours that the child will spend with a parent for that holiday. The Litigant can define the visitation time (exact number of hours per day) for all holidays at once by writing in the specific timeframe (e.g. 12:00pm to 4:00pm) in the top row of this column. This timeframe will then apply to all holidays listed, unless otherwise specified. The Litigant can also specify line by line the hours that the child will spend on visitation for each individual holiday.
3. *Every Year*: The Litigant can assign a holiday to a parent every year. The Litigant must decide whether there are any holidays that she thinks the child should spend every year with either parent. Mother's Day and Father's Day are examples of a holiday that may be spent with only one parent each year. Write either "Petitioner" or "Respondent" in this column to indicate with whom the child should spend this holiday every year.

4. *Even Years/Odd Years*: The last two columns are labeled even years and odd years. Instead of dividing one holiday between two parents, parents can switch whole holidays between even and odd years. This is an objective and fair method of identifying whose visitation time it is, and helps to ensure a reasonable chance for both parents to enjoy the children. Write either “Petitioner” or “Respondent” under either column.
5. *Extra Lines*: Litigants may include major religious and other holidays on the extra lines.

- **Three-Day Weekend and Other Provisions Box**

If the Litigant wishes to keep three-day weekends with the parent who would normally have the child, mark the first box. The Litigant can specify other arrangements for a three-day weekend by marking the second box. For example, Lincoln’s birthday and Washington’s birthday are three-day weekends. If the Litigant wants to alternate these weekends in even and odd years, she can specify this arrangement in the space provided.

- **Vacation Schedule**

At Item 2, the Litigant may reserve additional vacation time with the child for herself, the other party, or both. The length of the vacation, and the amount of advance notice can all be specified in this section. The Litigant may also permit out-of-state vacation. The Litigant may select the number of days that she or the other party would like to have to respond if there is a problem with the schedule.

8.13 Request for Child Abduction Prevention Orders (FL-312) (Sample Form 9H-3)

- **Caption**

Fill in the names of the parties exactly as they appear on the Summons and Petition. Check the first box to indicate that the form is an attachment to the Petition.

- **Item 1**

The Litigant’s name should appear in the space provided. This is important because the Litigant will be signing this request under penalty of perjury.

- **Item 2**

Check the box to indicate that the Litigant is requesting orders against the Respondent.

- **Item 3a-3c**

The Litigant should check one or more boxes at 3a, 3b or 3c and answer “Yes” or “No” to whether she thinks the other parent might take the children to another county in California, another state, or a foreign country. If the answer is “yes” then the Litigant must specify which county, state or country. If the Respondent is likely to take the children to another country then the Litigant must also answer whether he is a citizen of that country and whether he has family or emotional ties to that country and explain.

- **Item 4**

Check all that apply to explain why the other parent might take the children without Litigant’s permission. For example, the other parent’s family may own a successful business in Mexico and he can easily find a job there and he often talks about how much he misses Mexico and his family.

- **Item 5**

If supervised visitation is being requested, check Box 5 and also the box that states “Form FL-311.”

- **Item 6**

This can generally only be requested if it is likely that the Respondent will be able to post such a bond. If so, check this box and write in at least \$10,000 for the amount of the bond to be used to bring the children back.

- **Item 7**

Check this box to request that the other parent not move with the children without written permission or a court order.

- **Item 8**

Check this box to limit the other parent from traveling with the children, and check all that apply.

- **Item 9**

If the other parent is likely to take the children to another state, check this box and write in that state.

- **Item 10**

Check this box to request that the other parent turn in and not apply for passports or other documents that can be used for travel.

- **Item 11**

If the other parent is allowed to travel with the children, check all the Items listed to request that the other parent provide before the children are allowed to travel.

- **Item 12**

If the other parent is likely to take the children to a foreign country, then that country should be written in Item 12 so that the other parent is required to notify the embassy or consulate of the custody order within 15 days of the time the order is made.

- **Item 13**

If the other parent is likely to take the children to a foreign country, the Litigant should request that the other parent obtain a custody and visitation order in that country that is the same as the U.S. order before the children are allowed to travel.

- **Item 14**

Any additional request may be listed here.

8.14 Service of Process

Before concluding the session, Litigants must be given detailed instructions on service of process. It is critical not to understate or under-explain the importance of proper service. More detailed instructions are available in **Chapters 5 & 6**.

A. Personal Service

1. Be sure that the Litigant understands that the **original** Proof of Service **must be signed by the server**. If possible, it is generally advisable for a Center attorney to review the completed Proof of Service before it is filed with the court, but this should not delay the filing of the proof of service with the court.
2. If the Litigant is having service completed by the **sheriff**, ensure she prepares a form cover letter to send with the service documents, **see Sample Form 6V** (Los Angeles County Sheriff's department letter), **6W or 9M** (letter for use with Sheriff's departments that are outside of Los Angeles County).
3. If the Litigant qualifies for a fee waiver, the sheriff will serve the documents free of charge.

B. Service by Certified Mail

1. Be sure to complete certified mail forms and that the forms request **restricted delivery**.
2. Be sure that the Litigant understands that a **third party** must actually **mail** the papers and **sign** the Proof of Service.

C. Posting

1. If the Litigant has not seen or been in contact with the Respondent for a significant period of time and does not know how to locate him, instruct the Litigant to begin documenting her efforts to locate the Respondent.
2. Be sure that the Litigant understands that this procedure adds several months to the divorce process and that personal service, if possible, should be done instead.
3. The first phase of Posting can be started at the Dissolution I appointment. The Litigant should also fill out the letter to the adverse party's last known address and the letter to the Daily Journal requesting a search if appropriate. **See Chapter 5 for details on service by posting.**

D. Service to an Out-of-State Respondent

When a Respondent is going to be served out-of-state, either by mail or personal service, inquiry should be made about the Respondent's contacts with the state of California. This inquiry is critical to determine whether there are **minimum contacts** sufficient to allow the court to make **in personam orders** against the Respondent (e.g., child support orders). Determine whether the marriage took place in California; whether the parties lived in California during the marriage; whether children were born in California; whether the Respondent has personal or business contacts in California; whether the Respondent visits California frequently; etc.

E. Service to an Out-of-Country Respondent

A recent California dependency court case has raised the issue of service on residents of a foreign country. In *In re Vanessa Q.*, the California Court of Appeal found that all family law cases must be served in accordance with the Hague Service Convention. *In re Vanessa Q.* (2010) 187 Cal. App. 4th 128, 134. The Hague Service Convention requires that service on a resident of a foreign country, that is a signatory to the Convention, must follow specific service guidelines of the Convention as well as the manner of service accepted by the specific country. Because the U.S. is a signatory to the Hague Service Convention, anytime a Litigant must service a resident of a foreign country that is also a signatory of the Convention, she must follow the

Convention's specific guidelines. At the present time, the Center is developing a protocol for out-of-country service. Additionally, the Administrative Office of the Courts (AOC) is investigating the issue as well. For a detailed discussion of the Hague Service Convention guidelines and impact on Litigants, **see Chapter 5**.

When a Respondent must be served out-of-country because he is not expected to return to California, he still must have sufficient minimum contacts with the state of California, for the court to make in personam orders, as discussed above in service of out-of-state Respondent.

F. Service to an Incarcerated Respondent

When the other party is in jail or prison, special steps must be taken to serve the incarcerated party.

- 1. Prison:** If the other party is in prison, service is arranged with the prison's litigation coordinator. **See Sample Form 9L or 6Y**. The California Department of Corrections has an inmate locator service available by calling (916) 445-6713 or on their website at <http://inmatelocator.cdcr.ca.gov/>. You will need to have the full name and date of birth or the CDC identification number of the inmate.
- 2. Jail:** If the other party is in jail, service is arranged through the Sheriff's Department. **See Sample Form 6V** (Los Angeles County Sheriff's department letter), **6W or 9M** (letter for use with Sheriff's departments that are outside of Los Angeles County). The Los Angeles Sheriff's department has an inmate locator service available on their website at http://app4.lasd.org/iic/ajis_search.cfm. Please see **Chapter 5** for a complete discussion before advising the Litigant about service. Sheriffs in other counties may also handle service for incarcerated individuals in county jails. Please consult with the local sheriff regarding service if outside of Los Angeles County.

HBCFL Practice: Complete the Proof of Service form as much as possible before the Litigant leaves the appointment and place colored dots on the form so that the Litigant understands that the server must complete each of these items. **See Chapter 5** for additional information about completing this form.

8.15 Active Duty Military Respondents

Under federal law, a default Judgment cannot be entered against an active duty military serviceperson unless counsel has been appointed. This means that Litigants with spouses on active duty in the military cannot follow regular default procedures.

To avoid filing a motion for appointment of counsel, Litigants must either delay their dissolution case or obtain the other party's appearance in the matter through an Appearance, Stipulations and Waivers form and proceed with the case as an uncontested matter. **See Chapter 25** for details about this option and the motion to appoint counsel.

Service members receive a dependent allotment, and spouses and children of active duty military service people are entitled to special benefits and support. This issue should be identified early on in the case. If the Litigant is not receiving the benefits to which she is entitled, she may want to speak to the other party's commanding officer. More information is available at the Defense Finance and Accounting Service's website www.dfas.mil.

8.16 Amended Pleadings

A. First Amended Petition

Pursuant to California Code of Civil Procedure section 472, the Petition may be amended once, without costs and without court order, at any time **before** a Response is filed and thereafter, upon order of court. A motion to amend pleadings for clerical errors may be made ex parte without notice to the other party; however, all other requests to amend pleadings must be made by noticed motion to the other side. Cal. Code of Civ. Proc. § 473(a)(1). **See Sample Form 25BB.**

1. Reasons for Amending

A Litigant may need to amend her pleadings for a variety of reasons, including:

- a.** Corrections to the Original Petition: For example, to correct failure to list significant debts or assets such as a pension; failure to properly complete an essential item in the Petition or ask for relief (example: didn't check off the box for "Custody" or "Spousal Support" or didn't ask for restraining orders or supervised visitation); and misclassifying an important piece of property such as a house.
- b.** To Reflect Temporary Orders: If a Litigant in a default case obtains pendente lite orders (i.e., through a Request For Order) which are different from what was requested on the Petition, and she wants to

incorporate the pendente lite orders in her default Judgment, she may need to amend her Petition to reflect the change and then re-serve the other party. Alternatively, she may request a default hearing and ask the judge to find that the orders made in the RFO are in the best interest of the minor child.

2. **Service:** Amended pleadings must be **served** on the other party in a manner identical to the original service. Depending on the matters which have been amended, the new date of service may “relate back” to the original service date for purposes of the six-month waiting period for final judgments of dissolution.
3. **Designation of Documents:** All amended pleadings should be properly designated: the Petition is called the “**First Amended Petition**” and the Summons is called “**Summons on the First Amended Petition.**”

B. Amended Proof of Service

Even more frequently than amended substantive pleadings, Litigants need to file amended Proofs of Service. This is permitted and the document should be labeled “**Amended Proof of Service.**”

8.17 Final Review—Troubleshooting

A. Review Each Set of Pleadings

1. **Common Problems:** Failure to date forms or to consistently use the same names for parties.
2. **Review the Petition**
 - a. Did you mark the box for “Dissolution” and/or “Legal Separation,” as desired/required?
 - b. Did you accurately list the names and birth dates of the parties’ minor children? If there are children of the relationship born **before** marriage did you remember to include them in 4b of the Petition?
 - c. If the length of marriage is **10 years or more**, did you request spousal support? It does not matter that it may later be reserved; this preserves the Litigant’s right to request it. Some Litigants may be reluctant. They should be urged to seek it, because they cannot predict what may happen. If a Litigant elects to waive spousal support, the Center asks Litigants to complete an internal waiver form.

B. Evaluate Need for Immediate Relief

1. Is there a need for a Request For Order and/or Temporary Restraining Orders?
2. Is the spouse truly missing, such that there is a need for Posting Orders? (if so, **see Chapters 5 and 6**)
3. Is the spouse in the military, requiring special attention?

C. Review Service of Process

Remind Litigants that, when possible, it is best to have a Center attorney review their Proof of Service before it is filed.

D. Advise: File Before Service of Process

Make sure the Litigant understands that filing of the court papers **precedes** service of process.

E. Provide Important Reminders to the Litigant

1. Litigants should be advised that if a spouse serves them with a Response, they should mail in a copy to the Center as soon as possible.
2. Those seeking fee waivers should bring a photo ID and verification of income with them to court.
3. Those with children of the relationship born before the marriage or after separation, or have children that are not the biological children of the husband, should obtain certified copies of their children's birth certificates.
4. Those whose spouses have pension/retirement rights should be given the Center's form letter on this issue (**Sample Form 90**), and should be told to complete and return it as soon as possible.

F. Prepare the Dissolution I Checklist (See Sample Form 9Q)

8.18 Preview of the Disso II Appointment

The next session primarily involves preparation of financial disclosures. Advise the Litigant that the following information should be gathered and brought to future appointments:

- Registration and license plate numbers for vehicles mentioned in the Petition.
- Deeds and documents showing any encumbrances and the most recent “lender statements” for any real property.
- Income and expense information for themselves, and income information for their spouses, including evidentiary documents such as pay stubs or tax returns.
- Account numbers and statements (dated as close as possible to the date of separation and the most recent) for all bank accounts, credit cards, and installment debts.
- Copy of birth certificate and Voluntary Declaration of Paternity (where applicable) for each child.
- Documents and case numbers for any related cases of which the Court must be notified.
- Social security number, date of birth and driver’s license number for the Litigant’s spouse, if known.

8.19 Checklist for Dissolution I Forms

A. Forms to Complete

Name of form and Judicial Council or local form number

- 1. Request to Waive Court Fees (FW-001)**
 - a. See Chapter 3 and accompanying sample forms
- 2. Order on Court Fee Waiver (Superior Court) (FW-003)**
 - a. Staple **two** extra copies of the Order to the original Order, with the Request on top of the Order. The client should be instructed to return one of the copies to the Center.
 - b. See Chapter 3 and accompanying Sample Forms
- 3. Family Law Case Cover Sheet (LA-20/FAM-020)**
 - a. See Chapter 4 and accompanying Sample Forms
- 4. Summons (Family Law) (FL-110)**

5. **Petition—Marriage/Domestic Partnership (Family Law) (FL-100)**
 - a. Remember checklists and other forms to help complete the Petition (**only** include in the Center File)
 - i. Pension Checklist
 - ii. House Checklist
 - iii. Child Visitation Interview (on reverse of the Disso I Checklist)
6. **Attachments to Petition if Needed** (staple attachments to the Petition and consecutively number them following the Petition)
 - a. Child Custody and Visitation Application Attachment (FL-311)
 - b. Children’s Holiday Schedule (FL-341(C))
 - c. Additional Provisions—Physical Custody Attachment (FL-341(D))
 - d. Joint Legal Custody Attachment (FL-341(E))
 - e. Request for Child Abduction Prevention Orders (FL-312)
 - f. Attachment 11c: Health Insurance for Spouse Attachment
 - g. Attachment 11c: Children’s Health Insurance Attachment
 - h. Attachment 11c: Consolidation Attachment

Note: If there are multiple 11c attachments, number each one separately, such as 11c(1), 11c(2), 11c(3), etc. and note this in the Petition.
7. **Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105)**
 - a. Required in all cases with minor children
 - b. Remember to attach a blank copy to the Respondent’s copy
 - c. **See Chapter 7** and accompanying sample forms
8. **Proof of Service of Summons (Family Law – Uniform Parentage – Custody and Support) (FL-115)**
 - a. Place colored dots next to each place where the server needs to input information and sign
 - b. **See Chapters 5 and 6**
9. **Blank Response (FL-120)** (only attached to the Respondent’s copy)
10. **Schedule of Assets and Debts (FL -142)**
 - a. Do not submit yet; hold in the Center’s working file until the Disso II appointment

11. Posting (if applicable):

- a. Letter to Respondent's Last Known Address
- b. Letter to Daily Journal Requesting Search of Respondent's Name and/or Internet Search for Respondent's Name and USPS Boxholder Information Request

B. Copies

1. Originals

- a. Plus two extra copies of the Order on Court Fee Waiver

2. Set for the Litigant's Personal Records

3. Set for the Spouse

- a. Do not include fee waiver forms
- b. Add a blank copy of the Response
- c. Add a blank UCCJEA Declaration if there are minor children at issue

4. Set for the Working File Maintained at the Center