

This excerpt from Chapter 8 provides information and issue-spotting assistance in filling out item 4 on a Petition (FL-100). Also included with this excerpt is the relevant sample form.

Copyright © 2019 by Harriett Buhai Center for Family Law. All rights reserved. No portion of this book may be reproduced without express written permission of the Harriett Buhai Center for Family Law.

- **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 a 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 or additional parties may need to be joined to the dissolution.

- 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.

Sample Form 9F: Petition — Marriage/Domestic Partnership (Family Law) (FL-100)

FL-100

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: Maria Smith FIRM NAME: STREET ADDRESS: 433 1st Street CITY: Los Angeles STATE: CA ZIP CODE: 90008 TELEPHONE NO.: (213) 222-5555 FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): Petitioner in Pro Per	STATE BAR NO.:  <b>FOR COURT USE ONLY</b>				
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: 111 N. Hill St. CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District					
PETITIONER: Maria Smith RESPONDENT: John Smith					
<table style="width:100%; border: none;"> <tr> <td style="width:40%; border: none;"> <b>PETITION FOR</b>  <input checked="" type="checkbox"/> <b>Dissolution (Divorce) of:</b>  <input type="checkbox"/> <b>Legal Separation of:</b>  <input type="checkbox"/> <b>Nullity of:</b> </td> <td style="width:20%; border: none;"> <input checked="" type="checkbox"/> Marriage  <input type="checkbox"/> Marriage  <input type="checkbox"/> Marriage                 </td> <td style="width:20%; border: none;"> <input type="checkbox"/> <b>AMENDED</b>  <input type="checkbox"/> Domestic Partnership  <input type="checkbox"/> Domestic Partnership  <input type="checkbox"/> Domestic Partnership                 </td> <td style="width:20%; border: none; vertical-align: top;">                 CASE NUMBER:             </td> </tr> </table>		<b>PETITION FOR</b> <input checked="" type="checkbox"/> <b>Dissolution (Divorce) of:</b> <input type="checkbox"/> <b>Legal Separation of:</b> <input type="checkbox"/> <b>Nullity of:</b>	<input checked="" type="checkbox"/> Marriage <input type="checkbox"/> Marriage <input type="checkbox"/> Marriage	<input type="checkbox"/> <b>AMENDED</b> <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Domestic Partnership	CASE NUMBER:
<b>PETITION FOR</b> <input checked="" type="checkbox"/> <b>Dissolution (Divorce) of:</b> <input type="checkbox"/> <b>Legal Separation of:</b> <input type="checkbox"/> <b>Nullity of:</b>	<input checked="" type="checkbox"/> Marriage <input type="checkbox"/> Marriage <input type="checkbox"/> Marriage	<input type="checkbox"/> <b>AMENDED</b> <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Domestic Partnership <input type="checkbox"/> Domestic Partnership	CASE NUMBER:		

1. **LEGAL RELATIONSHIP** (check all that apply):
  - a.  We are married.
  - b.  We are domestic partners and our domestic partnership was established in California.
  - c.  We are domestic partners and our domestic partnership was NOT established in California.
  
2. **RESIDENCE REQUIREMENTS** (check all that apply):
  - a.  Petitioner  Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition*. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)
  - b.  Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
  - c.  We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we married.  
 Petitioner lives in (specify): \_\_\_\_\_ Respondent lives in (specify): \_\_\_\_\_
  
3. **STATISTICAL FACTS**
  - a.  (1) Date of marriage (specify): 6/5/2002 (2) Date of separation (specify): 12/15/2017  
 (3) Time from date of marriage to date of separation (specify): 15 Years 6 Months
  - b.  (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent (specify below): \_\_\_\_\_  
 (2) Date of separation (specify): \_\_\_\_\_  
 (3) Time from date of registration of domestic partnership to date of separation (specify): \_\_\_\_\_ Years \_\_\_\_\_ Months
  
4. **MINOR CHILDREN**
  - a.  There are no minor children.
  - b.  The minor children are:
 

Child's name	Birthdate	Age	Sex
Anna Smith	5/7/2003	15	F
Paul Smith	11/1/2010	8	M
  - c. (1)  continued on Attachment 4b. (2)  a child who is not yet born.
  - c. If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
  - d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
  - e.  Petitioner and Respondent signed a voluntary declaration of paternity. A copy  is  is not attached.

9 • DISSOLUTION I – FORMS

Sample Form 9F: Petition — Marriage/Domestic Partnership (Family Law) (FL-100)

FL-100

PETITIONER: Maria Smith RESPONDENT: John Smith	CASE NUMBER:
---	--------------

**Petitioner requests that the court make the following orders:**

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

- a.  Divorce or  Legal separation of the marriage or domestic partnership based on (*check one*):
  - (1)  irreconcilable differences. (2)  permanent legal incapacity to make decisions.
- b.  Nullity of void marriage or domestic partnership based on
  - (1)  incest. (2)  bigamy.
- c.  Nullity of voidable marriage or domestic partnership based on
  - (1)  petitioner's age at time of registration of domestic partnership or marriage. (4)  fraud.
  - (2)  prior existing marriage or domestic partnership. (5)  force.
  - (3)  unsound mind. (6)  physical incapacity.

**6. CHILD CUSTODY AND VISITATION (PARENTING TIME)**

- |  | Petitioner                          | Respondent                          | Joint                    | Other                    |
|--|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| a. Legal custody of children to.....                     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Physical custody of children to.....                  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Child visitation (parenting time) be granted to ..... | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
- As requested in:  form FL-311       form FL-312       form FL-341(C)  
 form FL-341(D)       form FL-341(E)       Attachment 6c(1)

**7. CHILD SUPPORT**

- a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
- b. An earnings assignment may be issued without further notice.
- c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
- d.  Other (*specify*): Child support be made retroactive to the date of filing of this petition pursuant to Family Code 4009.

**8. SPOUSAL OR DOMESTIC PARTNER SUPPORT**

- a.  Spousal or domestic partner support payable to  Petitioner  Respondent
- b.  Terminate (end) the court's ability to award support to  Petitioner  Respondent
- c.  Reserve for future determination the issue of support payable to  Petitioner  Respondent
- d.  Other (*specify*):

**9. SEPARATE PROPERTY**

- a.  There are no such assets or debts that I know of to be confirmed by the court.
- b.  Confirm as separate property the assets and debts in  *Property Declaration* (form FL-160).  Attachment 9b.  
 the following list. Item Confirm to

Sample Form 9F: Petition — Marriage/Domestic Partnership (Family Law) (FL-100)

FL-100

PETITIONER: Maria Smith RESPONDENT: John Smith	CASE NUMBER:
---	--------------

10. COMMUNITY AND QUASI-COMMUNITY PROPERTY

- a.  There are no such assets or debts that I know of to be divided by the court.
- b.  Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
  - in *Property Declaration* (form [FL-160](#))       in *Attachment 10b.*
  - as follows (*specify*):

11. OTHER REQUESTS

- a.  Attorney's fees and costs payable by  Petitioner  Respondent
- b.  Petitioner's former name be restored to (*specify*): Maria Rodriguez
- c.  Other (*specify*): 1. Consolidation of DVPA case; 2. Health Care for Minor Children; 3. Health Care for Spouse.

Continued on [Attachment 11c. 1, 11c2, 11c3.](#)

12. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 11/5/2018

Maria Smith \_\_\_\_\_  
(TYPE OR PRINT NAME)

  
 \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
(TYPE OR PRINT NAME)

  
 \_\_\_\_\_  
(SIGNATURE OF ATTORNEY FOR PETITIONER)

**FOR MORE INFORMATION:** Read *Legal Steps for a Divorce or Legal Separation* ([form FL-107-INFO](#)) and visit "Families Change" at [www.familieschange.ca.gov](http://www.familieschange.ca.gov) — an online guide for parents and children going through divorce or separation.

**NOTICE:** You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

**NOTICE—CANCELLATION OF RIGHTS:** Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.